A photograph of a woman from behind, walking through a lush green forest. She has her hair tied back with a red clip and is wearing a vibrant floral patterned dress. A large, woven basket filled with green bananas is slung over her shoulder. She is holding a red-handled tool, possibly a machete, in her right hand. The background is filled with dense tropical foliage.

State of Indigenous Peoples', Local Communities', and Afro-descendant Peoples' Carbon Rights in Tropical and Subtropical Lands and Forests

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McGill



Due to limited progress in reducing carbon emissions in industrialized countries, global interest in using nature-based climate solutions (NbS) has never been greater among governments, corporations, and non-governmental organizations (NGOs). In principle, NbS are meant to leverage multilateral, bilateral, and private finance to fund initiatives to protect, manage, and restore ecosystems to mitigate and remove carbon emissions while also generating social and environmental benefits.¹

However, many NbS schemes, especially those involving private carbon markets, have been criticized for their lack of transparency and climate integrity and their potential adverse impacts on affected communities.² Yet despite a growing mistrust in the purported benefits of the voluntary carbon market, carbon trading projects and investments continue unabated.³

As an indication of the growing demand for NbS, as of October 2024, 91 countries had signed or negotiated bilateral agreements or otherwise expressed interest in carbon market transactions and activities under Article 6.2 of the Paris Agreement.⁴ If fully realized, the cumulative carbon removal activities in these countries' net-zero pledges and Nationally Determined Contributions would require NbS to cover an area of land roughly equal to what we use globally for agriculture.⁵ Operationalizing a global carbon market under Article 6.4 raises further questions about how even greater demand for land-based projects will play out on the ground.

To date, NbS have prioritized actions with low opportunity costs in rural landscapes of developing regions, ignoring the primary drivers of deforestation, forest degradation, and biodiversity loss (that is, global supply chains for agriculture, timber, mining, and other commodities).⁶ These initiatives frequently overlap with the lands and territories of Indigenous Peoples,⁷ local communities,⁸ and Afro-descendant Peoples.⁹

However, only half of the lands customarily held by these communities have so far been legally recognized by governments.¹⁰ Because these are regions where land and carbon rights often lack clarity, are contested, or are otherwise unrecognized, NbS risk depriving communities of their land and natural resource rights often integral to their livelihoods and cultures. **Nature-based climate solution activities that infringe upon the rights and tenure security of communities are not only inconsistent with international law, but they also generate uncertainty and conflict that jeopardizes the integrity and legitimacy of carbon sequestration schemes for governments and investors.**

This brief summarizes findings from a study undertaken by the Rights and Resources Initiative (RRI) and McGill University to systematically analyze the carbon rights¹¹ held by Indigenous Peoples, local communities, and Afro-descendant Peoples in 33 countries in Africa (11), Asia (9), and Latin America (13).¹² These countries cover an estimated 67 percent of the world's tropical and subtropical forests¹³ and have a combined rural population of 1.54 billion people, over 44 percent of the world's rural population.¹⁴ We examine whether and how countries are currently protecting the rights necessary for communities to manage, control, and benefit from carbon on their lands and to access compensation and justice when they are affected by carbon trading initiatives.

For this analysis, we collected data on 35 indicators from domestic laws and policies related to land, carbon, and resource rights across several sectors, including constitutional law; land tenure administration; and forest, climate, and environmental law. Across the 33 countries, our analysis refers to the legal rules that govern 96 community-based tenure regimes (CBTRs) identified by RRI in these countries (see Box 1).¹⁵

KEY FINDINGS

1. Most countries do not have adequate legal frameworks to enable Indigenous Peoples, local communities, and Afro-descendent Peoples to exercise their tenure rights in the context of NBS.

- » Only 19 out of 33 countries have constitutions or laws that protect the collective rights of Indigenous Peoples, Afro-descendent Peoples, or local communities to tropical and subtropical forest lands, territories, and resources.
- » Most countries (19 out of 33) do not in any way recognize these groups' right to free, prior, and informed consent in their domestic legal systems.
- » Most communities have limited tenure rights. Of the 96 CBTRs in our dataset, 41 are classified as being owned by Indigenous Peoples, local communities, and Afro-descendent Peoples; 46 have been designated for these groups;¹⁶ and nine are administered by governments.

2. Community rights to benefit from carbon are rarely recognized.

- » Community-based carbon rights are explicit in only three of the 33 countries analyzed. Within those three, only Indonesia and Peru recognize communities' rights to engage in carbon markets across all CBTRs, while the Republic of Congo recognizes rights to carbon for only some CBTRs. In 14 other countries, carbon rights are inferred as tied to land or forest rights. In the remaining countries, rights are retained by the State (9) or are ambiguous or inconclusive (7) (see Graph 1).

3. More than half of countries do not have carbon trading regulations.

- » Only 45 percent of countries (15 out of 33) have regulations related to carbon trading. Two countries, Cambodia and Zambia, have laws related to national-level REDD+ (J-REDD+), and 13 have developed some regulation or oversight over both the voluntary carbon market and J-REDD+.

4. Carbon-related transparency and due process are rare.

- » Only 36 percent of countries (12 out of 33) have evidence of a carbon project registry, and only six have registries with publicly available information.
- » Due process related to carbon projects is often differently defined for different CBTRs. Only three countries guarantee communities' rights to

challenge carbon projects explicitly. Among these, two countries extend this protection to all CBTRs (Vietnam and Mexico) and just one guarantees due process for some but not all CBTRs (Guyana).

- » General rights to compensation for harms to communities' rights exist for 79 of the 96 CBTRs; however:
 - » In only eight cases (across three countries) can this be tied explicitly to carbon projects.
 - » In 28 CBTRs, communities' rights to receive compensation from carbon projects can be inferred as a result of communities having both a general right to compensation for harms to their rights and an inferred right to carbon through land or forest rights.
 - » In 45 CBTRs, communities do not have rights to carbon, but carbon legislation recognizes a right to compensation for the general population. Communities have no clear rights to compensation in 17 CBTRs.
- » National laws and regulations are unclear or do not address third-party audits (15 countries), access to legal support for communities (17 countries), or guaranteed access to information on carbon projects (11 countries). When audits and legal support are noted, they are specifically mentioned in the context of carbon projects in only five and three countries, respectively. In 21 countries, however, project developers must provide some (20 out of 33) or all (1 out of 33) information on project activities, risks, revenues, and grievance redress mechanisms with communities.

5. Benefit-sharing and grievance redress mechanisms are lagging. Progress toward meeting key elements of REDD+ readiness that matter for communities appears to have stalled, undermining communities' ability to access benefits, compensation, or justice in the context of carbon sequestration activities that affect their lands.

- » Only seven countries have designed or implemented benefit-sharing policies that apply to results-based payments generated through J-REDD+ initiatives. Of these, only four countries have established a minimum allocation requirement of benefits to affected communities.
- » Eleven countries have operational national grievance and redress mechanisms (GRM) for J-REDD+ schemes. However, no country appears to have set up a GRM that includes private carbon trading activities.

BOX 1. WHAT IS A COMMUNITY-BASED TENURE REGIME?

It is a distinguishable set of national laws, regulations, and case law governing all situations under which the right to own or manage terrestrial natural resources is held at the community level. RRI defines CBTRs as owned by communities when communities have access rights, withdrawal rights, management rights, exclusion rights, unlimited duration of rights, and rights to due process and compensation. CBTRs are defined as designated for communities when communities have access and withdrawal rights, as well as either management rights or exclusion rights. When CBTRs are categorized as owned by communities, they are understood to have a full bundle of rights to exercise tenure over their lands and forests.

DISCUSSION AND KEY RECOMMENDATIONS

Our analysis highlights the ongoing failure of governments to adopt the legal and policy reforms needed to recognize and safeguard the carbon rights of Indigenous Peoples, Afro-descendent Peoples or local communities—either within the context of concurrent land and territorial claims or as a stand-alone right, pursuant to their conservation-aligned actions or contributions.

Despite more than 15 years of international support and investment in national REDD+ readiness programs and other related initiatives, progress toward the comprehensive and meaningful recognition of community rights remains slow. Most of the countries in our study have yet to put in place the overarching set of laws and regulations that provide these groups with the full bundle of rights of access, withdrawal, management, exclusion, and due process and compensation over their lands and resources.

In the context of ongoing negotiations for the finalization of an international market mechanism in the pursuit of national net-zero strategies (Article 6.4), failure to recognize and give effect to communities' collective forest, land, and carbon rights—including

their rights to free, prior, and informed consent—invariably undermines both the credibility of market-driven climate solutions and the ability of Indigenous Peoples, Afro-descendent Peoples, and local communities to exercise their rights and autonomy over their customary territories (see Box 2).

While the existence of laws for providing community-based tenure provides a strong foundation for recognizing and protecting Indigenous Peoples', Afro-descendent Peoples', and local communities' carbon rights, more than half of the 96 CBTRs in our study fall short of providing these groups with a full bundle of rights. In addition, most of the CBTRs we reviewed predate 2008, the year when large-scale efforts to conserve or enhance carbon sequestered in tropical forests began, and are thus ill-equipped to address the risks to communities posed by emerging activities that use carbon as a tradeable commodity. **It is important that governments recognize the need to strengthen community-based tenure regimes to safeguard the rights of communities to control, benefit from, and receive due process and compensation for Nbs activities that affect their lands or resources** or apply to the ecosystem services and functions that directly or indirectly flow from their sustainable livelihoods and cultural practices.

BOX 2. CARBON MARKETS RISK AMPLIFYING INSECURITY OVER LAND RIGHTS

The large-scale acquisition of carbon rights in a number of countries highlights risks for Indigenous Peoples, Afro-descendant Peoples, and local communities. For example, the Dubai-based Blue Carbon, Inc. has signed Memorandum of Understandings (MOUs) without public consultations that secure carbon-trading rights covering vast amounts of land and territory in largely contested or otherwise undocumented regions, including in Zimbabwe (20 percent of total land area), Zambia (10 percent), Liberia (10 percent), and Tanzania (8 percent).¹⁸

In Liberia, the MOU secures rights to carbon trading for 30 years and allows Blue Carbon, Inc. to retain 70 percent of carbon market revenue. In Tanzania, approximately 90 percent of actors in the carbon investment market are foreign. Numerous resource-dependent and already marginalized communities will be impacted, with their tenure rights and livelihood practices potentially threatened. While some reporting suggests governmental schemes in Tanzania are aiming to include local communities in the carbon trade,¹⁹ there is other evidence of evictions in Kenya in the name of carbon trade²⁰ and communities in Tanzania being “delisted” from national registries for conservation purposes.²¹

RULES ON CARBON TRADING

After close to two decades of multilateral and bilateral support for domestic REDD+ readiness, progress in establishing the key elements of an effective domestic legal framework for managing results-based payments for carbon sequestration has been uneven.

Two seemingly positive developments are that 26 countries have established operational safeguards information systems (SIS) for their J-REDD+ activities, and 28 countries explicitly include the clarification of forest tenure for Indigenous Peoples, Afro-descendant Peoples, or local communities as a component of their national J-REDD+ strategies. However, both SIS and the recognition of the need to clarify rights were set in motion during early REDD+ negotiations, and evidence suggests that these have so far had limited effect on the advancement of community rights. These are further offset by the failure of most governments to establish national mechanisms for benefit-sharing

and grievance and redress and to ensure that they apply to private carbon trading initiatives.

Even in countries that recognize community-based carbon rights, there is a risk of NbS crowding out basic recognition and the protection of land rights, as is feared in Indonesia.¹⁷ The failure of governments to ensure gains for communities in the context of J-REDD+, especially where carbon trading is likely to be most active, is a clear step backward in protecting communities' rights.

DUE PROCESS, FAIRNESS, AND COMPENSATION

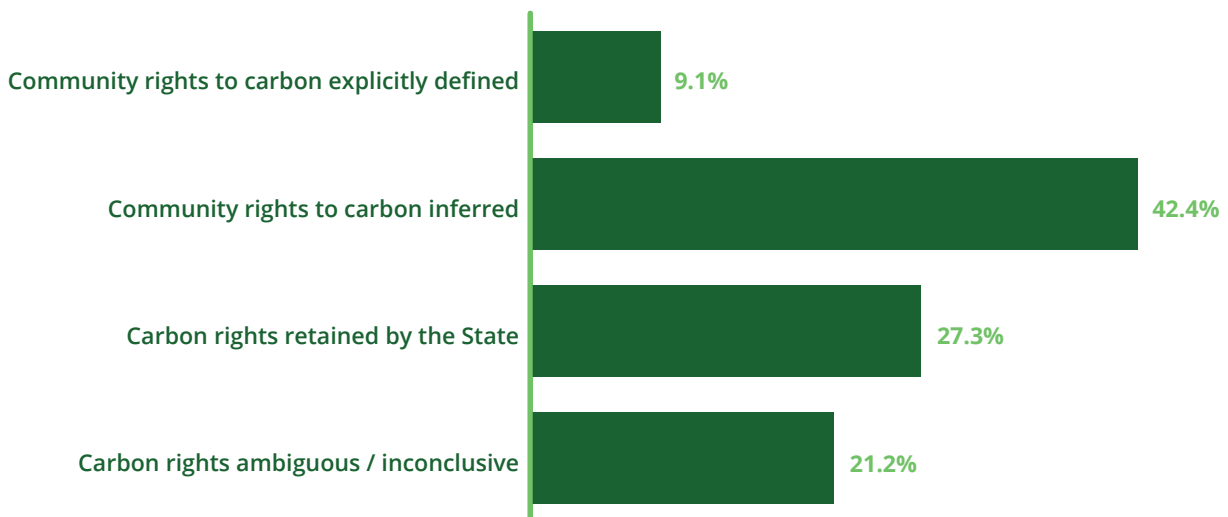
These shortcomings in the legal and regulatory frameworks of countries participating in NbS or that intend to do so put communities at risk while limiting their ability to derive benefits from the ecosystems they own and manage. **The limited number of reforms since 2008 suggests that**

investments in NbS processes to date (for example, REDD+ readiness) have done little to strengthen community rights. They also fail to provide a stable legal environment conducive to the development and implementation of NbS interventions that can deliver real climate, social, and environmental benefits. Drawing on traditional knowledge often rooted in an eco-centric worldview, Indigenous Peoples, Afro-descendent Peoples, and local communities have a demonstrated track record of effective and sustainable stewardship of their customary lands and resources.

In this context, well-designed and ethical NbS initiatives—along with interventions to address the transnational drivers of global demand for commodities and the deep, rapid, and sustained reductions in greenhouse gas emissions called for by

the Intergovernmental Panel on Climate Change—could be used to strengthen the tenure security, cultures, and livelihoods of Indigenous Peoples, Afro-descendent Peoples, and local communities. **Given the growing interest and investment in NbS, it is critical that governments take steps to advance effective, equitable, and sustainable climate actions that respect the human rights of affected communities and contribute to the eradication of poverty.** As this policy brief highlights, this must include efforts to actively protect and scale up the recognition of local peoples' carbon rights through overarching legal reforms and mechanisms as well as measures specifically adopted to address risks tied to carbon trading.

GRAPH 1. STATUS OF CARBON RIGHTS ACROSS 33 COUNTRIES



This policy brief was co-authored by Dr. Brian E. Robinson and Dr. Sébastien Jodoin, with contributions from Dr. Alain Frechette (RRI), Isabel Davila Pereira (RRI), and Teresa Paterson (RRI), with research assistance from Morgan Scott and Salomé Genest-Brissette. Nicole Harris and Madiha Waris edited the brief, and Ashley Young at Publications Professionals provided typesetting and design.

The findings are based on a forthcoming study by the Rights and Resources Initiative and scholars based at McGill University.

NOTES

- 1 Ellis, Peter Woods, Aaron Marr Page, Stephen Wood, Joseph Fargione, Yuta J. Masuda, Vanessa Carrasco Denney, Campbell Moore, Timm Kroeger, Bronson Griscom, Jonathan Sanderman, Tyson Atleo, Rane Cortez, Sara Leavitt, and Susan C. Cook-Patton. 2024. The Principles of Natural Climate Solutions. *Nature Communications* 15(1): 547.
- 2 Dawes, Allegra. 2024. "What's Plaguing Voluntary Carbon Markets?" Center for Strategic and International Studies, Washington, DC. Available at: <https://www.csis.org/analysis/whats-plaguing-voluntary-carbon-markets>.
- 3 Trove Research. 2023. Investment Trends and Outcomes in the Global Carbon Credit Market. IETA, Geneva. Available at: <https://www.ieta.org/resources/reports/investment-trends-and-outcomes-in-the-global-carbon-credit-market/>.
- 4 UNEP. 2024. "Article 6 Pipeline." UNEP, Nairobi. Available at: <https://unepccc.org/article-6-pipeline/>.
- 5 Dooley, Kate, Kirstine Lund Christiansen, Jens Friis Lund, Wim Carton, and Alister Self. 2024. Over-reliance on Land for Carbon Dioxide Removal in Net-Zero Climate Pledges." *Nature Communications* 15(1): 9118.
- 6 Seddon, Nathalie, Alexandre Chausson, Pam Berry, Cécile A.J. Girardin, Alison Smith, and Beth Turner. 2020. Understanding the Value and Limits of Nature-based Solutions to Climate Change and Other Global Challenges. *Philosophical Transactions of the Royal Society B* 375(1794). doi:10.1098/rstb.2019.0120.
- 7 For the Rights and Resources Initiative (RRI), the term "Indigenous Peoples" follows the definition, or statement of coverage, contained in the International Labor Organization Convention on Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169). Therefore, it includes peoples who identify themselves as Indigenous; tribal peoples whose social, cultural, and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; and traditional peoples not necessarily called Indigenous or tribal but who share the same characteristics of social, cultural, and economic conditions that distinguish them from other sections of the national community, whose status is regulated wholly or partially by their own customs or traditions, and whose livelihoods are closely connected to ecosystems and their goods and services. While RRI recognizes that all people should enjoy equal rights and respect regardless of identity, it is strategically important to distinguish Indigenous Peoples from other stakeholders. They have a distinct set of rights linked to their social, political, and economic situation as a result of their ancestry and stewardship of lands and resources vital to their well-being.
- 8 Recognizing that "local communities" is not formally defined under international law, RRI considers that they encompass communities that do not self-identify as Indigenous but who share similar characteristics of social, cultural, and economic conditions that distinguish them from other sections of the national community; whose status is regulated wholly or partially by their own customs or traditions; who have long-standing, culturally constitutive relations to lands and resources; and whose rights are held collectively.
- 9 As per the Declaration of Santiago of 2000, the States of the Americas defined "Afro-descendant" as "the persons of African origin who live in the Americas and in the region of the African Diaspora as a result of slavery, who have been denied the exercise of their fundamental rights." See the Durban Conference and Program of Action and the UN International Decade for People of African Descent 2015–2024. Available at: <https://www.un.org/en/observances/decade-people-african-descent>. In Latin America and the Caribbean, the constitutional and legal recognition of Afro-descendant Peoples' collective tenure rights is based on their special cultural, ethnic, and spiritual relationship with the land.
- 10 Rights and Resources Initiative. 2023. Who Owns the World's Land? Global State of Indigenous, Afro-descendant, and Local Community Land Rights Recognition from 2015–2020. Rights and Resources Initiative, Washington, DC. doi:10.53892/MHZN6595.
- 11 In line with RRI's right-based framework for assessing community-based forest tenure, carbon rights are defined here as the bundle of rights of access, management, withdrawal, exclusion, due process, compensation, and alienation held by communities in relation to the carbon sequestered on their lands and territories and the related resources in which carbon is stored.
- 12 The 33 countries analyzed are Bolivia, Brazil, Cambodia, Cameroon, Colombia, Costa Rica, Democratic Republic of the Congo, Ecuador, Gabon, Ghana, Guatemala, Guyana, Honduras, India, Indonesia, Kenya, Liberia, Madagascar, Mexico, Mozambique, Nepal, Nicaragua, Panama, Papua New Guinea, People's Democratic Republic of Lao, Peru, Philippines, Republic of Congo, Suriname, Tanzania, Thailand, Vietnam, and Zambia.
- 13 Forest estimates based on data from the Food and Agriculture Organization. See Food and Agriculture Organization of the UN. 2020. Global Forest Resources Assessment 2020. Food and Agriculture Organization

- of the UN, Rome. Available at: <https://fra-data.fao.org/assessments/fra/2020/WO/sections/extentOfForest/>. See also Food and Agriculture Organization of the UN. 2016. Forest Resources Assessment Working Paper 186. Food and Agriculture Organization of the UN, Rome. Available at: <https://openknowledge.fao.org/server/api/core/bitstreams/cb2f19f3-d5f6-4fba-b8d1-39c51f732237/content>.
- 14 The World Bank. 2023. Rural Population Dataset. Accessed November 8, 2024. Available at: <https://data.worldbank.org/indicator/SP.RUR.TOTL>.
 - 15 Rights and Resources Initiative. 2024. "Tenure Tracking Tool." Rights and Resources Initiative, Washington, DC. Available at: <https://rightsandresources.org/rri-tenure-tool/>. For some countries, the legal rules may apply to all CBTRs collectively. Whenever there is variation within the country for different CBTRs, this is acknowledged in the analysis. A CBTR is defined as "a distinguishable set of national laws, regulations, and case law governing all situations under which the right to own or manage terrestrial natural resources is held at the community level." See Rights and Resources Initiative. 2023.
 - 16 RRI defines CBTRs as owned by communities when communities have access rights, withdrawal rights, management rights, exclusion rights, unlimited duration of rights, and rights to due process and compensation. CBTRs are defined as designated for communities when communities have access and withdrawal rights, as well as either management rights or exclusion rights. When CBTRs are categorized as owned by communities, they are understood to have a full bundle of rights to exercise tenure over their forests and lands. Tenure over water or carbon is not accounted for in this classification. See Rights and Resources Initiative. 2023.
 - 17 Hans Nicholas Jong. 2024. "Indonesia Opens Carbon Trading Market to Both Skepticism and Hope." Mongabay, October 2024. Accessed October 29, 2024. Available at: <https://news.mongabay.com/2023/10/indonesia-opens-carbon-trading-market-to-both-skepticism-and-hope/>.
 - 18 Ramachandran, Vijaya, Alex Smith, and Satvika Mahajan. 2024. "Land Grabs for Carbon: Are Carbon Offset Megadeals the Future of Conservation in Africa?" The Breakthrough Institute. Accessed September 23, 2024. Available at: <https://thebreakthrough.org/journal/no-20-spring-2024/land-grabs-for-carbon>.
 - 19 Simbaya, Friday. 2024. "Tanzanian Government Announces Inclusion of 54 Villages in Carbon Trade." The Citizen, August 2, 2024. Accessed September 24, 2024. Available at: <https://www.thecitizen.co.tz/tanzania/news/national/tanzanian-government-announces-inclusion-of-54-villages-in-carbon-trade-4711220>.
 - 20 Marshall, Claire. 2023. "Kenya's Ogiek People Being Evicted for Carbon Credits – Lawyers." BBC News, November 9, 2023. Accessed September 25, 2024. Available at: <https://www.bbc.com/news/world-africa-67352067.amp>.
 - 21 The Chanzo Reporter. 2024. "Tanzania Delists All Wards and Villages in the Contested Ngorongoro Area. Stakeholders Warn the Plan is Unconstitutional." The Chanzo Reporter, August 20, 2024. Accessed September 24, 2024. Available at: <https://thechanzo.com/2024/08/20/tanzania-delists-all-wards-and-villages-in-the-contested-ngorongoro-area-stakeholders-warn-the-plan-is-unconstitutional/>.