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HOW NATIONAL LEGISLATION CAN ADVANCE CARBON JUSTICE

A POLICY TOOLKIT



Grassroots
Justice
Network

 NAMATI

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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://grassrootsjusticenet.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.

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.

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

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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.