



HOW NATIONAL LEGISLATION CAN ADVANCE CARBON JUSTICE

A POLICY TOOLKIT



Grassroots
Justice
Network



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Introduction

Members of the Grassroots Justice Network believe in a world where all people can use the law to defend their rights and take part in decision-making. This includes communities affected by carbon markets.

Drawing on our members' experiences responding to nature-based carbon projects around the world, our network has united around six principles necessary to make carbon projects fair. These co-developed principles are the basis for a carbon justice campaign that seeks to ensure that rules for carbon projects protect community rights - within project agreements, national laws, and global policy.¹ (see pg 6)

With the rapid expansion of carbon markets in recent years, many national governments are currently developing laws and policies on carbon trading. Robust national policies are critical to protecting community rights.² National law and policy defines processes for land acquisition, community participation in decision-making, and distribution of funds from investment. International mechanisms for carbon trading under the United Nations Framework Convention on Climate Change (UNFCCC) and private sector standards

bodies that certify carbon projects often defer to or rely heavily on requirements in national law. Public agencies responsible for defining and implementing national policies are also more accessible and accountable to communities than global mechanisms.

To support the development of robust law and policies, Namati and the Grassroots Justice Network analyzed national legislation and policy frameworks for carbon trading in eight countries.

The questions for the research included:

- How is emerging legislation addressing the carbon justice principles? What are the main gaps?
- Are there common challenges across countries that need to be addressed?
- What are good models for effective policy?

We looked at countries that have recently passed or are in the process of developing policy for carbon trading in Africa, Latin America, and Asia. We also drew from research by the Rights and Resources Initiative (RRI) and McGill University, including a cross-cutting analysis of carbon policy in 33 countries.³ Based on this research, we developed a practical toolkit for grassroots justice advocates to support advocacy for national

policy that reflects key principles for carbon justice. The toolkit focuses on nature-based projects that often have significant impacts on the land rights of local communities.⁴

This toolkit has the following components:

1. Integrating Carbon Justice Principles into National Law or Policy: Examples and Lessons Learned
 2. Checklist for Effective National Carbon Market Legislation
 3. How to Understand and Navigate Power Dynamics Around National Carbon Policy
- Appendix A: Table Comparing National Legislation Across 4 Countries
- Appendix B: Key Terms
- Appendix C: Case Studies From Emerging Legislation

Endnotes

- ¹ If you are new to understanding carbon policy, take a look at our index of key terms in Appendix A. Please also see <https://grassrootsjusticenetwork.org/carbon-justice-movement/> for resources on carbon markets.
- ² The Grassroots Justice Network includes members who are recognized as Indigenous Peoples and those who have lived on their land for generations but are not recognized as indigenous. This toolkit refers to "communities" as those who are directly impacted by carbon projects, including Indigenous Peoples, Afro-descendant Peoples and non-Indigenous Peoples. Indigenous and Afro-descendant Peoples have specific rights to sovereignty over their land. The Grassroots Justice Network also believes it is important to also protect the rights of local people that are not recognized as Indigenous Peoples.
- ³ Rights and Resources Initiative and McGill University. *State of Indigenous Peoples', Local Communities', and Afro-descendant Peoples' Carbon Rights in Tropical and Subtropical Lands and Forests, 2024*. doi:10.53892/OFGY6987..
- ⁴ Nature-based projects rely on land and natural ecosystems like forests, grasslands, and mangroves to store carbon. These projects currently account for about half of the projects in the voluntary carbon market. See *Ecosystem Marketplace, Paying for Quality: State of the Voluntary Carbon Markets 2023*, p.15.

Carbon Justice Principles



1 NO PAY TO POLLUTE

Carbon payments must not be a substitute for eliminating avoidable emissions.

Fossil fuel companies **should be barred** from taking part in carbon payment schemes.



2 RESPECT COMMUNITY RIGHTS TO LAND AND WATER

Recognize the use and ownership rights of communities, including customary rights, irrespective of whether a community holds legal title to the land.

Work with legitimate community governance structures, rather than setting up bespoke, hand-picked committees.



3 FREE, PRIOR, AND INFORMED CONSENT

No carbon projects should exist without a robust and meaningful Free, Prior, Informed Consent (FPIC) of the communities whose land is in question. **This includes a community's right to say no.**

"Informed" means disclosing to communities, among other things, all the actors involved, as well as gross revenue and other financial information throughout the lifecycle of the project.

FPIC means all residents can take part in decision-making, including women, land users, youth, and other groups.



4 FAIR COMPENSATION

For nature-based projects, the communities whose land it is should receive **at least 50% of gross revenue.**

Communities should be able to determine how that money is spent, e.g. on what sorts of development projects.



5 FAIR PARTICIPATION

Enable communities to lead the work of stewardship, including accessing opportunities for training and employment.

Community members should be able to **exercise their rights without fear** of reprisal.

Allow community activities which do not affect carbon storage, e.g. the harvesting of non-timber forest products.

Ensure communities have access to **independent legal support** before and during a project.

Make it easier for communities to access carbon payments directly, without intermediaries.



6 ENFORCEMENT

All of these principles need to be enforced. Governments and certification bodies should ensure robust oversight and accountability.

When carbon projects violate these principles or otherwise go wrong, **there should be clear channels by which communities can pursue a remedy.**

Integrating Carbon Justice Principles into National Law or Policy



The Carbon Justice Principles were developed by grassroots justice organizations that are supporting frontline communities to respond to carbon projects on the land where they live. These principles represent the minimum criteria for communities to thrive amid carbon projects. They can be used to advocate for fair rules on carbon markets at the community, national, and global levels.

This section describes why each principle is important and how it can be addressed in national legislation. It identifies specific policy priorities for protecting community rights and highlights common gaps

in existing policies at the national level. It also includes examples from several countries on how to put the carbon justice principles into action, highlighting successes and challenges to date.



RESPECT COMMUNITY RIGHTS TO LAND AND WATER

Recognize the use and ownership rights of communities, including customary rights, regardless of whether a community holds legal title to the land.

Work with legitimate community governance structures, rather than setting up bespoke, hand-picked committees.

Carbon projects impact vast areas of land, much of which is currently managed by communities with insecure or informal tenure rights. According to an analysis by RRI, at least 1/3 of carbon in tropical and subtropical countries is found in forests where Indigenous Peoples and local communities do not have legally recognized land rights.⁵ In Africa and Asia where carbon markets are expanding quickly, nearly 80% of the land managed by Indigenous Peoples and local communities is through informal tenure regimes that are not formally recognized by the government.⁶

In 2023, the Intergovernmental Panel on Climate Change (IPCC) warned of the risks when carbon projects happen in contexts where community tenure rights are unclear or insecure.⁷ Communities without tenure

security face the risk of being displaced or losing access to their lands and resources. National laws are central to ensuring that land rights are respected and that communities can safely access and use their land. Most carbon market standards currently defer to national land policy, making national legislation the primary lever for protecting community tenure rights.

Whether or not a carbon policy aligns with existing land laws often determines if land rights are upheld. In countries with strong protections for land rights, integrating provisions from existing land laws can safeguard community rights during carbon projects. Unfortunately, carbon policies are often developed quickly and fail to take into account existing land laws. Even worse, in countries where there

are not yet laws that explicitly protect community tenure rights, there is a real risk that carbon projects will spark conflict or lead to land grabs. To avoid harming communities that rely on the land for their livelihoods, land rights need to be documented and recognized before a project begins.

To protect community rights to land and water, national policy on carbon trading should:

- **Require clearly documented land rights as a pre-condition before the approval of a project.** To prevent risks to existing land users, national policy should require project developers to ensure that land rights in the project area are formally documented before a project can be approved. This could include helping communities register their land under existing laws or working with communities to map the boundaries of their land and include references to their tenure rights in any project agreements. Any impacts on water use or access should also be clearly addressed at the outset. If there is limited

recognition of community tenure rights in existing land law, ideally, governments would pursue land reforms before actively seeking to expand carbon investments.⁸

A strong example of national legislation protecting land rights in carbon projects comes from Kenya, where project developers are required to clearly indicate who holds tenure rights to the land. If the land is owned by a third party, they must submit agreements documenting the terms under which rights holders have consented to the land being used in the project.⁹ In Costa Rica, regulations note that disputes over property rights or the right to benefits from the sale of carbon credits are grounds for the government to deny approval of a proposed project.¹⁰

Advocacy pitch

Disputes over land can create project delays and undermine confidence in the market. Ensuring clear understanding of who has rights to the land reduces risk and sets a project up for success.



- **Define carbon rights based on land tenure rights.** The term carbon rights refers to the right to benefit from the land's ability to absorb and store carbon, usually from trees, grass, soil, or peat. Who has this right in law – whether it's people with tenure rights, the government, a mix, or undefined – has a significant impact on the potential for communities impacted by a project to benefit financially.

Many national policies do not explicitly define carbon rights.¹¹ The Rights and Resources Initiative found that less than half of the countries they studied defined carbon rights. Those that do often identify the government as the owner of carbon rights.

In these cases, it can create confusion about what rights communities have and increase the risks that communities will be displaced if a carbon project is proposed on their land. In contrast, in the Philippines, draft policies specify that carbon rights within ancestral territories belong to Indigenous Peoples based on their tenure rights to those lands.¹²

Advocacy pitch

For carbon markets to be fair and effective, projects must benefit the people who live on and manage the land. Carbon rights should be clearly defined based on land tenure rights, including customary ownership and use rights.

- **Engage legitimate community governance structures.** Only community institutions that are recognized by residents as legitimate can represent them and negotiate with project developers on their behalf. National policy needs to clearly define who can give consent and enter into agreements on communities' behalf. Often, these are elected community committees established under law or long-standing institutions for customary governance. For example, the Kenyan Carbon Market Regulations require project developers to work with Community Land Management Committees, local

governance bodies established by the Community Land Act 2016, to develop a benefit sharing agreement.¹³

Unfortunately, project developers often set up parallel structures which are less effective and tend to undermine legitimate community institutions. In a project led by Biocarbon Partners in Zambia, the project developer selected the members of the Community Forest Management Groups instead of the committees being elected by residents as provided for by law. This raises concerns about whether the committees remain accountable to community members.

Endnotes

- ⁵ Rights and Resources Initiative, *A Global Baseline of Carbon Storage in Collective Lands*, 2018.
- ⁶ Rights and Resources Initiative, *Status of Legal Recognition of Indigenous Peoples', Local Communities' and Afro-descendant Peoples' Rights to Carbon Stored in Tropical Lands and Forests*, 2021.
- ⁷ Intergovernmental Panel on Climate Change, *Climate Change 2023 Synthesis Report, AR6*
- ⁸ See TMP Systems, "IAN: Managing Tenure Risk," 2016, 4.
- ⁹ See Kenya, *Climate Change [Carbon Markets] Regulations, 2024, article 16(g)*.
- ¹⁰ Costa Rica, *Regulation and operation of the domestic carbon market, 2013, article 35*.
- ¹¹ RRI 2024.
- ¹² See Philippines Supplemental Guidelines on Free and Informed Consent for forest carbon projects and other related activities, 2024, section 8.
- ¹³ See The Kenya Climate Change [Carbon Markets] Regulations, 2024 and Kenya, *The Community Land Act, 2016*.



FREE, PRIOR AND INFORMED CONSENT

No carbon projects without the Free, Prior, Informed Consent (FPIC) of the communities whose land is in question. This includes respecting a community's right to say no.

FPIC requires the inclusion of all residents in decision-making, including women, land users, youth, and other groups.

"Informed" means disclosing to communities, among other things, all the actors involved, as well as gross revenue and other financial information throughout the lifecycle of the project.

Free, prior and informed consent (FPIC) is crucial to protecting the people who are impacted by carbon projects. When projects occur on sovereign Indigenous Lands, FPIC is required by the United Nations Declaration on the Rights of Indigenous Peoples. FPIC is also important to ensure communities who may not be recognized as Indigenous Peoples have a say in decision-making about projects on their land. FPIC is widely recognized as an international norm for good practice in land investments. In some countries, such as Sierra Leone, national legislation requires FPIC for all land-based investments.¹⁴ The largest carbon certification standards

require project developers to obtain consent from affected communities before registering a project.¹⁵ Despite established norms and standards around FPIC, in practice carbon credit projects are under increasing scrutiny for failing to meaningfully engage communities.¹⁶

To address the implementation gap, national laws need to include detailed requirements for FPIC throughout the project life cycle. While some national policies on carbon trading include the right to FPIC for all communities, most fail to outline specific requirements that can be monitored and enforced.¹⁷ If the process for FPIC is left to the discretion of project

developers, it often takes the form of limited consultation rather than robust consent throughout the lifecycle of the project.¹⁸ Community awareness sessions or meetings for “stakeholder input” are not sufficient to ensure FPIC.

On the other hand, national policies need to guard against defining FPIC requirements in ways that do not align with communities’ own processes for making decisions. When FPIC processes build on existing approaches that communities use for deliberation and collective governance it leads to stronger outcomes.

To protect the right to FPIC, national policy on carbon trading should:

- **Provide for access to information.** National policies must clearly define the information that project developers are required to provide to local communities. This should include information about the project proponent; the location and boundaries of the project area; proposed activities and any anticipated

impacts on community access and use rights; and projected and actual revenue from carbon credit sales. In addition, government regulators should maintain a national registry of project documents that is easily accessible to the public. Because the language of these documents is technical and often unfamiliar to communities impacted by the projects, the government should also require plain language summaries of project plans and potential impacts be shared with affected communities.

To date, access to information remains a significant gap in policy. An RRI study found that 64% of the countries reviewed do not have carbon project registries and only six countries make the information in registries publicly available.¹⁹ In addition to a registry, laws should also require information to be available in local languages and through multiple channels that are readily accessible to communities. For example, regulations in Zimbabwe require information to be shared via local newspapers and local shops.²⁰

- **Require inclusive decision-making.** Decisions to grant consent need to include all groups within a community. National policy can promote greater equality by including explicit requirements or guidelines for ensuring the participation of groups at risk of being left out, such as women, youth, and land users who don’t own the land. For example, the draft policy in the Philippines requires that women should have equal access to project benefits and decision-making processes.²¹

- **Incorporate FPIC throughout the project lifecycle.** Several national laws require documented free, prior and informed consent from impacted communities before a project begins. Some also include provisions that communities must be engaged during the project design stage.²² In addition to obtaining consent at the outset of a project, project developers should also be required to obtain consent for any major

changes to project plans as well as any expansions or changes to the project area.

The draft guidelines on FPIC for forest carbon projects in the Philippines offer a strong example of how to do this. They explicitly acknowledge FPIC as a continuous process and establish consistent criteria to be applied across different stages of a project, from feasibility assessments and project design, to implementation, and through monitoring and verification and sales of carbon credits.²³

Advocacy pitch

When project developers engage communities and obtain FPIC throughout the project cycle, potential conflicts can be prevented or mitigated. Communities will be able to engage more effectively when they define the process for consultation and consent based on their existing approaches to dialogue and deliberation.



FPIC AND TENURE RIGHTS IN LIBERIA'S CARBON POLICY ROADMAP

In Liberia, nearly all laws governing natural resources and land incorporate FPIC as a foundational requirement for any contracts. For example, provisions in forestry and land laws require:

1. FPIC before any area is designated as a government concession. Companies must negotiate social agreements with communities prior to starting operations (National Forestry Reform Law of 2006).
2. Community consent before granting permits to developers for natural resource exploitation on their lands (Community Rights Law of 2009).
3. FPIC from local communities before initiating any land-based investments on community lands (Land Rights Act of 2018).

Despite these existing legal protections, there have been barriers to fully integrating FPIC into carbon policy in Liberia. One significant gap was the failure to actively involve communities in developing the national carbon market readiness framework.

- Photos Source: Andrew Zelman.



There are a large number of community bodies that play key roles in managing land, including community forest committees and community land management committees, several of which are also organized into national unions. Yet consultations on the policy framework did not actively seek to include the perspectives of these key community structures that have the authority to grant consent. The EPA and its partners developed national guidelines for implementing FPIC. However, feasibility studies for the forest sector roadmap note that “the guidelines lack prescriptive requirements, and stakeholders are confused about the ideal definition and approach to meet FPIC conditions.”²⁴ The document was

designed as a guide on community consultation rather than a procedural description of the actions required to meet the basic standard of FPIC. Thus, to date, the Liberia Carbon Market Readiness roadmap still falls short of guaranteeing that communities have the right to make decisions regarding projects that affect their lands and resources.

Further, project developers' accountability for meeting FPIC requirements is limited due to the lack of established mechanisms for monitoring compliance. To address this gap, civil society organizations have put forward recommendations to involve independent oversight bodies or community-led monitoring initiatives to ensure that FPIC is respected.

Endnotes

¹⁴ Sierra Leone Customary Land Rights Act, 2022.

¹⁵ See e.g. Verra, Verified Carbon Standard, v4.7 2024, available at: <https://verra.org/wp-content/uploads/2024/04/VCS-Standard-v4.7-FINAL-4.15.24.pdf>. In contrast, the Article 6.4 Sustainable Development Tool only protects FPIC for Indigenous Peoples.

¹⁶ See e.g. McCoy, Terrence, Julia Ledur, and Marina Dias, “How Carbon Cowboys are cashing in on protected Amazon forest”, Washington Post, 24 July 2024, <https://archive.is/EVzW1/image>; “Kenya’s indigenous Ogiek evicted from ancestral lands for carbon credits”, DW News, 2023, available at: <https://www.youtube.com/watch?v=uC3nGdsSFZ0>; Human Rights Watch, Carbon Offsetting’s Casualties

Violations of Chong Indigenous People’s Rights in Cambodia’s Southern Cardamom REDD+ Project (2024), available at: <https://www.hrw.org/report/2024/02/28/carbon-offsettings-casualties/violations-chong-indigenous-peoples-rights>

¹⁷ RRI study found that 14 of 33 countries recognized the right to FPIC of Indigenous Peoples. Rights and Resources Initiative 2024.

¹⁸ A review of 18 REDD+ projects found that the lack of specific requirements and guidance around FPIC allows project developers to structure processes based on what is most convenient for them. Haya, et al, Quality assessment of REDD+ carbon credit projects. Berkeley Carbon Trading Project, 2023, available at: <https://carbonmarketwatch.org/publications/quality-assessment-of-redd-carbon-credit-projects/>.

¹⁹ RRI 2024.

²⁰ Zimbabwe Carbon Credits Trading (General) Regulations, 2023, Schedule 1

²¹ DENR Draft Guidelines (2024) Sec 9, Art 3.

²² See e.g. Kenya Climate Change [Carbon Markets] Regulations 2024, reg 16.

²³ Philippines Supplemental Guidelines on Free and Informed Consent for forest carbon projects and other related activities, 2024, part 2.

²⁴ See Kerwillain, Shadrach, Feasibility studies to support forest sector carbon roadmap and actions for Liberia, (created for UNDP) 2024, available at: <https://docs.google.com/document/d/1WpRcSDMudKirQ5qRoelWbrbmBqMIV0y/edit?usp=sharing&oid=111628720911244189724&rtopof=true&sd=true>



FAIR COMPENSATION

For nature-based projects, the communities whose land it is should receive at least 50% of gross revenue.

Communities should be able to determine how that money is spent, e.g. on what sorts of development projects.

Robust, binding agreements between project developers and communities provide a basis for communities to protect and enforce their rights throughout the lifecycle of the project.²⁵ These agreements also define how communities will be compensated for the use of their land. Nature-based projects – the primary focus in this toolkit – often place restrictions on how communities can access and use land.²⁶ Fair and transparent compensation for communities is crucial to recognize their investment of time and labor in the project and to offset lost income from changes to livelihoods. Even in areas where carbon rights are held by the state, the people living on and using the land are crucial to a project's success and should be compensated.

Unfortunately, fair compensation is not standard practice for carbon

projects. Most of the carbon standards for the voluntary carbon market do not establish specific requirements for compensating communities. A survey of 47 carbon projects found that only 15 mentioned benefit sharing agreements, and of those only 4 included compensation for impacted communities.²⁷ At the same time, communities often do not have information about the total revenue a project will generate, and thus risk under-valuing their land, resources, and labor during negotiations.

National governments are best placed to establish procedures for how agreements are negotiated and to define the minimum requirements that must be included. They can also ensure compliance by making final project approvals dependent on evidence of a fair agreement with local communities. For example, in

Kenya, the Climate Change (Carbon Markets) Regulations require project developers to submit the community development agreement negotiated with communities before seeking a license from the national government. This allows communities to negotiate without the pressure of the project already having been approved by the national government.

The potential revenue from carbon trading is a major driver behind the development of national legislation. While there are a number of legitimate interests to manage – between communities, traditional leaders, national and local governments – national policy should set benchmarks for compensation to affected communities.²⁸ National policy can also ensure communities have access to the information they need to negotiate a fair agreement with project developers.

Advocacy pitch

Most nature-based projects depend on local communities to succeed – either by relying on them to lead conservation or by limiting their access to and use of the land. If communities are not adequately compensated, projects are more likely to fail and to undermine local livelihoods.

To ensure communities are adequately compensated for carbon projects on their land, national policy should:

- **Define community benefits as a % of revenue.**

Setting community compensation as a percentage of total annual revenue offers a clear, simple guideline that can be easily understood and enforced. For nature-based projects, the majority of the revenue (at least 50%) should go to communities that own or have historically used the land. Two examples in this direction stand out: in Kenya 40% of earnings from land-based projects must be paid to communities and in the Philippines a draft policy requires communities to receive 30% of revenue.

In some cases, a government managed fund for social development or environmental protection stands in for direct compensation to communities. For example, regulations in Zimbabwe do not require compensation for communities. Instead, the government puts a portion of the environmental tax on carbon projects toward two public funds for

climate adaptation and a loss and damages relief fund.²⁹ While these are valuable investments, they should not substitute for compensation to the communities directly affected by a project.

Other factors to consider in addition to the percentage coming to communities include:

- **Revenue vs profit:** It is more transparent and easier to track if the community share is tied to revenue rather than profit. Defining compensation for communities based on profits makes it much harder to assess compliance as costs and future investments in the project could be manipulated. In addition, in many cases it can take 5 to 10 years or more before a project generates a profit due to significant start-up costs.
- **The timing and frequency of payments.** Payments should match communities' needs. In most cases, this means annual payments that start as soon as the project begins to affect their land. However, this can be challenging because projects typically cannot sell credits on the voluntary carbon market

until three or more years after the project begins and the price of credits varies over time, creating uncertainty about how much money the project will earn from one year to the next.

Draft policy in the Philippines provides for communities to be compensated only after the project has passed the “break-even phase”, i.e. once they have recovered initial costs and are generating an annual profit. This is highly problematic because communities are likely to have lost access to the land or resources they depend on for their livelihoods while having to wait years to receive compensation that would offset that loss.

- **Give communities full control over their revenue share.** Communities should be able to decide how to use the compensation they receive. This is in line with their right to self-determination and autonomy to define their own priorities. Policies should also include guidelines to ensure inclusive and transparent decision-making within communities.

One common – and problematic – approach is to establish a community development

committee that includes government officials, the project developer, and sometimes other third parties. This often limits communities' ability to decide how their revenue share is used.

- **Require financial transparency.** Communities and government regulators need access to information about project revenue and carbon credit sales to ensure they are paid in full. National policy should require project developers to provide annual financial statements to the community that include the gross revenue, total earned from carbon credit sales, and operating costs.

For example, Schedule 9 of the Kenya Climate Change (Carbon markets) regulations, requires the project developer to submit an annual progress report that include:

- Brief financial statement highlighting the volume of carbon credits sold in the reporting period;
- Price per carbon credit
- Carbon revenue generated by the project
- Project's operating expenses; and
- Annual social contribution made by the project proponent to the community.

Endnotes

- ²⁵ These agreements go by many different names: benefit sharing agreements, compensation agreements, or project implementation agreements. Whichever term is used, it is important that agreements cover how the land will be used and access rights for communities as well as compensation. In addition, the agreements should take the form of binding contracts that can be enforced.
- ²⁶ The recommendations in this report are primarily focused on nature-based carbon projects. There are many other types of carbon projects, including renewable energy and energy efficiency projects for industries and households. Local communities can benefit from these projects too, but in many cases the community revenue share may be lower unless the project impacts land or ecosystems that communities rely on for their livelihoods. For example, regulations in Kenya require non-land based projects (e.g. clean cookstoves), to share 25% of earnings with local communities.
- ²⁷ Lindsay Otis and Gilles Dufrasne, A fair share of the voluntary carbon market? (Carbon Market Watch) 2023, available at: https://carbonmarketwatch.org/wp-content/uploads/2023/11/CMW_policy_briefing_benefit_sharing_2023_11.pdf
- ²⁸ Benefit sharing in national REDD+ programs offers an example of how contested the distribution of revenue among different actors can be. Progress stalled in most countries when they began attempting to define benefit sharing policies. So far, only seven REDD+ implementing countries have implemented benefit sharing policies, with four establishing a minimum requirement for how much should be allocated to impacted communities.
- ²⁹ Zimbabwe Carbon Credits Trading Regulations, Statutory Instrument 150/2023.



FAIR PARTICIPATION

Enable communities to lead the work of stewardship, including by providing opportunities for training and employment.

Allow community activities which do not affect carbon storage, e.g. the harvesting of non-timber forest products.

Ensure communities have access to independent legal support before and during a project.

Community members should be able to exercise their rights without fear of reprisal.

Make it easier for communities to access carbon payments directly, without intermediaries.

Communities have deep, firsthand knowledge of local ecosystems and experience with land management. The strongest projects are designed with communities in a way that builds on their existing knowledge and identifies practical solutions to challenges they anticipate. Carbon projects often require rural communities to change their production practices, resulting in significant risks for food and livelihoods. If changes in land use are necessary, then it is important to prioritize opportunities for training and employment for community members.

National laws can enable communities to participate in markets as full partners in carbon projects. Communities should be able to participate in project design and governance. However, communities often need dedicated support to engage with project developers as an empowered counterparty. This can include assistance to understand technical project documents, make collective decisions in an inclusive manner, and seek remedy if things go wrong.

To participate fully in carbon projects – either as project proponents or in response to project developers – it must be safe for communities and individuals to speak up. Too often, environmental rights defenders face violence and threats for trying to protect communities. Most national governments have agreed under International Human Rights Law to be responsible to protect freedom of expression. This means that they need to take measures to prevent and respond to reprisals, including removing operating licenses for project developers who do not comply.

Advocacy pitch

Communities must be able to set the terms of project agreements. When communities can engage effectively in shaping agreements, it lowers operational risks for projects and reduces negative social and environmental impacts.³⁰ To be an empowered counterparty, communities need access to independent legal and technical support to negotiate contracts and address grievances.

To support communities to participate in carbon markets as empowered actors, national policy should:

- **Give communities an active role in project governance and implementation.** Some land and forestry laws explicitly give communities the authority to manage local ecosystems. For example, the 2011 Forestry and Wildlife Law in Peru recognizes communities' right to participate in managing forests (Article 2). Similarly, the 2015 Forest Management Act in Zambia also recognizes community forests managed by local people (Section 29). Carbon policy should build on these provisions by ensuring communities can participate in project design and ongoing management of conservation activities on their land.

National policy on carbon markets can also recommend or require that project developers make opportunities for training and employment available to local communities. In many countries, there are local content rules for other types of investment that could be a useful precedent.³¹



- **Ensure communities can access independent legal and technical support.**

Asymmetries in access to information and power between communities and project developers make it challenging to ensure meaningful FPIC and fair negotiations. Providing access to independent support for communities can level the playing field.³² National policy can provide for independent legal aid and technical assistance for communities or require project developers to contribute to a pooled fund for this purpose. For example, The Customary Land Rights Act in Sierra Leone identifies this as a necessary component of responsible investment.³³ In Vietnam, ethnic minorities are entitled to free legal assistance when they face land rights challenges.³⁴

- **Establish strict prohibitions against reprisals.**

Governments should adopt a zero tolerance policy for any intimidation, threats, or attacks on community members who speak out against a carbon project. Any project developer that intimidates or threatens community members for reporting concerns should have their project approval revoked. Governments should also create hotlines or whistleblower mechanisms that allow communities to report threats safely and quickly. Many financial institutions, including the World Bank and the Green Climate Fund, have zero tolerance policies for any projects they finance.³⁵ Similarly, the UNFCCC Article 6.4 Supervisory Body also highlighted the importance of protecting human rights defenders in the Sustainable Development Tool.³⁶

None of the existing national legislation for carbon trading explicitly addresses risks for environmental rights defenders. Nor do policies establish clear expectations for how to respond to instances of retaliation.

- **Simplify requirements to enable communities to register their own projects.**

The ideal market will make it easier for communities to sell their own credits with fewer intermediaries. The requirements for registering a project under national law should be as simple as possible while maintaining strong safeguards against negative social and environmental impacts. In Kenya, civil society successfully advocated for the removal of a proposed regulation that required project developers to have prior experience implementing a carbon project because it would have created

barriers for communities to participate in carbon markets.

In the voluntary carbon market, Plan Vivo has designed processes for simplifying project development and reporting while maintaining strong monitoring of carbon emissions reductions. The Mikoko Pamoja mangrove conservation project is a strong example of how streamlining requirements can enable high impact projects led by communities.³⁷ Governments should also consider providing capacity building to communities, cooperatives, and community-based organizations to register their own carbon projects.

Endnotes

³⁰ See Rachel Davis and Daniel Franks, “Costs of Company-Community Conflict in the Extractive Sector,” *Corporate Social Responsibility Initiative* (Cambridge, MA: Harvard Kennedy School, 2014), 8, 19-21.

³¹ See <https://ccsi.columbia.edu/content/local-content-laws-contractual-provisions>

³² Namati et. al., *How to Address the Corporate Community Engagement Gap: The Case for a Pooled Fund for Legal and Technical Support* (2024), available at: <https://grassrootsjusticenetw.org/wp-content/uploads/2024/09/Report-Basket-Fund-Single-Pages-Compressed.pdf>

³³ Part VII, Section 30

³⁴ Vietnam Legal Aid Act, Joint Circular 01/2012/TTLT-BTP-UBDT (2017) Clause 1, Art 2

³⁵ See Green Climate Fund, *The GCF will Never Tolerate Retaliation* (2021) <https://irm.greenclimate.fund/opinion/gcf-will-never-tolerate-retaliation>. The Escazu Agreement, a regional accord in Latin America, is another powerful reference for national policy as it requires governments to take measures to prevent, investigate, and punish threats against human rights defenders. See Section 9.

³⁶ Section 6.4.1, available at: <https://unfccc.int/sites/default/files/resource/A6.4-SBM014-A04.pdf>.

³⁷ Plan Vivo, Mikoko Pamoja – Kenya, <https://www.planvivo.org/mikoko-pamoja>



ENFORCEMENT

All of these principles need to be enforced. Governments and certification bodies are responsible for ensuring robust oversight and accountability.

When carbon projects violate these principles or otherwise go wrong, there should be clear channels by which communities can pursue a remedy.

Carbon projects pose significant risks to community land rights and livelihoods if they are poorly implemented. National laws can establish strong safeguards to protect community rights. However, these protections are only meaningful if they are actively and consistently enforced. National regulatory agencies hold significant authority and responsibility for ensuring carbon projects implemented in their country meet high standards for social and environmental integrity. This includes establishing clear processes for reviewing and approving carbon projects, ongoing monitoring, and grievance redress.

There are many examples of carbon projects going wrong, leading to the dispossession of local communities or people losing access to the land and ecosystems they depend on for their livelihoods. This makes

it particularly important that communities can seek remedies when needed. While international mechanisms like Article 6.4 and certification bodies for the voluntary market (e.g. Verra) have established grievance mechanisms, they are difficult for local communities to access. They also have important limitations in their scope and ability to enforce protections for community rights. Pathways to justice at the local and national levels are closer to communities and are more likely to be able to fully address their concerns.

Advocacy pitch

Robust monitoring and enforcement can bolster the integrity and credibility of carbon markets. By proactively identifying challenges and addressing noncompliance, regulators can ensure markets are generating positive outcomes for people and the planet.

To ensure active enforcement of the principles described in this toolkit, national policy should:

- **Identify clear processes for proactive oversight and accountability.** Policies on carbon trading need to identify the primary regulatory authority and define the process by which the agency will assess projects. The process for project approvals or licensing should include explicit criteria that address each of the carbon justice principles (i.e., tenure rights, FPIC, compensation, participation, and climate integrity). In addition, project approvals should be documented and made available to the public through a national registry. Finally, the policy also needs to define specific steps for proactively monitoring projects after they are approved. For example, this could include requirements for regular reporting, field visits by regulators, and making renewal of project licenses dependent on a positive track record on social and environmental outcomes. Any project with recurrent, unresolved disputes should not be renewed.

Coordination among different agencies or ministries is a common challenge that can hinder effective implementation and proactive enforcement. There are many examples in the mining sector of the Ministry of Mines granting licenses without coordinating with the Ministry of Lands or the agency responsible for environmental protection. In Zambia the Ministry of Mines allowed one mine to continue operating after the Ministry of Environment issued an order shutting it down. Regulators often stand to benefit from the approval or operation of carbon projects, for example through taxes or a revenue share. These financial incentives can also undercut accountability.

To minimize these challenges, each agency's mandate and responsibilities related to carbon projects should be clearly defined. The agency responsible for environmental protection is typically the best placed to review project approvals and conduct ongoing monitoring. Whenever possible, it is also helpful to separate revenue collection from the agency responsible for oversight of carbon projects.



- **Ensure effective grievance redress mechanisms are in place.** To be effective, processes for resolving disputes and grievances need to reflect communities' needs and perspectives. Grievance mechanisms need to be:
 - **Accessible** – known to potential users and does not create undue barriers to access. Accessibility encourages trust in the system and increases the chances of problems being addressed before they escalate.
 - **Legitimate** – based on independent and impartial processes for coming to a decision. This is crucial to trust in the process.
 - **Focused on access to remedy** – remedy is the central purpose of a grievance process. To be

effective, grievance mechanisms should include options for mediation, requirements to consult affected communities on proposed solutions or remedies, and structures or incentives to ensure remedies identified through the process are implemented.

Most national policies on carbon include some provisions for grievance redress. Several even outline a multi-step process with recourse to higher institutions when needed. For example, the Carbon Credits Trading Regulations of 2023 in Zimbabwe define a tiered set of grievance redress mechanisms, starting with mediation or arbitration by national human rights institutions. Disputes may also be referred to the Designated National Authority



for carbon trading or pursued through judicial proceedings. Similarly, under the regulations in Kenya, disputes are first addressed through mechanisms defined in project agreements, followed by mediation, and referral to the National Environmental Tribunal if not resolved within 30 days from the date of submission to each of the prior mechanisms.

The bigger challenge tends to be ensuring that grievance mechanisms are accessible and effective.³⁸ When possible,

it is helpful to build on existing processes that communities understand and trust.

- **Uphold the terms of contracts with communities.** Governments are also responsible for ensuring that agreements between project developers and local communities are respected. Regulators can require reporting on compensation payments to communities. They can also make license renewals dependent on project developers complying with their contract with communities.

Endnotes

³⁸ Wendland, Lene, *UNGP Effectiveness Criteria*, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Accountability-and-Remedy/GRAM-presentation-effectiveness-criteria.pdf>



NO PAY TO POLLUTE

Carbon payments must not be a substitute for eliminating avoidable emissions.

Fossil fuel companies should be barred from taking part in carbon payment schemes.

Carbon markets must advance progress toward net zero in order to be an effective climate solution. The market value of carbon credits fell by more than 60% in 2023 due to fundamental concerns about greenwashing and environmental integrity. Clear standards and requirements for buyers and sellers are crucial to ensure markets operate with integrity to achieve climate goals. Without decisive action, markets will fail to mitigate climate change and become a dangerous distraction.

Most of the national policies reviewed for this research are being drafted to regulate carbon projects under the voluntary carbon market. These policies define requirements for project developers, but they do not include any conditions or requirements for how buyers can use carbon

credits. To date, governments and certification standards for the international carbon market have not seen regulating buyers as part of their mandate. In contrast, where governments are setting up a compliance market that requires companies to reduce emissions below a certain level there are more direct openings for addressing this principle.³⁹

A number of initiatives, notably the IC-VCM and the Science Based Targets Initiative (SBTI), are working to create stronger standards for how buyers use carbon credits. While global initiatives have an important role to play and national legislation cannot fully address this principle in isolation, there are steps that national governments can take to ensure markets advance climate goals. National policies should define processes

for assessing proposed projects and verifying that any approved projects achieve real emissions reductions. They can also require projects to disclose who is buying carbon credits and set guidelines for developers to use when selecting a buyer.

To ensure carbon markets achieve effective climate mitigation goals, national policy should:

- **Set clear standards for environmental integrity.** Governments are responsible for ensuring that the emissions reductions that projects report are accurate. Most existing national policies require projects to describe how they will reduce emissions or store carbon and identify the methods they will use for measuring outcomes over time. The designated national

authority is responsible for determining whether projects meet standards for environmental integrity before projects are approved and at each reporting period. However, regulatory agencies need to have the technical expertise to monitor and enforce these standards which often poses significant challenges.

It is helpful to identify easily enforceable provisions or incentives to prevent overestimation whenever possible. For example, in Kenya, the national regulations on carbon markets establish penalties for manipulating carbon measurements in order to claim additional credits. They also create penalties for offering false or misleading information about environmental outcomes or financial gains from the carbon project.



- Photo Source: Liberia, Namati by Andrew Zelman

- **Establish guidelines for who can buy credits and how they can be used.** National laws can define criteria for ensuring that companies buying carbon credits are not using them to avoid reducing their own carbon emissions. This is crucial for ensuring that carbon markets support the goal of reaching net zero carbon emissions. Buyers should reduce all avoidable emissions in their supply chain before buying carbon credits.⁴⁰

Compliance markets should include an industry wide limit on emissions that is progressively reduced over time. This ensures emissions will go down over time as part of sustained changes across the entire sector.

Given the need to phase out fossil fuel as quickly as possible, fossil fuel companies should be barred from buying carbon credits. Prohibiting them from participating can increase the legitimacy of carbon markets as this is one of the most common critiques.

Some fossil fuel companies are using carbon projects to improve their image. For example, the two largest projects in Zambia are financed by Shell and British Petroleum (BP). Oil and gas companies' participation in carbon markets is highly controversial as they are the single industry that bears the most direct responsibility for climate change. To achieve global climate targets fossil fuel production needs to be brought to a stop as quickly as possible. For this reason, oil and gas companies should be barred from participating in carbon markets.



- Photo Source: Liberia, Namati by Andrew Zelman

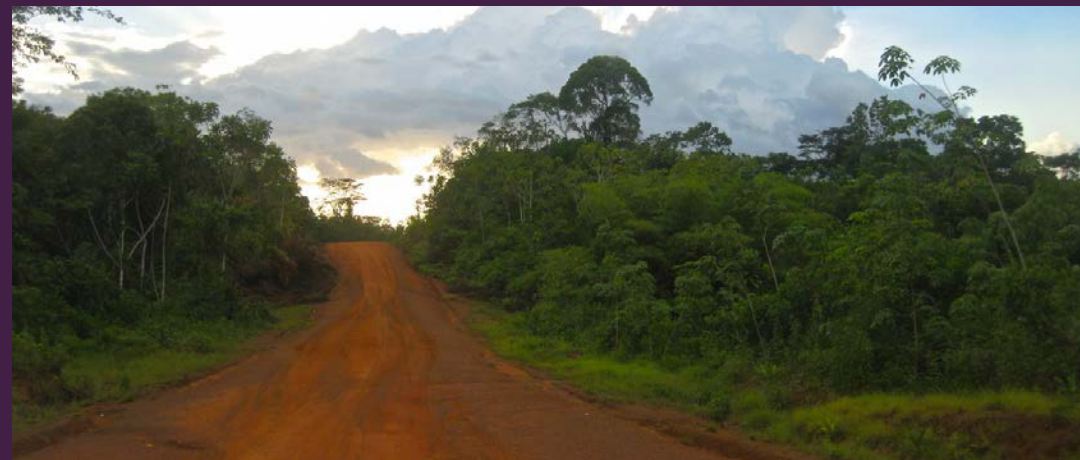
Endnotes

³⁹ Compliance markets involve an industry-wide emissions limit. Companies who are below the limit can sell credits for their remaining emissions. In this type of market governments are already regulating the buyers (i.e., companies who are also subject to the emissions limit).

⁴⁰ A major concern in carbon markets is the risk that companies use carbon credits to avoid taking action to reduce their own emissions. Civil society is pushing for strict limits against the use of carbon credits to "offset" or "compensate for" emissions. Several global initiatives like the Science-based Targets Initiative and the Voluntary Carbon Market Integrity Initiative are establishing guidelines around the claims companies can make when they use carbon credits.

Checklist for Effective Carbon Market Legislative Frameworks

This section provides a checklist for reviewing national policy against the Carbon Justice Principles. When possible, it includes examples of text that are used in carbon-rich countries.



- Photos Source: Namati



RESPECT COMMUNITY RIGHTS TO LAND AND WATER

Recognize the use and ownership rights of communities, including customary rights, irrespective of whether a community holds legal title to the land. Work with legitimate community governance structures, rather than setting up bespoke, hand-picked committees.

Land tenure rights must be identified and recognized before beginning project development.

- Communities with customary use or tenure rights have the right to the benefits from carbon sales on their land, whether or not they have a land title.
- Project proponents must recognize and respect the rights of Indigenous Peoples, and customary rights holders, and take steps to help secure their rights before a project begins. If there is an ongoing conflict over land, the proponent shall undertake no activity to exacerbate the conflict.
- Project must demonstrate legal right to operate in the proposed project area, for example through a contractual agreement with local communities or other landowners following the procedures defined under national land laws.
- The involuntary relocation of rights holders from their land is prohibited.
- National regulatory agencies ensure adequate compliance with safeguards for local rights holders before approving a proposed carbon project the fund.

Communities can negotiate directly with carbon project developers to arrive at a fair and binding agreement.

- Communities have the sole right to enter into contracts with third parties for investment on community land.
- Project developers are required to work with legitimate community governance structures such as local governance committees established under land laws and/or traditional authorities rather than setting up project-specific bodies.

EXAMPLES OF TEXT:

In the Philippines, carbon rights belong to Indigenous communities within their ancestral lands. Section 8 of the draft guidelines from the Department of Environment and National Resources on establishing carbon credit projects and supplementary guidelines on FPIC provide as follows: "In any forest carbon engagement, the IPs have carbon ownership in recognition of their concept of ancestral territories as referring not only physical but the total environment including the spiritual and cultural bonds to the areas which they possess, occupy and use to which they have claims of ownership. As owners, they have the rights to the carbon credit benefits created by a forest carbon project and the right to transfer such carbon credits /GHG benefits to qualified persons under existing laws."⁴¹



FREE, PRIOR AND INFORMED CONSENT

No carbon projects should exist without a robust and meaningful Free, Prior, Informed Consent (FPIC) of the communities whose land is in question. This includes a community's right to say no. "Informed" means disclosing to communities, among other things, all the actors involved, as well as gross revenue and other financial information throughout the lifecycle of the project. FPIC means all residents can take part in decision-making, including women, land users, youth, and other groups.

Project developers should be required to provide the following information to all impacted communities:

- Project implementation plans, including:
 - Primary project proponent and contact details.
 - Location and boundaries of the project.
 - Proposed activities and any anticipated changes to access or land use
 - Potential risks and negative impacts on communities
 - Projected income from carbon credit sales
- Annual financial statements that include total revenue from carbon credit sales and any other sources as well as operating costs for the project.
- Information must be provided in local languages using multiple different modes of communication that are accessible to communities.
- Participating communities also have the right to access other third party contracts, for example, agreements with brokers or marketers.

FPIC is a precondition for project approval.

- The government entity responsible for approving projects must confirm that free, prior, and informed consent of communities with legal or customary rights to the land has been obtained before approving a project. This should include women, youth, and those with use rights to the land.
- Proponents must provide documentation of changes they made to address community concerns and priorities raised during the FPIC process.
- Consent must be clearly documented. A robust consent form should include:
 - A clear, simple summary of project activities
 - A summary of compensation terms
 - A description of the community's decision-making process
 - Signature of representatives authorized by the community to sign on their behalf
- Project developers shall also submit the contract or compensation agreement with communities in their application for final approval.

The responsible government agency maintains a national registry of project documents and approval conditions that is publicly accessible.

- Project applications
 - Project design document that includes information on the project developer, proposed activities, and potential impacts
 - Documentation of community consent
 - Contract/compensation agreement with the communities
- Project approvals
 - Any findings or conditions required based on review by regulators.
 - Formal approval or license issued by the relevant government agency.
- Monitoring and Progress Reports
 - Project audit and monitoring reports
 - Regularly updated information on the carbon credits generated and revenue earned through carbon credit sales.

EXAMPLES OF TEXT:

SIERRA LEONE

Customary Land Rights Act (2022), Part VII, Article 28

No investment shall take place on any land subject to customary law unless the investor obtains the written free, prior and informed consent of at least 60 % of the male and female adult members of the family or a fair representation of the community with rights to the land.

ZIMBABWE

Carbon Credits Trading (General) Regulations (2023), First Schedule

In projects involving local communities, prior informed consent by each individual participant or household representative shall be mandatory and shall be clearly outlined in the Stakeholder and Public Participation Plan.

PHILIPPINES

Draft Guidelines for Establishing Voluntary Carbon Projects (DENR 2024)

Section 9, Article 3: Gender Equity. Ensure that women within the community or Indigenous Peoples (IPs) have equal access to project benefits and decision-making processes.



FAIR COMPENSATION

For nature-based projects, the communities whose land it is should receive at least 50% of gross revenue. Communities should be able to determine how that money is spent, e.g. on what sorts of development projects.

- Affected communities should receive at least 50% of gross revenue for any projects on community land. This could take the form of direct payments, community development projects, employment, or any combination of these.
- Payments to communities should be predictable and in a frequency aligned with regular budgetary processes.
- Communities have the right to collectively decide how to use their revenue share.
- The community revenue share should be distributed equitably to benefit both land owners and land users.
- Project developers are required to provide annual financial statements showing gross revenue, total earned from carbon credit sales, and operating costs.

EXAMPLES OF TEXT:

FINANCIAL TRANSPARENCY

Kenya Climate Change (Carbon Markets) Regulations (2024)

Ninth Schedule, Annual Progress Reporting Form

“Provide a brief financial statement highlighting the volume of carbon credits sold in the reporting period, the price per carbon credit, name and contact address of the buyer(s), the date of carbon credit transfer to the buyer(s), the carbon revenue generated by the project, the project's operating expenses and the annual social contribution made by the project proponent to the community.”



FAIR PARTICIPATION

Enable communities to lead the work of stewardship, including accessing opportunities for training and employment. Allow community activities which do not affect carbon storage, e.g. the harvesting of non-timber forest products. Community members should be able to exercise their rights without fear of reprisal. Ensure communities have access to independent legal support before and during a project. Make it easier for communities to access carbon payments directly, without intermediaries.

- Communities have a right to participate in the ongoing management and governance of carbon projects on their land.
- Livelihood activities that do not affect carbon storage, e.g. harvesting of non-timber forest products, should continue to be permitted.
- Affected communities are guaranteed access to independent legal support before and during a project. For example, the government could provide legal assistance or require project developers to contribute to a pooled fund for legal support.
- There is zero tolerance for intimidation, threats, or attacks against community members and human rights defenders who speak out against perceived harmful impacts of carbon projects.
- Procedures for project approval and renewal do not create barriers for communities to develop and register their own projects.
- Communities are able to access technical assistance to develop or register a project.

EXAMPLES OF TEXT:

ZELO TOLERANCE FOR REPRISALS

In the Escazu Agreement, each Party is mandated to guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters, so that they are able to act free from threat, restriction and insecurity.

Additionally, each Party is mandated to take appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidation that human rights defenders in environmental matters may suffer while exercising their rights.



ENFORCEMENT

All of these principles need to be enforced. Governments and certification bodies should ensure robust oversight and accountability. When carbon projects violate these principles or otherwise go wrong, there should be clear channels by which communities can pursue a remedy.

The responsible government agencies ensure robust oversight and accountability.

- The process for approving projects is clearly defined and includes criteria that address each of the key principles for carbon justice (i.e. tenure rights, FPIC, compensation, participation, and climate integrity).
- Registered projects are required to submit monitoring reports and audits on a regular basis at least every 3 years.
- Law or policy defines clear procedures for resolving disputes and grievances related to land rights, FPIC, revenue sharing, and other issues.
- Budgets for responsible agencies allow for hiring of appropriate monitoring staff and coordination between agencies.

The responsible regulatory agency reviews project performance at regular intervals and considers any reported grievances or disputes before granting a renewal to the operating license.

- FPIC from impacted communities must be obtained again for any (a) major modifications to project activities and/or (b) expansion of the project area.
- Recurrent disputes are grounds for denying renewal of project authorization.
- Any project that violates the terms of agreement between a community and project proponents shall be suspended or canceled.

Communities can submit complaints and access remedy if their rights are violated.

- Mechanisms for grievance redress are clearly defined and easily accessible to local communities.
- Communities are consulted on proposed solutions or remedies.
- There are effective processes for ensuring remedies identified through grievance mechanisms are implemented in practice.



NO PAY TO POLLUTE

Carbon payments must not be a substitute for eliminating avoidable emissions. Fossil fuel companies should be barred from taking part in carbon payment schemes.

Carbon projects must meet high environmental integrity standards.

- The application for approval and renewal of licenses includes robust measurement, monitoring, reporting and verification to ensure the project generates reliable emissions reductions and removals.
- All reported emissions reductions and removals must be verified by independent, accredited third parties.
- Regulation establishes penalties for any project that misrepresents emissions reductions or manipulates carbon measurement and verification.

Guidelines require buyers to reduce their own emissions as much as possible before buying carbon credits.

- Corporate buyers of carbon credits are required to make net zero commitments and demonstrate sustained progress toward them. Companies must prioritize reducing avoidable emissions in their own supply chain and use carbon credits only to compensate for any remaining hard to abate emissions.
- For voluntary markets, fossil fuel companies are not permitted to purchase carbon credits.

EXAMPLES OF TEXT:

KENYA CLIMATE CHANGE (AMENDMENT) ACT (2023)

Section 23A(d) states that “(ii) emissions reductions that have been achieved in violation of human rights and without free prior informed consent; and (iii) emission reductions that have had significant negative social or environmental impact” will not be registered under national carbon markets mechanisms.

Endnotes

How to Understand and Respond to National Carbon Policy Power Dynamics



Like any legislative change, discussions about national carbon or climate legislation are rife with power dynamics. Understanding and strategically navigating those power dynamics is essential for influencing legislation where you are working.

This section provides some insights into trends that we are seeing across multiple countries and tools for visualizing power so you can analyze the situation within your own context and create a winning strategy.

WHAT POWER DYNAMICS ARE WE SEEING INFLUENCE NATIONAL CARBON LEGISLATION?

The power dynamics within each country are, of course, unique. That said, we see trends across multiple countries creating national rules about carbon markets that might be useful information for those trying to influence change:



Rights holders. In many countries, rights holders, those who have formal or informal rights to the land, are organizing to ensure that their voices are included in the legislative process - that their interests are represented in the outcomes. This often happens with the support of community based or non-governmental organizations. For example, in Kenya, numerous organizations submitted official comments on draft regulations about carbon markets advocating for the rights of communities.

This resulted in changes to the draft such as the recognition and incorporation of the Community Land Committee which is a legitimate representative of communities in community lands under the Community Land Act, 2016. In Sierra Leone and Zambia, organizations representing rights holders have built relationships with different government officials working on this topic so that they were invited to an official working group on the national policy drafting.



International influencers. While international actors often try to influence national legislation and policy, there is a quick and direct link from international actors influencing carbon policy. Carbon markets are global in reach and impact. The overall amount of carbon in the atmosphere is leading to the global climate crisis. Those who think that carbon markets are a solution to the climate crisis have a strong interest in fostering more markets. They use their influence to promote the UNFCCC agreements, like Article

6.2, which allows carbon markets to trade between countries to reach their national commitments, and Article 6.4, which allows for voluntary trading. Proponents can also use their power to shape voluntary carbon markets. International organizations, like the World Bank and UNDP have increasing engagement on national and international laws on voluntary carbon markets. Further, individuals that work for these institutions often have developed careers advising countries on policy related to REDD+ and other carbon frameworks. These individuals often have personal career incentives that are tied to perpetuating carbon markets. This means they may be incentivized to push for quick national carbon policy creation over ensuring comprehensive participation of all parties.

WHAT ARE NATIONAL DETERMINED CONTRIBUTIONS?

Nationally Determined Contributions (NDC) are promises that countries make every 10 years about how they will reduce greenhouse gas emissions to address the climate crisis. A country's NDC plan might include carbon projects. If a country cannot meet its goal on its own, it can trade emission reduction or removals with another country through Article 6.2 carbon transfers. The potential of trades – and financial investment – through NDC is influencing many countries to quickly ready their carbon market rules. Understanding your country's NDCs can help you understand their plan for carbon policy.



National Ministries. In many countries the different national ministries play important roles in shaping the carbon legislation. Which ministries are leading-or not leading-the process and their respective interests can greatly influence the content of provisions and whether community rights are considered.

- **Ministries of Finance.** There is a sense in many countries that carbon markets are a means to access financial windfall of climate financing. As a result, in many places, Ministries of Finance are early players in discussions about carbon policy. For example, in one country, the Nigerian Sovereign Investment Authority initiated a review of national policy about carbon projects with the aim of establishing mechanisms to create national carbon crediting. Ministries of Finance are often extremely powerful actors because of their control of the budget and economy. The interests

of Ministries of Finance tend to focus on national financial transactions and financial benefit to the government. This means that when Ministries of Finance dominate or frame the discussion about carbon markets, there is a risk of deprioritizing the complications related to land rights and community impacts.

- **Ministries of Environment.** A Ministry of Environment's mandate tends to include conservation and climate commitments. As such, they are often a key agency involved in discussions about developing carbon policy. Their interests vary depending on the government's approach to the climate crisis, as well as how forestry and conservation are managed. In countries where conservation is done with a top-down approach, these ministries can lean towards strong national control over decision making about carbon projects. This means that the national government makes decisions about large areas of land, often without the involvement of communities impacted by that land. At the same time, sometimes Ministries of Environment have insight into compliance of land-based investments because of their

role monitoring environmental impacts. They often understand implementation barriers for corporate compliance. The Ministry of Environment is usually relatively understaffed and under-resourced.

- **Ministries of Land.** Ministries of Land are typically responsible for ensuring rules are clear for respecting land rights during land based investments. In many cases, the Ministry of Land is not actively involved in defining carbon policy. However, when these ministries are involved, there tends to be more attention to land tenure rights and greater fidelity to existing land laws. For example, in Sierra Leone, the Ministry of Lands is keen to ensure that national carbon policy aligns with the Community Land Rights Act (CLRA).
- **Ministries of Foreign Affairs.** In most countries, the Ministry of Foreign Affairs is involved in climate negotiations and in agreements between countries related to carbon projects. This can mean that the Ministry of Foreign Affairs also has a seat at the table influencing the national carbon policy. Ministries of Foreign Affairs are also often involved in reporting on the country's human rights obligations.



Corporate actors. Project developers, carbon standards, and market investors all have a lot to gain financially when carbon projects go well. They also tend to have the most information about the intricacies of carbon markets. Like corporate influence in other sectors, we have observed corporate actors directly and indirectly attempting to influence national legislation. This can include hosting events to “inform” national actors about carbon policy and directly meeting with ministry officials and parliamentarians. In many contexts these actors can be very influential because government officials are concerned about losing the access to revenue that they represent.

- Photo Source: Kaisahan



Parliamentarians with special interests. Because the rules are being incorporated into national legislation, parliamentarians are key players in determining carbon policies. We have found that the knowledge of parliamentarians about carbon markets varies and their susceptibility to influence by corporate and international actors is high. In many contexts, parliamentarians are very concerned with the views of traditional leaders or local government officials from their constituency, often because their election depends on endorsements. When the views of traditional leaders do not align with those of communities, it can be politically difficult for parliamentarians to speak clearly in favor of communities.

- Photo Source: Kenya, Namati



Traditional leaders. Traditional leaders, such as Tribal Chiefs, can be influential due to the power they have over land and communities within those lands. In some countries they hold formal authority over common lands or ancestral territories, potentially including the power to make decisions about contracts with outside investors. They can be a useful ally for communities during project negotiations as project developers often want their support for the project. While they can help advocate for communities' interests, traditional leaders may also have their own interests that diverge from those of communities. For example, they may want to retain personal control over decision-making about the project or the use of revenue. As they are often recognized by the government as holding authority over land, traditional leaders can also have significant influence over national policy. They can also be an ally for communities on many demands for policy development, but they may also attempt to protect their own role and decision-making power.

- Photo Source: Kenya, Namati



POLITICS AND POWER DYNAMICS THAT ARE SHAPING POLICY DEVELOPMENT IN TWO NATIONAL CONTEXTS

In Zambia, as the government develops regulations and policy guidelines on carbon markets a number of power dynamics are shaping the direction and outcomes of the process. Development agencies have been supporting initiatives that involve the development of guidelines and regulations for carbon markets. The Ministry of Finance is playing a big role in shaping carbon policy because of the opportunity to generate taxes and state revenue. Participation by the private sector and communities has been limited due to lack of access to information and capacity to engage. In contrast, traditional leaders have proved to be highly influential. The Parliamentary Committee is hesitant to go against their wishes because they can mobilize significant popular resistance. This has meant that engagement by traditional leaders has largely replaced other efforts to ensure community engagement.



- Photos Source: Andrew Zelman(1-2) & Kaisahan(3)

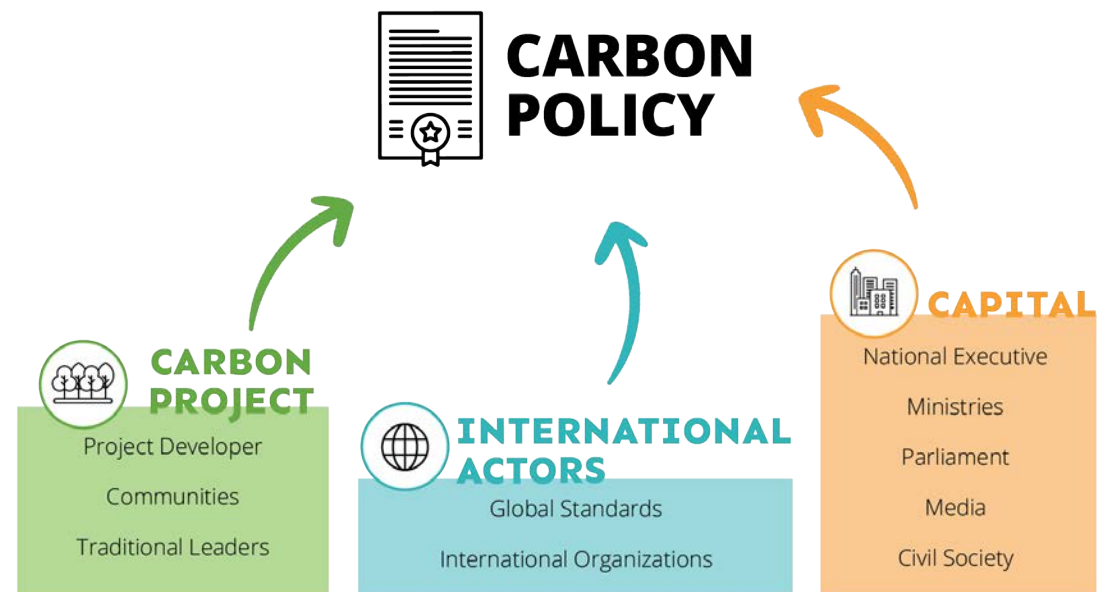
In the Philippines, the government has made ambitious commitments under the Paris Agreement and is aiming to demonstrate progress ahead of COP 29. This is contributing to a push to rapidly adopt policies on carbon trading. Again, power and interest dynamics are impacting how the policy development process unfolds and who it benefits.

First, multiple agencies are creating separate policies for various sectors, potentially creating the risk of contradictory requirements and additional challenges for implementation. For example, the Department of Environment and Natural Resources (DENR) is the leading agency responsible for regulating carbon under Article 6 of the Paris Agreement. They are currently developing a directive on carbon trading in forest areas. The National Commission on Indigenous People (NCIP) also put out draft guidelines on FPIC in carbon projects and the Department of Agriculture is considering a policy for carbon on agricultural lands.

Second, the DENR guidelines, the primary policy regulating carbon trading, were developed with limited input from communities and local governments, which is reflected in the outcomes. There are no binding requirements for public participation in the policy process and consultations were held at the national level, far from the rural communities who will be the most impacted. This means the draft policy fails to address many of communities' concerns. In contrast, the NCIP held local consultations with Indigenous Peoples on the FPIC guidelines. These consultations focused on Indigenous communities and did not include widespread representation for other rural communities.

Finally, the potential revenue from carbon trading is a driving interest for the government. This is a focus for the Ministry of Finance and gives them significant power in shaping policy development. As a result, there is a major risk that generating revenue is given higher priority than advancing conservation goals or protecting community rights.

WHAT IS POWER MAPPING?



Power mapping is an advocacy tool that will help you identify key decision makers or influencers needed to achieve policy wins. It enables policy influencers to identify where the power and influence lies, as well as the people/entities that are most aligned to their advocacy goals (and, just as importantly, those that are not aligned).




As noted above, the actors involved in defining national carbon legislation are varied. Because carbon policy is complex, new,

and infused with a lot of money, the power dynamics are changing quickly. These changes may mean that the power dynamics for this sector differ from what is influencing other land-based investments or climate justice areas. Understanding the different actors involved in your context, their power to influence change, and their alignment with policy positions, is a critical first step to considering how to approach advocacy. This will help you prioritize our resources and our messages to be most effective.

HOW DO YOU DO POWER MAPPING?

Identify all the key actors involved or likely to be involved in the formulation of the policy. Be as specific as possible.

This is a list of generic actors, fill in the ones that are relevant for your country with the specific ministry or individual names

<p> National Executive</p> <p>Office of the President: _____</p> <p>Ministry of Environment: _____</p> <p>Ministry of Finance: _____</p> <p>Ministry of Land: _____</p> <p>Ministry of Forestry: _____</p> <p>Ministry of Indigenous People: _____</p> <p>National multi-stakeholder groups: _____</p> <p>Consumer Protection Agency: _____</p> <p>Parliament</p> <p>Committee on Climate: _____</p> <p>Committee on Land Use: _____</p> <p>Committee on Natural Resource Management: _____</p>	<p>Civil Society Groups</p> <p>Climate focused _____</p> <p>Environmental and Land focused _____</p> <p>Indigenous organizing groups _____</p> <p>Justice groups _____</p> <p>Academic _____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Media</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p> Subnational Governments</p> <p>Paramount chiefs: _____</p> <p>Village committees: _____</p> <p>Mayors and governors: _____</p>	<p>Private Sector</p> <p>Current project developers _____</p> <p>Influential investors _____</p> <p>Standards being used in the country _____</p>
<p> International Actors</p> <p>Regional bodies (African Carbon Markets Initiative (ACMI)</p> <p>International development partners such as the World Bank, International Monetary Fund (IMF), United Nations Development Programme (UNDP), Foreign Commonwealth Development Office (FCDO).</p> <p>_____</p> <p>_____</p> <p>_____</p>	

HOW TO IDENTIFY ACTORS

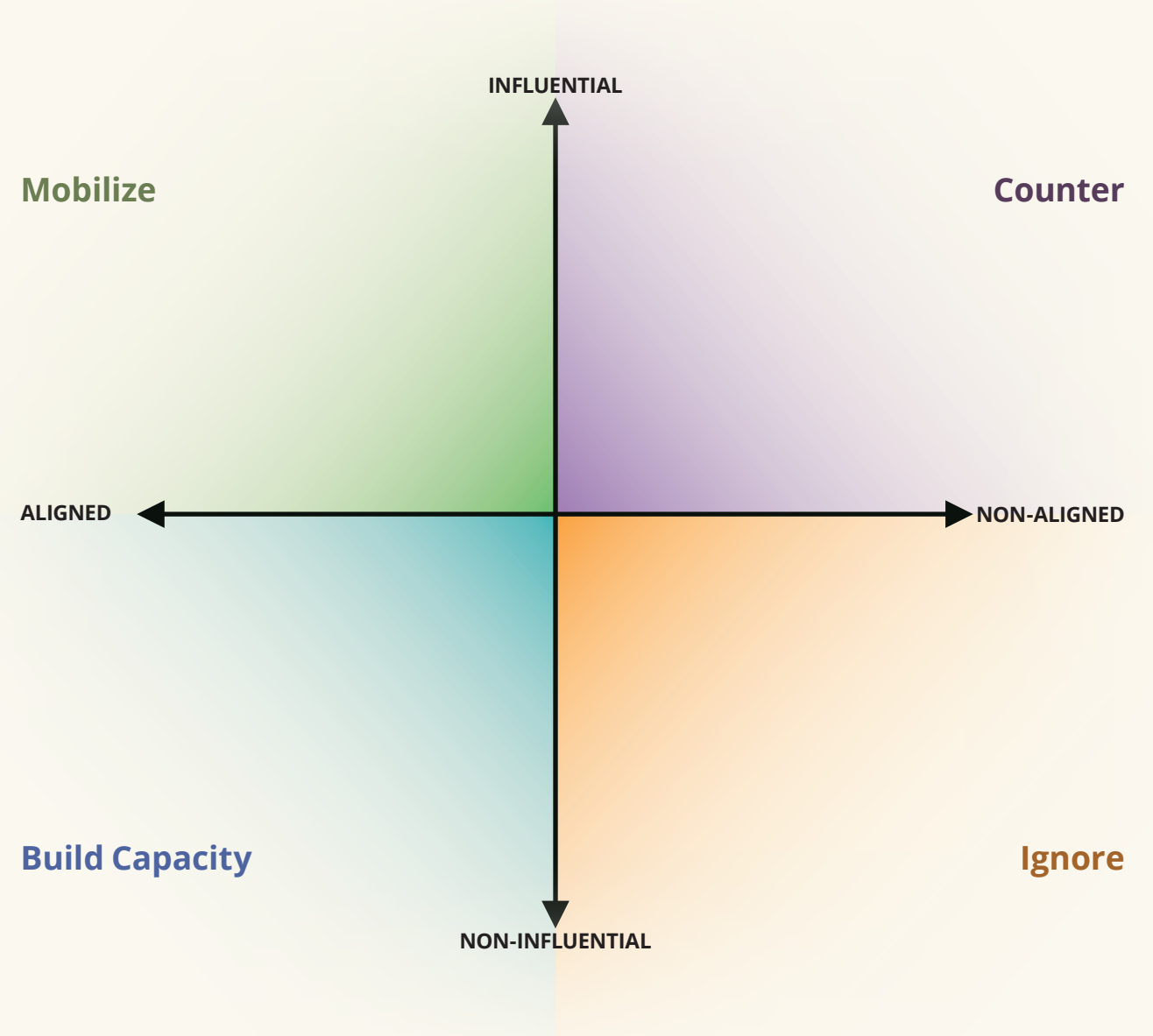
Identifying which institutions are of influence is often the first step to finding the key decision makers. These steps below can help you identify the institutions, and continue asking questions to find the individual who has the most influence to making the decisions:

- Check with people who have previous experience working with actors in other sectors such as in the land, environment, forest or wildlife management. Interviewing civil society groups who have worked on similar issues about their understanding of the different decision makers can be invaluable.
- Media reports can show actors that are speaking about the policy formulation or actively involved in the space. If you notice the same reporter is writing multiple stories about carbon markets, they are likely to have a good understanding of the different influencers. These reporters are often open to quick discussions to share information about who is making decisions.

- Legal frameworks, especially land and environmental laws, identify government institutions that have formal mandates related to land, environmental protection, and climate change. Understanding who is involved in deciding rules for relevant sectors is likely a good starting point for carbon markets.
- To understand which international actors are playing an important role in your country, try to identify who is funding government efforts on carbon trading or climate mitigation (for example, the World Bank, a regional development bank, or governments of other countries). Also check to see if your government is part of joint policy initiatives like the Forest Carbon Partnership Facility, the LEAF coalition, or the African Carbon Markets Initiative.
- Once you identify a few actors, you can reach out to them to find out more about their involvement and get information about other actors who might be involved in carbon policy space.

VISUALIZING POWER DYNAMICS

There are multiple ways to visualize the power dynamics that can help you better understand the different actors that are part of making change and empower you in your strategy to confront them. We offer some options for you to consider visualizing the power dynamics. Many advocates have found that using more than one form of mapping can help them better prepare.



MAP THE ACTORS BASED ON THEIR LEVEL OF INFLUENCE AND ALIGNMENT WITH YOUR VIEWS.

This is a classic power mapping exercise where we consider on the horizontal axis how much the actor is aligned with your views and on the vertical axis how much power they have to influence change. This exercise often lends itself well to a big white board or post-it notes so you can move actors as you discuss them.

Once you have mapped out the actors, understanding which quadrant they find themselves in can help orient your response.

- **Sympathetic but weaker - Build capacity:** These are actors that are aligned with our advocacy asks, but not influential in the policy making process. For instance, communities and other Civil Society Organizations (CSOs) in Sierra Leone are aligned to the carbon justice principles but are not influential in the process. Building their capacity helps build more power and ensures there are more people amplifying the advocacy asks. Rights holders often fall here, so educating and organizing them can be a powerful step.

- **Sympathetic and more powerful - Mobilize:** This group of actors are aligned to the advocacy asks and are influential. For instance, the Ministry of Lands in Sierra Leone is aligned to our advocacy towards respecting community rights under the CLRA and they have influence over the policy makers. It is essential to mobilize these actors.
- **Unsympathetic and powerful - Counter:** These are the actors that are not aligned but are influential. It is essential to counter their policy positions to weaken them so that they are not incorporated into the law. To do that, you could develop arguments against their points, try to win over their allies, or attempt to shift the issue into new forums and framings that lessen their influence. In some cases, you may even consider finding a compromise position that changes their alignment, and maybe your own.
- **Unsympathetic and weaker - Ignore:** These are actors that are not aligned and are non-influential. Since they have no influence, it is efficient not to consider them in your strategy.

MAPPING THE FORMS OF POWER

There are multiple types of power that can influence a policy. In their guide about grassroots change making, JASS⁴² describes four arenas of power that are critical to understand:

Visible power: This includes formal power defined by law

Hidden power: Organizing behind the scenes to influence formal structures

Invisible power: This often includes shaping norms and beliefs through narratives, communication strategies, and culture.

Systemic power: These are underlying operating frames that result in different levels of influence, like patriarchy and ingrained racism.

Using this questions, place the actors you identified in the different forms of power they exert. Consider too different methods necessary to address those forms of power. In doing this exercise, you may notice additional actors involved in carbon policy that you didn't list earlier.

- **Visible power:** What power is most prominent influencing carbon policy? This includes formal power defined by law.

- **Hidden power:** What is happening behind the scenes to influence carbon policy? Organizing behind the scenes to influence formal structures.

- **Invisible power:** What are the norms and beliefs influencing carbon policy? This often includes shaping norms and beliefs through narratives, communication strategies, and culture.

- **Systemic power:** What are the underlying structures that are influencing carbon policy? These are underlying operating frames that result in different levels of influence, like patriarchy and ingrained racism.

SAVVY STRATEGIES TO CREATE CHANGE



Once relevant power and interest dynamics related to carbon markets have been identified, the next step is determining how to deliberately respond to this political landscape, with the goal of maximizing impact. The best strategies often depend deeply on the context, and we can learn a great deal from other frontline change makers about how to approach these steps. This table draws from politically savvy work of numerous frontline change makers who shared how they actively addressed political obstacles and created or capitalized on political opportunities.

The strategies are organized into three general categories: those aimed at navigating the status quo more opportunistically; those focused on changing the balance of power and interests to create conditions more favorable to reform efforts; and those aimed at circumventing or actively working around existing political challenges. Strategies in the table should be understood as an illustrative menu of options and can be mixed and matched across the three general approaches or supplemented as appropriate for a given context.⁴³

- Photo Source: Sierra Leone, Namati

After reading through the next table, consider the following questions:

- What do you expect to be the most effective way of approaching specific power and interest dynamics around particular carbon market issues in your context: navigate, change, or circumvent? How does this connect with your understanding of who has the power above?

- Which strategies strike you as most relevant? What resources would you need to operationalize them?

- How might you combine strategies from across categories?

- Would it be helpful to consider working with others who might be taking a different approach? How could that strengthen or undermine your efforts?

STRATEGY	RATIONALE	OPERATIONALIZING
1. NAVIGATE: MAKING THE BEST OF THE STATUS QUO/ALIGNING GOALS AND STRATEGIES WITH POLITICAL REALITIES.		
1A. Strategic issue framing	Trying to frame issues/specific land-based investment (LBI) governance reforms in ways that maximize support and minimize opposition from key actors.	Understanding key actors' priorities and framing/ focusing on issues in ways that align with their interests or deliberately avoid scenarios where opposition is likely.
1B. Tolerable concessions	Select concessions might neutralize opposition and allow for some progress.	Understanding interests of those blocking progress and considering whether there are concessions to be made that do not compromise core aspects of the reform agenda.
1C. Simplify implementation	The easier implementation is, the more likely it is to happen/ fewer opportunities for delay or obstruction.	Include implementation planning and resourcing in reform efforts, with an emphasis on simplification.
1D. Capitalize on windows of opportunity	Certain "moments" can create auspicious opportunities to advance reforms due to increased attention/ scrutiny or the creation of openings to influence LBI that do not normally exist.	Look out for and take strategic action in response to openings such as: campaigns/elections; key moments in development of LBI policies or legislation; and scandals/ disasters/other events demonstrating risks of poor governance of LBI.
1E. Collaborate with reformers	Landscape of power will not be monolithic, so look for the most powerful actors who are sympathetic to reform and try to maximize their impact.	Engaging sympathetic actors in government through collaboration on identifying: actionable problems; viable change pathways; and technical inputs to support their actions.
2. CHANGE: TRYING TO SHIFT THE STATUS QUO/ALIGNING POLITICAL REALITIES WITH GOALS AND STRATEGIES		
2A. Shift the interests and incentives of key actors	Actively seeking strategies to change the incentives/ disincentives and interests of key actors to better align with the pursuit of desired LBI governance outcomes (increase support/ decrease opposition).	<p>Naming and shaming/ "faming"</p> <p>Mobilizing pressure from below to demand change (communities, unions, indigenous populations, broader social groups)</p> <p>Mobilizing pressure and support from above (global actors like international financial institutions, credit rating agencies, etc.) to both incentivize and enable change</p> <p>Reframing issues to disincentivize opposition</p> <p>Focusing on avoiding conflicts of interest</p>

2B. Shift the balance of power: strategic coalitions	Building strength in numbers –ideally involving at least one reasonably powerful government actor – to try to overcome opposition or inertia impeding LBI governance reform by amplifying pressure on key decision-makers, improving resources of those involved, expanding networks, improving credibility of reform proponents, insulating individual actors from dismissal/ pushback/ retaliation, etc.	<p><u>Types:</u></p> <ul style="list-style-type: none"> • Horizontal: connecting actors across government or across social groups • Vertical: connecting a range of different types of actors • Transnational: connecting national/ subnational coalitions with global allies <p><u>Formation:</u> identifying/cultivating and focusing on areas of shared interest across actors</p> <p><u>Potential participants:</u> reform champions in government, allies across government agencies, parliamentarians, communities, social movements, traditional/cultural/ religious figures, media, organized labor, domestic private sector, global actors (international non-governmental organizations, media, international financial institutions, investors, etc.)</p>
3. CIRCUMVENT: WORKING AROUND POLITICAL OBSTACLES		
3A. Relocate authority within government	Authority often lies with those who have a conflict of interest/ obstruct change, so it may be useful to try to move to more independent or pro-reform actors.	Explore possibilities for creating new bodies to oversee specific policies or practices and cultivate their independence/autonomy.
3B. Move to different levels of government	Sometimes, removing reform activities from the attention of national figures can reduce prospects of interference by vested interests.	Move reform efforts from national to subnational/local levels.
3C. Think beyond governments alone	Involvement of stakeholders in key decision-making, implementation and oversight/ monitoring roles may contribute to greater support and efficacy.	Explore possibilities of creating multi-stakeholder bodies or groups to oversee and advance reforms.
3D. Think beyond governments altogether	If there are powerful, nonstate actors in a position to help deliver the desired LBI governance outcomes, and that have the desire to do so, they might provide another pathway for improving prospects for progress.	Look for major private sector actors who might be motivated by social license or other concerns to address specific LBI governance demands, e.g., around community beneficitation, consultation or complaint mechanisms.

CRAFTING MESSAGES TO CONNECT YOUR ASKS TO YOUR AUDIENCE



You have done considerable work to identify the carbon policies that are most important to your work, map the different actors involved in influencing those policies, consider their power to create change and interests motivating them, and prioritize strategies to move forward. Now it is important to take some time to consider how the words you use to describe your policy ask connect with your audience.

You already know from working in organizing communities and creating change that the words we use are incredibly important to how and whether different people will be willing and able to help us create

change. Within a community impacted by a carbon project you are likely to use different words to describe how a tree impacts the environment than in a boardroom of a carbon developer. There is a lot of research about what types of language are most persuasive with different audiences.

Unfortunately, for decades the climate movement has found it particularly difficult to consistently deploy this research in the most effective ways.⁴⁴

This section is aimed at providing space for you to consider a few tips on good practice and giving you the opportunity to reflect on how to best deploy these tools.

UNDERSTANDING YOUR AUDIENCE

Before thinking about the specific words we use, it is very helpful to spend a little time unpacking who it is that we are trying to reach (your audience(s)), what is important to them (their values, needs, and concerns), and how to reach them (where and when).

Being clear about who the audience is helps us spend our time connecting more clearly with their values and words that are relevant to them.

Select one audience that you intend to reach out to as part of your strategy. Try to be as specific as possible about the individual involved. Consider the following:

What matters to this audience?

- What values are relevant to them?
- What is the main objective of their role (formal or informal)?
- What are they interested in?

What types of words do they use? Is their day to day language technical or colloquial? What will feel most familiar to them?

- Where does this person access information?
- What medium of information do they have frequent access to?
- What information sources are most trustworthy to them?

What do you want to communicate to your key audience or what do you want your audience to know, do, or feel?

After answering these questions, developing a persona of the audience can help you clarify what will resonate.

WHAT IS NARRATIVE WORK AND WHY IS IT IMPORTANT?

Narratives are the stories we tell about the world we have experienced, the world we live in, and the world we want to see. They hold immense power to shift power dynamics and challenge existing perceptions. Narrative work is defining how we frame an issue through an overarching set of themes and values. The idea behind using narratives is that we can connect with our audience’s values and understanding of how the world works. This can be a powerful tool to create alignment and minimize the differences in positions.

Narrative message construction uses a simple framework:

Value: Start with a value, an underlying belief, that is shared by both you and your audience. Beginning with this type of statement helps the audience hear our message and increases their buy-in to the outcome of the conversation. People are more open to information when they feel a connection to it in some way.

Ex. We all want to make sure that people in our country are not harmed more by solutions to the climate crisis than the crisis itself.

Problem: Introduce the problem in a way that creates conflict with the values. If you use facts, make sure that they specifically show how the shared value is threatened or at risk.

Ex. Right now, communities in our country who have not been contributing to the climate crisis are not able to access their land and have lost their source of income because of a carbon project.

Solution: Provide a positive solution that allows people to feel like they have power and choices. This is an important opportunity to help connect what you are proposing to the values that are relevant to your audience.

Ex. We can make it so that people in our country are not harmed by carbon projects like this. Including protection of land rights in a national law about carbon markets will allow the markets to continue in a way that does not harm communities.

Action: Now that your audience sees a solution that is connected to their values, they are ready to help. Giving them a specific action they can do in the short term, builds your credibility with them and helps them feel empowered.

Ex. You can help by making sure the next draft of legislation before your committee includes this proposed language.

Now try it yourself.

Audience _____

Shared value: What values do you share with this audience?

Problem: How does this problem currently threaten these shared values? How and where would your audience recognize this problem?

Solution: What is your solution and how does it benefit this audience or connect to their values?

Action: What is your audience’s role in creating change? What are immediate steps they can take to work towards that change?

If you want to learn more about narrative approaches, Clean Mobility Collective has a great Narrative Strategy Guide.

WHAT IS STORYTELLING AND WHY IS IT IMPORTANT?



Storytelling gets a lot of attention in civil society communication spaces right now as an effective means of communication. Stories are impactful because they connect with an audience's sense of empathy. Numerous studies show that people are more likely to remember information if they connect with it emotionally. People are naturally wired to understand through storytelling because stories create context, move people, and build connections. They allow us to see ourselves in another's shoes.

Carbon markets are a technical, policy-heavy space that is usually driven by nuanced discussions with many acronyms. However, people remain involved in making these decisions and they often crave stories that will help them connect with the technical issues they understand with the human impacts they don't. Stories can bridge across different technical language and help multiple stakeholders have a common frame of reference of the policy issue. They can also help unfamiliar audiences—like communities faced with navigating their first external carbon project investment—to understand their role and power in shaping how that story plays out.

Stories have the following basic components:

- **Character:** This is a person who is identified as an individual. The more specific this person is the more they become real to the audience - and the more the audience cares about what happens to them.
- **Conflict:** A good story needs the character to have a journey that includes some type of conflict or problem they need to address.
- **Resolution:** Conclude the story with a resolution to how the problem was resolved and what happened with the character.
- **Connection to policy ask:** After telling a compelling story, it's key to connect it to a specific policy ask or action that the audience can take. Do not assume that your audience will implicitly understand how the story connects to the changes you propose or how they can be involved in making that change. We want to practice Actionable Storytelling: telling a story that demonstrates for others how they can see themselves as, and become, agents of change.

FRAMING GUIDELINES FOR DEVELOPING YOUR STORY:

- **Talk about solutions, not problems -** Hopeful stories inspire us to act, focusing on just the problems and potential harm can make audiences feel defeated. Name the problem, but focus on your solution more.
- **The future -** what is possible to change and what we want the future to look like - Tell your audiences what the story of the future could look like. How is it different from the past or present? How is it the same?
- **Highlight what we stand for, not what we oppose -** Speak frequently to your shared values with your audience
- **Define clear, active, and empowered roles for your audience -** Give your audience clear, specific ways to act towards the change you are envisioning together. Use your story to show that change is a constant and proactive tool we all have access to, not just a single act we use to react to an unwanted change.

Examples of storytelling to address carbon projects:

- **Land-grabbing and the fight for justice in Sierra Leone.**

A 2024 DW⁴⁵ documentary shows the story of a community in Sierra Leone responding to a carbon project. The main characters in this story are the paralegals supporting the community trying to navigate a negotiation with a carbon developer. By traveling with the paralegals through multiple methods of transportation, the viewer gets a strong understanding of the challenges involved in supporting communities navigating these complex discussions. Introduction to some of the community members and hearing how their livelihoods could change also makes the conflict of the community

negotiation more real to the audience.

- **To save carbon projects, make them fair.**

An October 2024 op-ed by Vivek Maru in the Telegraph, titled 'To save carbon projects, make them fair'⁴⁶ effectively opens with a story of how one community member responded to discussions about carbon markets. By naming the women, describing her home and her role in the community, and giving her a quote, the character becomes very real to the audience. In just a few lines, we also understand that the confusion that she is experiencing is a real conflict for her. This story sets up a more detailed discussion of the carbon justice principles.

CONNECT YOUR PROJECT TO A STORY

- What is the key message you want to communicate with your story? This might be a policy ask or an issue that policymakers don't understand.
- Who is the main character of your story? Be as specific as possible. Think about why they are best placed to communicate this message.
- What is the problem in your story? What does the character have to deal with and how is it linked to your message?
- How is that problem resolved? Don't leave the listener without a resolution. Let them know what happened after the problem, even if the outcome is that the character is left waiting for results.

Endnotes

⁴² JASS Power Guide, available at: <https://pressbooks.pub/jass-power-guide/front-matter/introduction/>

⁴³ The contents were derived from interviews with frontline justice advocates in numerous countries by CCSI as part of ALIGN and the Politics of Extractive Industries program.

⁴⁴ 'We Make the Future, Climate of Possibility: Mistakes of Climate Comms (2022); <https://www.wemakethefuture.us/resources-docs/climateofpossibility>

⁴⁵ DW documentary, Land-grabbing and the fight for justice in Sierra Leone, 2024, available at: <https://www.youtube.com/watch?v=IMySLXRpOU>

⁴⁶ Maru, Vivek, To save carbon projects, make them fair, The Telegraph, 10 Oct 2024, available at: <https://www.telegraph.co.uk/global-health/climate-and-people/to-save-carbon-offset-projects-make-them-fair/>



Appendix A: Table Comparing National Legislation Across 4 Countries

	PHILIPPINES	KENYA	ZAMBIA	ZIMBABWE
How does the law/policy define carbon rights?	Carbon rights belong to indigenous communities within their ancestral territories.	The law is contradictory. It recognizes community land rights and requires FPIC, but gives the government ultimate authority over contracting. This creates confusion about who holds the carbon rights.	No definition of carbon rights	No definition of carbon rights
How does it address access to information?	Requires full disclosure of information concerning proposed projects and activities in a manner that is both accessible and understandable to the concerned community. No specific requirements regarding financial transparency, e.g. total project revenue or number and price of carbon credits sold.	Establishes a publicly accessible national carbon registry but with some confidentiality requirements. Project proponents must disclose: <ul style="list-style-type: none"> An annual report on aggregate earnings. An annual report of the contribution paid to the community No requirement to disclose project contracts or community development agreements.	No access to information requirements for the public or affected communities. No requirement to disclose project contracts or community agreements. Treats financial information, including gross revenue, as confidential.	Requires registered projects to report revenue earned from carbon trading. Provides for access to information by the public and stakeholders involved in or affected by carbon credit projects. Emphasizes the importance of maintaining accurate records and providing necessary information to government authorities.
Is Free, Prior and Informed Consent (FPIC) required?	Requires FPIC across all stages of forest carbon projects (during feasibility assessment; project design; implementation; monitoring; reporting and verification; and issuance and trading of credits). Recognizes communities' priority rights to harvest, utilize, or develop any natural resources within their lands.	Requires FPIC to be clearly documented. However, there are no clear requirements for how to conduct FPIC. Project proponent required to involve the communities in early stages of project design for public and community land-based projects.	Requires free, prior and informed consent (FPIC), but does not identify specific processes or procedures for FPIC. Not explicit on community participation in decision making about project design or implementation.	There is no mention of FPIC in the laws. The law only requires public participation through stakeholder meetings.

How is revenue from carbon credit sales distributed?	<p>Pre-break even phase: All revenue from potential sources is directed towards covering initial project expenses and operational costs.</p> <p>Post-break even phase:</p> <ul style="list-style-type: none"> 30% Community share 30% Project Developer 20% Government 20% Reinvested in the Project <p>Financial benefits for communities may include:</p> <ul style="list-style-type: none"> Direct payments or community projects; Capacity building Social and cultural benefits: supporting the preservation of Indigenous Peoples' cultural heritage. 	<p>Annual contribution to local communities:</p> <ul style="list-style-type: none"> Land based projects: at least 40% of earnings. Non-land based projects: at least 25% of earnings. <p>The Regulations define the annual contribution based on "aggregate earnings less the cost of business". This contradicts the Climate Change (Amendment) Act, which identifies "aggregate earnings" – i.e. revenue – as the basis for annual social contribution.</p>	Not explicit on the distribution of benefits	<p>For the first ten years of the project, 70% shall be retained by the Project Proponent and 30% shall be taken as a levy and go toward the Environment Fund managed by the central government.</p> <p>The Environmental Fund will be allocated to:</p> <ul style="list-style-type: none"> climate adaptation and low carbon development projects (55%) a loss and damage relief fund (5%) the regulatory authority and other local authorities (10%) administrative costs for the regulatory authority (15%) the national Treasury (15%)
What grievance redress mechanisms are provided in the law?	<p>No specific guidelines on grievance redress mechanisms.</p> <p>Provision that local communities should participate in decision making and determination of priorities, including using their justice and peace-building processes to resolve disputes.</p>	Disputes are first addressed through mechanisms defined in project agreements, followed by mediation, and referral to the National Environmental Tribunal if not resolved within 30 days from the date of submission to each of the prior mechanisms.	<p>Provision that, where relevant, a grievance process may be established for stakeholders.</p> <p>It does not define how grievance mechanisms will be established nor how government authorities will respond to complaints or disputes.</p>	May involve Alternative Dispute Resolution (ADR), mediation, arbitration, conciliation, National Human Rights Institutions such as the Zimbabwe Human Rights Commission, or judicial proceedings – taking matters to court for a legal resolution.
What steps are taken to ensure emissions reductions are credible and lasting?	Requires that project activities contribute to the avoidance and reduction in emissions, including by enhancing carbon sinks; ensuring forest conservation and restoration; and promoting sustainable development	<p>Requirement for reduction of emissions, environmental integrity and careful recording of emission reductions.</p> <p>Establishes penalties for manipulating carbon credit measurements and for providing false or misleading information. The penalty is a fine not to exceed 500,000,000 KSH (3,876,000 US dollars) or imprisonment for up to ten years.</p> <p>Credits will not be registered /validated for any projects that do not respect FPIC and human rights.</p>	<p>The draft Climate Change Bill creates a framework for establishing emissions standards for each major sector (e.g. forestry, energy, agriculture, waste) with financial and criminal penalties for any violations of these standards. However, no standards have yet been defined.</p> <p>The bill also creates an integrated monitoring and verification system as an accountability mechanism.</p>	Establishes a set of guidelines on environmental integrity (see Second Schedule). These include requirements for verification of reductions using science-based models and the use of conservative baselines. The regulations also include a sustainable development checklist that tracks other positive environmental outcomes, e.g. reducing air pollution or improving water quality (See Fifth Schedule).
Are there any rules on who can buy credits or how they can use them?	No restrictions on who can buy credits or how they are used.	No restrictions on who can buy credits or how they are used.	No restrictions on who can buy credits or how they are used.	No restrictions on who can buy credits or how they are used.

Appendix B:

Glossary of Terms

Additionality: A carbon credit is only additional if it represents emission reductions that are above and beyond “business as usual”, i.e. the reduction would not have happened without the carbon credit project.

Blue carbon: A tradeable unit that represents 1 ton of CO₂ that is sequestered or not emitted.

Carbon market: The global buying and selling of GHG emissions in the form of carbon offsets and credits. There are two types of markets: 1) a compliance market guided by government regulation and multinational agreements, and 2) a voluntary market typically used by businesses and individuals seeking to offset their carbon impact.

Carbon offset: A way to quantify an action that reduces or removes greenhouse gasses (GHG) from the atmosphere or increases carbon storage (for example, restoring land or planting trees that absorb CO₂) as a way to compensate for emissions occurring elsewhere.

Carbon pricing: Establishing a cost that emitters must pay for greenhouse gas emissions. Carbon taxes and carbon credit compliance markets are the two main approaches to carbon pricing.

Carbon rights: The right to benefit from a land’s ability to absorb and store carbon, usually from trees, grass, soil, or peat.

Carbon standard: An independent screening and monitoring mechanism that regulates the carbon market, ensuring that what is being sold is a legitimate carbon credit that will have an impact. Carbon standards establish the rules project developers have to follow in order to sell credits on the voluntary carbon market.

CDR (Carbon Dioxide Removal): Carbon dioxide removal (CDR) refers to approaches that remove carbon dioxide (CO₂) from the atmosphere. CDR encompasses a wide array of approaches, including direct air capture (DAC) coupled to durable storage, soil carbon sequestration, biomass carbon removal and storage, enhanced mineralization, ocean-based CDR, and afforestation/reforestation.

Commoditization of Nature: Basically putting a price on nature and making it tradable.

Compliance markets: Compliance markets establish a carbon price through national, regional, or global laws and regulations. In national compliance markets, a cap is put in place on the greenhouse gasses that companies can emit and for any additional emissions they must purchase carbon credits from another company that is below the limit.

Customary land tenure: A set of rules and norms that govern community allocation, use, access, and transfer of land and other natural resources. Customary tenure systems may or may not be recognized in land laws.

FPIC (free, prior, and informed consent): Under international law, Indigenous peoples and local communities have the right to give or withhold their free, prior, and informed

consent to proposed projects that will impact them or the land and resources they customarily own or use. Sometimes this term is also used to include expectations of community right to informed consent more broadly.

Greenwashing: When a company makes a misleading claim that it is doing something environmentally friendly to represent itself to consumers as having a greater positive environmental impact than they actually do.

Land tenure: Who has legal rights to do what over and with what land.

Leakage: When a project or initiative stops carbon emitting activities, but the carbon emitting activities shift to another area outside of the project area.

Permanence: Emissions that are removed or reduced need to be permanently removed or reduced in order to have an impact on the climate – this means that the carbon benefits should last at least 100 years.

REDD+ (Reducing Emissions from Deforestation and Degradation plus): This is an initiative that aims to provide revenue streams to encourage countries to contribute to climate change mitigation efforts through five globally agreed on activities: Reducing emissions from deforestation; Reducing emissions from forest degradation; Conservation of forest carbon stocks; Sustainable management of forests; Enhancement of forest carbon stocks.

UNFCCC (United Nations Framework Convention on Climate Change): International environmental treaty to combat the climate crisis.

Voluntary Carbon Market: Where private individuals and corporations issue, buy, and sell carbon credits outside of regulated or mandatory carbon pricing tools.

Common Acronyms

VCM: Voluntary Carbon Market

ICVCM: Integrity Council for the Voluntary Carbon Market

UNFCCC: United Nations Framework Convention on Climate Change

TNFD: Taskforce for Nature-related Financial Disclosures

CDR: Carbon Dioxide Removal

GCMU: Global Carbon Market Utility

ESG: Environmental, Social, and Governance

SBTi: Science-Based Targets Initiative

IPCC: International Panel on Climate Change

TCFD: Taskforce on Climate Related Financial Disclosures

REDD+: Reducing Emissions from Deforestation and Forest Degradation

IPLC: Indigenous Peoples and Local Communities

NDC: Nationally Determined Contributions

Appendix C:

Case Studies

FAIR COMPENSATION IN THE CONTEXT OF THE KARIBA REDD+ PROJECT: A CASE STUDY FROM ZIMBABWE

Manele Mpfu, Zimbabwe Environmental Law Association

The fair compensation principle is a cornerstone of environmental justice, especially in the context of Reducing Emissions from Deforestation and Forest Degradation (REDD+) projects. In Zimbabwe, where the delicate balance between conservation efforts and community livelihoods is at play, understanding the nuances of fair compensation becomes crucial. In this brief case study, we explore the strengths and weaknesses of this principle within Zimbabwe's legal framework and political context, drawing insights from the Kariba REDD+ project which was initiated in 2011 and was meant to safeguard approximately 785,000 hectares of forest and wildlife on the southern shores of Lake Kariba encompassing the Binga, Hurungwe, Mbire, and Kariba Districts. As of March 2023 global companies had bought over 23 million carbon credits, worth over US \$100 million, making the said project the second largest in the world.⁴⁷ Until 2021, it was considered one of the most successful projects in terms of community empowerment and livelihood enhancement activities. The initiative was placed on hold in October 2023 by the Verified Carbon Standard, due to allegations of resource misallocation, over-crediting, and inadequate support for community activities.

Before delving into the specifics, it is essential to understand the REDD+ concept.⁴⁸ REDD+ involves financial incentives for developing countries to reduce deforestation and forest degradation emissions. It also includes the enhancement of forest carbon stocks and sustainable forest management. Central to REDD+ is the idea of compensating countries or communities for maintaining or enhancing their forest cover.

Zimbabwe's participation in the carbon markets such as the REDD+ project is backed by the National Climate Policy⁴⁹ which outlines the Government of Zimbabwe's intentions to mobilize climate finance from market mechanisms to support the Kyoto Protocol such as the Clean Development Mechanism (CDM).⁵⁰ However, the absence of a comprehensive national REDD+ policy and regulatory framework poses significant challenges to effective governance.⁵¹

Unfortunately, at the beginning of the Kariba REDD+ project,⁵² Zimbabwe did not have a comprehensive legislative framework on carbon trading. Additionally, Zimbabwe lacked a comprehensive national REDD+ policy and regulatory framework to provide clarity on roles, responsibilities, and compensation mechanisms. Without clear guidelines, misunderstandings arose regarding how benefits are distributed among stakeholders.⁵³

These stakeholders include local communities, project developers, and government agencies. The absence of clarity led to an inequitable distribution of benefits. Local communities have reported that they have not received adequate compensation for the restrictions placed on their land use due to the REDD+ project.⁵⁴ Local communities, often the custodians of forests, may not fully understand their rights or the compensation structures. As a result, they may be left out of decision-making processes, leading to potential exploitation and dissatisfaction. Ensuring meaningful participation of communities is crucial for the success of any carbon project.

Another critical challenge is the information gap between project developers and local communities. Project developers typically have access to technical expertise, financial resources, and legal knowledge. In contrast, local communities may lack the necessary information about the value of carbon credits and the benefits they are entitled to. This asymmetry hinders communities' ability to negotiate fair compensation. Without adequate knowledge, communities may accept terms that do not reflect the true value of their contributions to carbon sequestration. Transparent information-sharing and capacity-building initiatives are essential to bridge this gap.

Reports of alleged mismanagement and corruption within the project have further exacerbated the situation, as funds intended for community compensation may not reach or be seen to reach the intended beneficiaries.⁵⁵ This reflects the broader issues of governance and accountability that plague climate finance initiatives in Zimbabwe, undermining the fair compensation principle. Unclear financial flows and benefit-sharing mechanisms create opportunities for misappropriation. When compensation intended for communities is diverted or inadequately distributed, it undermines the fundamental principle of fair compensation. To address corruption risks, transparency and accountability must be prioritized. Clear guidelines on financial flows, auditing processes, and benefit-sharing should be established. Additionally, mechanisms for community oversight and reporting irregularities are essential.⁵⁶

Zimbabwe boasts several laws that support community rights and environmental conservation. Notably, the Forest Act and the Environmental Management Act provide a foundation for safeguarding community interests in land and natural resources. These legal provisions recognise the importance of equitable compensation for communities affected by conservation initiatives. The REDD+ projects can potentially engage local communities, particularly those involved in CAMPFIRE (Communal Areas Management Programme for Indigenous Resources), which has historically provided communities with a share of benefits from natural resource management. This existing framework can be adapted to ensure that communities receive compensation for their role in forest conservation.

In conclusion, while Zimbabwe's legal framework provides a basis for the fair compensation principle, significant weaknesses in implementation and political governance hinder its effectiveness. The Kariba REDD+ project exemplifies these challenges, illustrating the need for stronger accountability mechanisms and genuine engagement with local communities to ensure that the fair compensation principle is upheld in practice. Benefit sharing in carbon credit projects can include financial or monetary compensation to communities. However, it may also include non-monetary benefits such as the provision of strong land tenure for displaced people, education and training opportunities, access to markets or other social services and other benefits. The benefits can be integrated into

a carbon credit project development process in a participatory manner. In the carbon credit sector, transparency is very crucial given concerns about how carbon credits and the benefits thereof are being verified, quantified and measured. Carbon trading requires a transparent measurement, reporting and verification (MRV) system that can assure all stakeholders that carbon trading is traceable, not associated with corruption and beneficial to all parties, including communities.

1. As for equitable benefit-sharing models, it is proposed that Governments should consider continued dialogue with the carbon credit investors, communities and other stakeholders along the carbon credit market chain.
2. Community share and benefits should be underpinned by clear transparency and accountability measures learning from the Community Share Ownership Scheme model. Community investments from proceeds of carbon credits should be invested in sustainable projects, promote long-term community development-including the provision of social services and infrastructure and the conservation of natural resources or ecosystems.

Endnotes

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FAIR COMPENSATION IN KENYA'S NATIONAL LEGISLATION ON CARBON MARKETS

By Anne Njoroge and Namati Kenya

Kenya recently established one of the strongest policies on revenue sharing with local communities. The Climate Change (Amendment) Act of 2023 established clear requirements for revenue allocation based on the type of project: (a) at least 40% of aggregate earnings for land-based projects; and (b) at least 25% of aggregate earnings for non-land based projects. We have not seen commitments at this level in any other legislation. The distinction between land-based and non-land based projects⁵⁷ reflects the significant impact on community land and the potential changes in communities' access to or use of resources in nature-based projects.

Despite these positive provisions, there are also some challenges in the policy framework that could create risks for communities. First, while the law defined community benefits in terms of annual revenue, the Climate Change (Carbon Markets) Regulations, 2024 set the annual contribution to communities based on "aggregate earnings less the cost of business" or profits rather than revenue. This directly contradicts the Climate Change (Amendment) Act. It is easier to ensure transparency and compliance if the share for communities is based on total revenue. If defined as a % of profits, companies could reinvest funds in the project or manipulate their accounting to minimize reported profits.

Additionally, the Climate Change (Carbon Markets) Regulations, 2024 establish a community development committee (CDA) to make decisions about how funds for communities will be used. These committees include representatives from government and the project proponent in addition to community members, limiting communities autonomy over decisions about how their revenue share is used. This provision is heavily influenced by existing policy on CDAs in the mining sector and is modeled on the language in the mining law, despite communities' experience that the company and government exercise significant influence over decisions.

The Community Land Act, 2016 recognizes communities as the absolute owners of community land and gives them the power to enter into contracts in the same way private landowners would. However, the Climate Change (Carbon Markets) Regulations treat community land as if it were public land, shifting power to the government by giving the state the role of entering into the main contract with the project proponent. In addition, making government representatives members of the CDA committee limits communities' autonomy to make decisions about investments on their land and undercuts their rightful power as land owners.

Endnotes

57 A "land-based carbon project" involves activities related to land use, land management, and ecosystem conservation or restoration. These are also commonly called "nature-based" projects. In contrast, "non-land-based carbon projects" rely on technology changes to increase energy efficiency or shift from fossil fuels to renewable energy sources. For example, this includes projects like clean cookstoves for household use and changes in industrial practices

HOW CARBON POLICY COULD AFFECT FPIC AND COMMUNITY GOVERNANCE BODIES IN LIBERIA

By Andrew Zelemen and Abu Kamara of the Liberia National Union of Community Forestry Development Committees (NUCFDC)

This case study examines Liberia's legal framework and political context, highlighting the strengths and weaknesses of existing structures while relating them to the on-the-ground realities. It is particularly relevant to Liberia's carbon market readiness framework and related legislation concerning various community structures.

FPIC requirements under Liberia laws

In Liberia, nearly all laws governing natural resources and land incorporate FPIC as a foundational requirement for any contracts. This includes laws covering the following aspects:-

1. FPIC required before any area is designated as a government concession. Companies must negotiate social agreements with communities prior to any activity.⁵⁸
2. FPIC requiring community consent and outlining the procedures for obtaining community consent before granting permits for natural resource exploitation on their lands.⁵⁹
3. FPIC required from local communities before initiating any developments on community lands.⁶⁰

Ongoing discussions surrounding Liberia's carbon market readiness framework have not adequately ensured that all community structures are aware of and involved in the process. The rights of these communities concerning FPIC have not been sufficiently addressed, risking the potential marginalization of their interests in any outcomes. This can be attributed to the fact that most of these structures are based in rural areas that have significant travel and communication barriers. Additionally, the organizers of carbon policy discussions have not designed specialized ways to reach out to communities. In some of these formal processes, the organizers invite very few participants who are not representative of all the community structures.

Community Structures

Liberia's laws encompass Government Forestry Concessions, Community Forests, Protected Forest Areas, Customary Land Ownership, Agricultural Concessions, and Mining Concessions. Each of these laws recognizes the unique socio-economic interests and environmental concerns of communities. However, community structures under these laws vary in terms of establishment and organization.

Communities' livelihoods are dependent upon the land and the natural resources. There are provisions in the laws that give communities some ownership rights through these structures. These rights will only be respected if people participate to voice out the issues affecting them and how they will be addressed.

FPIC challenges during the preparation of the Liberia roadmap for carbon markets

- The Liberia Roadmap for Carbon Markets recognizes that "the guidelines lack prescriptive requirements, and stakeholders are confused about the ideal definition and approach to meet FPIC conditions." Providing capacity building for communities to understand the definition and importance of FPIC as their rights is another issue. As FPIC is a framework that ensures communities have the right to make decisions regarding projects that affect their lands and resources, not many communities have this understanding and the Liberia Carbon Market Readiness roadmap is not still involving the communities to have their say in the processes that guarantee their FPIC.
- All the laws on land and natural resources recognize FPIC and emphasize adherence to it. However, even if clear guidelines are set up, the issue of full implementation will still be a big challenge in that most of the time the government or project owners don't fully implement FPIC. This has led to many communities being denied their rights to FPIC and the failures of some concession projects or conflict in most of the concession areas. Achieving genuine FPIC can be challenging due to power dynamics, misinformation, or lack of capacity within communities. It requires ongoing dialogue and transparency between project developers and local populations.
- Monitoring and accountability is still not effective due to the lack of established mechanisms for monitoring compliance with FPIC. This may involve independent oversight bodies or community-led monitoring initiatives to ensure that consent processes are respected. This is not considered in the Liberia Carbon Market roadmap yet.

To address these challenges, communities and community representatives are actively engaging with relevant institutions to ensure that community rights are prioritized in these discussions. Meetings have been held with the Environmental Protection Agency (EPA), which leads climate change initiatives, as well as with UNDP, which manages climate financing and supports capacity building and framework formulation to ensure community participation.

Conclusion

As Liberia navigates its carbon market readiness and related legal frameworks, it is imperative to strengthen community structures and uphold FPIC principles to ensure that local voices are heard and respected in decision-making processes affecting their lands and resources.

Endnotes

⁵⁸ National Forestry Reform Law of 2006

⁵⁹ Community Rights Law of 2009

⁶⁰ Land Rights Act (2018)

THE POLITICS AND POWER DYNAMICS SHAPING POLICY DEVELOPMENT IN ZAMBIA

By Solomon Mwampikita, Isaac Mwaipopo and Lucy Musonda of the Centre for Trade Policy and Development (CTPD)

Introduction

The push to legislate on carbon markets in Zambia has been motivated by commitments that have been made at the UNFCCC 27th & 28th Conference of Parties (COPs). As the government develops regulations and policy guidelines, a number of power dynamics are shaping the process:-

(i) The President

The President has been key in driving the green growth agenda and for the first time, the President has included environmental sustainability in the 5-year national development plans. After attending events such as the 27th & 28th Conference of Parties (COPs), the President has spoken strongly about enhancing carbon markets and has directed the drafting of climate change legislation. This has led to the enactment of the National Forestry Policy, a precursor to the Climate Change Bill. The President has influenced the policy direction greatly through constant pronouncements on the need for climate change legislation to guide carbon markets and trading.

(ii) Ministry of Finance

There was a call by the Minister of Finance in his 2022 budget speech that the government is to develop a comprehensive legislation to promote carbon trading.⁶¹ In the 2023 National Budget Speech, the Minister indicated that the government was developing legislation to regulate the carbon market in line with the Kyoto Protocol on climate change. However, the Climate Change Bill which will contain carbon markets regulations has not yet been finalized.

Generally speaking, the Ministry of Finance tends to have more influence in the formulation of laws that relate to investments that are considered to bring in more taxes/economic growth. In recent years, the budget allocation to environmental sustainability has been below 1% of the total national budget. However, the relationship between the ministry of finance & ministry of environment is warming up, in part because of the devastating effects of climate change. Hence, we have seen the promotion of green bonds and carbon trading by the Ministry of Finance

(iii) Foreign Direct Investment and development agencies

Aside from government pronouncements, the influence of the donor community cannot be overemphasized. The Minister of Finance in the 2023 budget speech echoed his concern about increasing rate of deforestation, and that, to enable the participation of project developers in the carbon market, government signed a green growth compact worth £1 billion with the UK Government to facilitate foreign direct investment from the United Kingdom in renewable energy, urban planning and trade connectivity, among others.

Development agencies have been supporting/funding initiatives that involve the development

of guidelines and regulations for carbon markets as well as green bonds. For example, the United Nations Development Programme (UNDP) has been supporting the Securities Exchange Commission to develop Green Financing Mainstreaming guidelines.

(iv) Ministry of Green Economy and Environment (MGEE)

Government agencies such as MGEE have not influenced much of the policy direction except from offering technical support. Their interventions come with little engagement from other players, especially communities and those working with grassroots communities.

(v) Traditional leaders

Traditional leaders are very powerful in Zambia. They have often replace engagement with communities. They are so powerful that the Parliamentary Committee on Agriculture, Land and Natural Resources is wary of upsetting or contradicting traditional leaders.

(vi) Parliamentarians

When it comes to policy formulation, the Parliamentarians usually bend towards what the Government of the day wants. Parliament in Zambia rarely takes the initiative to draft legislation. They are moving forward with the carbon legislation because of the pressure from the President and the traditional leaders. The Committee that is taking the lead in formulating the carbon market laws is the Parliamentary Committee on Agriculture, Land and Natural Resources.

(vii) Conservation Non-Governmental Organizations

Two conservation Non-governmental organizations with a focus on carbon markets are strong influencers in Zambia: Biocarbon partners (BCP) and Community Markets for Conservation (COMACO). These are local social enterprises involved in the voluntary carbon markets and trading. Biocarbon Partners state that it is working in partnership with local communities and landowners in pilot carbon forestry project (Rufunsa Conservancy), which comprises 41,000 hectares.⁶² In 2022, COMACO they verified 883,068 tons of carbon credits for in nine (9) chiefdoms, resulting in a \$3.1 million US dividend for the communities.⁶³ These organizations have not been able to influence national policy due to inadequate knowledge about the carbon market laws.

(ix) Communities and Civil Society Organisations (CSOs)

Due to the pressure from the executive authority as well as traditional leadership that represent rural communities, the Parliamentary Committee on Natural Resources has requested submissions from various CSOs on understanding the opportunities and challenges for Zambia in the carbon markets and trading. Some of the submissions from the CSOs were incorporated while others were not incorporated. It looked more like a ticking the box exercise.

Endnotes

⁶¹ <https://www.parliament.gov.zm/node/9858>

⁶² <https://bcp.earth/>

⁶³ COMACO 2022 Annual Report, Focused on Data Results

POLITICS AND POWER DYNAMICS AROUND CARBON POLICY IN THE PHILIPPINES

By Claire Demaisip and Tone Marzan of KAISAHAN

The government of the Philippines has made ambitious commitments under the Paris Agreement and is aiming to demonstrate progress ahead of COP 29. This is contributing to a push to rapidly adopt policies on carbon trading. As the government develops regulations and policy guidelines, a number of power dynamics are shaping the process. First, policy development is driven by the national government with limited input from communities or local governments. Second, different government agencies such as the Department of Environment and Natural Resources (DENR) and the National Commission on Indigenous People (NCIP) in the Executive Branch, and the Philippine Congress have different initiatives to regulate carbon trading in the Philippines. The lack of an integrated approach could lead to confusion or contradictions across policies. Finally, a driving interest for the government is carbon trading as a source of revenue – particularly a priority for the Department of Finance.

Several different actors and institutions are playing key roles in shaping policy:

(i) Department of Environment and Natural Resources (DENR)

DENR is currently formulating policies to deal with carbon trading, with a particular focus on carbon projects in forest lands and national parks. The DENR is the leading agency on carbon trading regulations -- both in taking the lead on policy development and they are also identified as the designated national authority for projects under Article 6 of the United Nations Framework Convention on Climate Change (UNFCCC).

The DENR aims to issue regulations under an administrative order before COP 29. There has been a lack of coordination among bureaus within the DENR in the drafting of policies namely: the Forest Management Bureau (FMB), the Biodiversity Management Bureau (BMB), and the Environmental Management Bureau (EMB) to ensure that the concerns of their constituency and mandate are being considered in the drafting of the policy. The DENR's policy development process has also not heavily involved crucial government agencies such as the National Commission on Indigenous Peoples (NCIP) and the Department of Finance (DOF).

(ii) National Commission on the Indigenous Peoples (NCIP)

On the other hand, the National Commission on the Indigenous Peoples (NCIP) has developed a draft Supplemental Guidelines on Free and Prior Informed Consent for Forest Carbon Projects which sets out procedures to protect the land tenure and right to participation for Indigenous Peoples. NCIP has the primary mandate to issue policies that may affect IPs.

The NCIP is not actively participating in the drafting of the DENR's carbon trading policy and it is unclear whether the FPIC policy on carbon trading will be fully adopted by the DENR. NCIP is less powerful than the DENR although they have a mandate in facilitating FPIC for indigenous peoples in any project.

(iii) Department of Finance

The Department of Finance (DOF) is the main agency that formulates revenue policies that will ensure funding of critical government programs. They treat carbon as a potential revenue stream and are advocating for taxing the carbon market. DOF's primary concern is revenue rather than environmental and conservation goals. If the government prioritizes revenue generation, it may lead to unfavorable benefit sharing for the community.

The DOF is also contributing to the delay of the publication of the carbon policy since it is currently reviewing the policy particularly on taxation. The current policy proposes 40% to the National Government and the national Government is likely to push for a bigger percentage share.

(iv) Department of Agriculture (DA)

The Department of Agriculture (DA) is the main agency responsible for the promotion of agricultural and fisheries development and growth. The current DENR draft policy on carbon trading does not cover agricultural lands, however, there are already various carbon projects in agriculture in the Philippines. The DA is working on a separate draft administrative order on carbon trading for agricultural areas. No information has been shared with the public yet and a series of consultations is expected to be conducted to discuss carbon policy on agriculture.

(v) The Congress

Currently, there are pending bills in the House of Representatives including The "Low Carbon Economy Investment Act of 2023" that seeks to establish a framework to help businesses reduce Greenhouse gas (GHG) emissions through mandatory decarbonization plans, a carbon pricing mechanism, and access to carbon markets. The chance of this proposed bill becoming a law soon is uncertain since the term of office of the current members of the 19th Congress will end in June 2025. The majority of representatives in Congress come from the president's party and the bill is unlikely to be adopted in this session unless the president declares it a priority.

(vi) The office of the President and the minister

Issuance of administrative policies will require the approval of the department secretary (minister), who is appointed by the president and acting on his/her behalf. Any laws passed by the Philippine Congress would also require the approval of the president.

(vii) Indigenous Peoples and Local Communities

Indigenous peoples and other rural communities The IPLCs have the biggest role and stake in biodiversity conservation including nature-based carbon projects market initiatives to mitigate GHG emissions such as carbon trading. There are not explicit requirements for public consultations on draft regulations or legislation in the Philippines. Sadly, indigenous peoples' participation in the formulation of the DENR's carbon trading policy has been extremely limited because the consultations were mainly done at the national level far from their communities. In contrast, there were localized consultations in the drafting of the FPIC guidelines to ensure their voices were reflected.

Other local communities that are not classified as indigenous peoples have had even less participation in the process, which partly explains the absence of specific provisions recognizing other non-indigenous communities' rights. Increasing community participation in the process would ensure that policies better protect their rights. There is also a lack of education and information initiatives to increase communities' understanding of carbon markets. There are CSO groups who are trying to fill in the gaps but they lack resources to reach as many communities as possible.

(viii) Project developers

Carbon project developers have significant influence with the government. The government is prioritizing generating income through enabling investment. Many carbon project developers were invited and active in different consultations on carbon trading policy and on FPIC on carbon projects.

POLITICS AND POWER DYNAMICS THAT SHAPED CARBON MARKETS POLICY DEVELOPMENT IN KENYA

By Anne Njoroge and Namati Kenya

In 2016, Kenya enacted the Climate Change Act. In 2023, barely two days before the Africa Climate Summit, President William Ruto assented into law the Climate Change (Amendment) Act, 2023 that introduced regulation for carbon markets. In May 2024, the Climate Change (Carbon Markets) Regulations, 2024 were gazetted which provided regulations to give effect to the Amendment Act. These policy developments in Kenya have been motivated by several factors including: (a) International policy developments; (b) Africa regional politics; and (c) national politics which has been characterized by power dynamics and competition between different national actors.

(a) International politics

At COP 26 in Glasgow in 2021, parties of the Paris Agreement [including Kenya] agreed on a package of rules to govern and implement international carbon market mechanisms under the United Nations Framework Convention on Climate Change (UNFCCC).⁶⁴ Rules to operationalize Article 6 of the Paris Agreement have since been going through formulation and implementation. Some of the rules under Article 6.4 of the Paris Agreement requires countries to establish the Designated National Authority who would, among other things, provide guidance on the rules, modalities and procedures of Article 6.4 of the Paris Agreement, including approval and authorisation of activities and the project proponents. The Paris Agreement developments were a great motivation for the Kenya Ministry of Environment and Climate Change to enact the Climate Change (Amendment) Bill, 2023.

Around May 2023, the Ministry of Environment and Climate Change invited the public to submit comments on the Climate Change (Amendment) Bill, 2023. The notice indicated that the Bill sought to provide for different objectives that resonate with the goals of the Paris Agreement. While tabling the Bill in Parliament, the Parliament's leader of majority, indicated that the Bill had been motivated by the Nationally Determined Contributions (NDCs) the country had set pursuant to the Paris Agreement, 2015.⁶⁵

During the Parliamentary debates, some of the members of Parliament indicated that since Kenya had ratified various international instruments, it was imperative that Kenya aligns its domestic legislation with its international obligations.⁶⁶ Further, the members of Parliament emphasized the importance of the Amendment Bill to establish the designated national authority to ensure that Kenya meets its international obligations both on NDCs and under Article 6 on the mechanism.⁶⁷

Additionally, during the Senate debates, when the Cabinet Secretary for the Ministry of Environment and Climate Change was put to task by the Senate on the hasty tabling of the Bill, she stated that the intentions were to raise the country's profile in environmental matters and climate change actions on the global stage.⁶⁸ While at COP 28, the Kenyan Government was trying to shake everyone's hand and make relations mostly to attract foreign investment into the country as the Government aimed to maintain a good global profile.

(b) Africa regional politics

The African Carbon Markets Initiative was launched on the sidelines of the 2022 United Nations Climate Change Conference (COP27) in Sharm el-Sheikh, Egypt.⁶⁹ The initiative is led by a 13-member steering committee of African leaders and carbon credit experts. The initiative aims to expand Africa's voluntary carbon markets capabilities, in the process creating job opportunities. Several African nations, including Kenya committed to collaborating with ACMI to scale up carbon credit production through voluntary carbon market activation plans. Speaking to the Nation, President William Ruto said: "We are going to leverage technology for solutions which include carbon credits,⁷⁰" he said. In the 2022 roadmap report, the initiative encouraged African countries to develop voluntary carbon market activation plans, in the next twenty four (24) months, to clarify regulation so as to create an enabling environment for voluntary carbon markets. The activation plan indicated the need for countries to put in place national carbon market regulatory requirements, including Article 6 mechanisms interactions.

It is worth noting that development partners such as the African Development Bank are set to influence the African Carbon Markets Initiative. In May 2024, the African Development Bank announced its official membership in the African Carbon Markets Initiative (ACMI). This strategic move is set to empower African countries and the private sector in securing additional resources to combat climate challenges effectively.

(c) National politics

Around May 2023, the Ministry of Environment and Climate Change invited the public to submit comments on the Climate Change (Amendment) Bill, 2023 to, among other things, regulate carbon markets. Subsequently after, the Bill was tabled in Parliament in August 2023 for the second reading by the leader of majority. From the Parliamentary debates, it was clear that the enactment of the Bill was motivated by the following:⁷¹

1. The need to boost Kenya's GDP by a big percentage from the proceeds of carbon market trading. Additionally, the law was seen as a way to track the already existing revenue on carbon markets that exists since there was hardly clarity of how this money was paid, who was paid, and how they were paid. To that end, The National Assembly Departmental Committee on Environment, Forestry and Mining agreed to increase the representation of the private sector in the council because the sector plays a very big financial role in the climate change aspect.
2. The President and the members of Parliament wanted to position Kenya as an African leader on climate change matters. This also contributed to the haste in passing the legislation ahead of the African Climate Summit. The Majority leader in Parliament specifically stated that, "the ideal time to launch the Act since it would be a big event that will be attended by over 20 Heads of State and Government and about 17,000 delegates."
3. Alignment with Article 6 of the Paris Agreement.

Also worth noting that while the process largely unfolded behind closed doors, after the outcry on the Climate Change (Amendment) Act there was some engagement with CSOs. This was mostly motivated by the rush to pass legislation due to pressure from the international and Africa regional spaces. Though this still wasn't adequate, their inputs did lead to some improvements in the regs -- including on FPIC.

Power dynamics between different actors**(a) National and County Governments**

During the Parliamentary debates, the Chairperson of the National Assembly Departmental Committee on Environment, Forestry and Mining was against involving the County Government in the matter, indicating that they would start licensing people, and charging other levies that are unacceptable, and which would hinder investors from coming to the country.⁷² This shows that the National Government is not willing to delegate power dynamics to the local Governments and hence wants to be the only ones that controls and drives the carbon market.

(b) Dynamics between different Government entities⁷³

Another member of Parliament was opposed to the Bill indicating that it seeks to replace the directorate with the National Climate Change Council, and then all the powers will be concentrated in the cabinet secretary. He was also dissatisfied with the fact that all the council members would be appointed by the President. Additionally, there was mention that the Amendment Bill made the Ministry of Environment and Forestry the focal point when it comes to carbon credit trading. mentioned other players, including the Kenya Ports Authority (KPA), the National Treasury, the Ministry of Trade, Investment and Industry, the Ministry of Roads, Transport and Public Works, and the State Department for Shipping and Maritime Affairs - all of which had been put in one basket. During the Parliamentary debates, there was debate that since the law sought to implement an international convention, it was important that the Ministry of Foreign and Diaspora Affairs got involved.

It is worth noting that the Ministry of Environment led on drafting the regs with little attention to existing land policy. There was also a key role that was played by the Ministry of Finance re: capturing revenue; and the heavy influence of ministries and the private sector was seen in the Kenya Carbon Markets Conference convened in March 2024 that was primarily for ministry officials with heavy representation from ACMI and the private sector. The conference aimed to showcase Kenya's progress in creating an enabling environment that provides confidence to investors and attracts carbon finance towards the country's climate positive growth.

Endnotes

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65 Kenya's 12th Parliament Hansard Report, Wednesday August 23rd, Page 19

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67 Kenya's 12th Parliament Hansard Report, Wednesday August 23rd, Page 21

68 <https://www.standardmedia.co.ke/environment-climate/article/2001480556/cs-tuya-put-to-task-by-senate-for-rushing-climate-change-amendment-bill-2023>

69 African Carbon Market Watch Initiative, Kenya Set to Reap From New Carbon Market Initiative (2024) available at: <https://africacarbonmarkets.org/kenya-set-to-reap-from-new-carbon-market-initiative/>

70 *Id.*

71 Kenya's 12th Parliament Hansard Report, Wednesday August 23rd

72 Kenya's 12th Parliament Hansard Report, Tuesday August 22nd, p 25

73 Kenya's 12th Parliament Hansard Report, Tuesday August 22nd



Grassroots Justice Network

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