



RIGHTS AND RESOURCES INITIATIVE | OCTOBER 2021

*Commentary: Reflections on ART-TREES, Jurisdictional REDD+
and Nature-Based Solutions*

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Rights and Resources Group (RRG) is increasingly being solicited for input on emerging climate change mitigation instruments and initiatives, including: 1) the Architecture for REDD+ Transactions and its REDD+ Environmental Excellence Standard (ART-TREES); 2) the Lowering Emissions by Accelerating Forest finance coalition (LEAF); and 3) emerging Voluntary Carbon Market initiatives and Nature-Based Solutions.

We would like to share our take on this dynamic and fluid landscape, and how we have interpreted the perspectives of rightsholders in these responses. As we all enter the final push to COP26, you will find a series of questions and answers in sections 1 and 2 that were recently provided to journalists working on these issues. In section 3, we conclude with a commentary on Nature-Based Solutions (NBS) and their implications for Indigenous Peoples, local communities, and Afro-descendant Peoples.

While careful to maintain a neutral stance in alignment with RRI's mission, we have not refrained from noting our concerns and areas for improvement. As always, these views are provided with the caveat that they reflect our own individual perspectives, and are therefore not representative of the Coalition, in whole or in part.

1. ART-TREES

1.1. Does TREES 2.0 make much of an improvement on the earlier version? If so, where?

A line-by-line comparison between TREES 2.0 and its earlier version shows very little has changed, except for one major shift: jurisdictional crediting opportunities for Indigenous Peoples' land areas was dropped altogether.

Per section 3.0 on Eligible Entities, "*subnational accounting areas registered by a recognized indigenous territory*" is no longer feasible or possible under TREES 2.0. The only sensible explanation rests on the observation that existing or emerging climate initiatives are not designed nor intended to protect "forests remaining forests", as ART-TREES puts it. To be part of the game, targeted lands and forests must accrue additionality for investors, which can only come from changes in measurable deforestation and forest degradation trends (per established reference levels) or credible threats to existing forest areas (for inclusion in High Forest, Low Deforestation crediting schemes).

As such, unless eminent threats to primary intact forests can be credibly documented, these systems are of limited value or interest to market and results-based climate initiatives. Consequently, lands and forests that are legally owned or designated for Indigenous Peoples and local communities are, for lack of a better term, "protected" and thus unappealing to climate investors. While unrecognized Indigenous and local community lands and territories could constitute a ripe arena for rights-based climate actions, the absence of reliable information on the geographical boundaries of Indigenous Peoples' and local communities' land claims, the challenge of developing robust and time-bound predictions of deforestation pressures in the absence of dedicated technical support, and the non-trivial issue of anchoring the proposed initiatives in an existing and operationalizable legal instrument,

all conspire against the prospects of scaling-up Indigenous and local community-led emission reduction strategies, anchored in the recognition of their customary land rights.

However, there are excellent examples at the project level where rights have been secured through results-based strategies, threats to community forestlands diminished, and benefits are continuously being accrued for the communities involved. [Carbon Tanzania](#) and the [Zambian BioCarbon Partners](#) offer interesting cases in point.

1.2. Relative to our other areas of interest, we note that ART-TREES 2.0:

- I. Maintains previously defined requirements for the legal recognition of communities' customary land and resource rights. The outcome indicator for this theme stipulates that stakeholders have "access to, use of, and control over land and resources in line with relevant ratified international conventions, agreements, and/or domestic and, if applicable, subnational, legal frameworks". However, this framing fails to establish an adequate threshold or uniform standard for the protection of communities' rights. Adherence to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is not mandatory under this standard, as it is not an international convention or agreement (and the Cancun Safeguards simply note that the UN General Assembly has adopted UNDRIP). Moreover, many countries have not ratified ILO 169, and in the absence of dedicated national or subnational legal frameworks, opportunities to advance the rights of communities will likely be constrained by the extent of current and future political will.
- II. Strengthens requirements describing participant ownership rights to ERRs, per paragraph 6, pages 80-81. While participants must demonstrate clear ownership or rights to ERRs (within or during subsequent crediting periods), the standard does not require *de jure* (i.e., legal) recognition of communities' customary land and forest rights and the carbon stored therein. If a government is legally compliant with established laws, it may legally claim ownership rights to all ERRs.
- III. Adds a Free, Prior and Informed Consent (FPIC) requirement for possible involuntary relocations under theme 2.3. This is a worrisome condition that was not invoked in the original draft, and one that contradicts intentions outlined in the first bullet above and the commitment to respect land rights and the rights of Indigenous Peoples and local communities more broadly.
- IV. Maintains limited assurances for the participation of Indigenous Peoples and local communities and the application of FPIC in the second reporting period only (i.e., after initiatives are approved). Hence, the Free, Prior and Informed Consent of communities in the initial planning and design phases of participant submissions is not a requirement under ART-TREES, limiting their capacity to influence outcomes regarding how projects are designed, including the scope of their potential participation.
- V. Maintains no obligation to produce a benefit sharing plan or mechanism in consultation with Indigenous Peoples and local communities.

- VI. Maintains limited grievance redress requirements via “*procedures guaranteeing nondiscriminatory and non-cost prohibitive access to dispute resolution mechanisms at all relevant levels*” (theme 2.4).
- VII. Provides no additional assurances for measuring, monitoring, or reporting improvements in the social, economic, and environmental wellbeing of affected communities. In the absence of clear reference levels on the state of affected communities and jointly developed strategies to address these, proposed climate actions are unlikely to be pursued in the context of equity, sustainable development, and poverty eradication, as called for by the Paris Agreement.

1.3. *Its supporters say ART-TREES gives more leeway for communities to decide if they want to take part. Do you agree?*

To some extent yes, but the real question should be whether communities can make fully informed decisions on the potential costs and benefits of such engagements. If legally recognized community forestlands bring limited additional value because their forests tend to be better protected and stewarded than those outside their territories, then the return value and potential costs of their participation—especially if accompanied with increased legal restrictions and administrative obligations—is unlikely to be clear for most communities. Correspondingly, the benefit of opting out undoubtedly rests on their ability to pursue their own climate and conservation initiatives, and thus contract with others as they see fit.

Where all of this becomes less clear is for communities whose land and territorial rights have yet to be formally recognized. If existing national laws do not specifically support their rights and international laws and conventions do not apply, what recourse does a community have? ART-TREES will not determine or enforce the land and territorial boundaries of customary rightsholders and there is nothing in the system that obligates a before and after scenario for community rights and benefits in the same way carbon reference levels are established, and subsequently monitored and verified for improvement. Yet project-level examples, such as those in Tanzania and Zambia, do show the potential of structuring investments and results around the legal recognition of community land rights. How practical this might be for more complex jurisdictional investments remains an open question.

Regardless of their existing tenure rights, the decision for these communities is unlikely to be easy. There is a dearth of jurisdictional experiences to build on to determine whether these initiatives will be beneficial for communities, irrespective of their situation. But if global development trajectories from the past five decades are any indication of the likely impacts market and results-based climate investments will have, then communities have reason to be cautious and skeptical of the paper claims and promises that ART-TREES and other large-scale frameworks might provide.

2. Jurisdictional REDD+

2.1. *Does the jurisdictional scale of REDD+ bias against community and Indigenous Peoples' engagement?*

It depends. Project-level experience suggests that things can yield positive outcomes for all, but we do not have a similar backlog of jurisdictional experiences to effectively answer this question. To some extent, it will depend on: 1) whether communities have strong / positive working relationships with governments; 2) whether countries have developed clear whistleblowing channels such as independent feedback and grievance redress mechanisms; 3) whether communities have access to effective, impartial, and affordable legal counsel and adjudication arenas; 4) whether the application of FPIC will hold value; 5) whether benefit sharing plans create returns over and above the transaction and opportunity costs of dealing with governments and climate investors; 6) whether the absence of financial benefits for sustainably stewarded and protected forests holds value for communities; and 7) whether existing legislation offers any salvation for communities whose customary land and resource rights have yet to be formally recognized.

2.2. How do you see this playing out in Glasgow? Is this a kick-start for REDD+?

Not everyone views REDD+ and the emergence of voluntary carbon markets as adequate or even reasonable solutions to the pending climate crisis. We see that civil society actors and rightsholders are split on the issue, with some who staunchly oppose offsets and market / payment-based approaches, and others who view it as the best possible solution to address the financial shortfall in the forest conservation arena, while addressing our climate woes in the short to medium term.

The impact of ART-TREES on Indigenous Peoples' and local communities' rights, climate change, forest conservation and restoration, and other claimed benefits will depend on the ambition of participant countries, the rigor with which conditional requirements are met, and the extent to which payoffs for rights-based actions exceed opportunity costs. However, as with everything else in the Paris Agreement, all proposed actions are non-constraining with limited accountability requirements. As investments from voluntary markets, results-based payments, and offsets begin to flood the land and forest sectors of developing countries with well-established power structures and preexisting transparency and corruption challenges, evidence to date suggests that these capital flows are unlikely to trickle down to those most in need. As we all know, money is the one thing that defies the laws of gravity, and there is nothing in the framing of LEAF or ART-TREES that suggests a change in this paradigm.

The climate solution favored by the world's richest countries and most polluting industries are not necessarily the most effective, equitable and efficient way – nor the only way – to tackle the climate crisis, ensure human well-being, and enhance biodiversity conservation. The available carbon budget was consumed long ago and though ecosystems can enhance climate mitigation over time, the global scientific community is quite clear: only rapid emissions reductions from the energy, transportation, agriculture, and industrial sectors can slow the pace of climate change. LEAF participants promise to do this, but actionable and verifiable strategies for doing so at the pace and scale needed are unlikely to be produced anytime soon. This is not a precondition for accessing TREES credits.

In terms of an action framework for global transformation, it's important to recognize that the REDD+ architecture rests on the maintenance of potentially transient external incentives. Any variation in

market conditions, donor commitments, or return value of forests and other ecosystems as greenhouse gas sinks and reservoirs could trigger asset devaluation, and a market shift to the next best thing. In contrast, securing land rights supports intrinsic forms of motivation that are more impervious to the whims of political cycles or market institutions. Unfortunately, none of the large-scale climate solutions are designed to reward those who have stewarded their landscapes for generations.

2.3. What are your thoughts on whether engagement with this agenda remains the best route for securing carbon rights for communities and Indigenous Peoples?

For over a decade, communities have been invited to share their thoughts and perspectives on REDD+, and what these emission reduction strategies mean for them. Yet, the debate does not seem to have evolved much in the context of large-scale initiatives. Rather than recognizing Indigenous Peoples and local communities as the primary stewards of the forestlands we now wish to protect or restore, they are still being viewed as a risk to be mitigated through safeguards and benefit sharing schemes. Whether or not large framework agreements with governments can be leveraged to secure community forest rights is a proposition that remains to be proven.

Support for REDD+ within civil-society and rightsholder communities is mixed. Some have been working for years to ensure effective and equitable engagement from Indigenous Peoples and local communities at all levels, while others openly dismiss and challenge its approach and likelihood of success. Where they all come together is the need for parity in decision-making processes and the legal recognition of their land, forest, and carbon rights as the foundation for further dialogue, equitable engagement, and effective / sustainable emission reduction strategies.

REDD+ supported participatory processes at the country level have given communities an unparalleled platform to advance their voice, demands and priorities. But ART-TREES and other large-scale initiatives give the impression that we have yet to act upon their demands. We need to ask ourselves what governments – North and South – can do to advance climate commitments. When communities are recognized as capable stewards and responsible artisans of rural landscapes, with rights to self-determination and the ability to pursue their own priorities and solutions, the discussion will hopefully shift from safeguards and benefit sharing schemes to what is actually needed for the sustainable and equitable governance of the world's lands and forests: The restoration of degraded ecosystems and the tools or processes that will support effective, transparent and equitable dialogue, collaboration, and joint actions towards a common purpose.

The international climate and conservation communities have so far failed to invest in the one thing we know works – securing peoples' rights and their conservation efforts. I believe emerging narratives need to shift from complacent discussions on safeguards and benefit sharing schemes to strategies and solutions that will rapidly scale-up the recognition of Indigenous Peoples' and local communities' tenure rights, including their ability to govern and draw benefits from their lands and territories. Actors like the [Global Alliance of Territorial Communities](#) (GATC), who control over 900 million hectares of tropical forests, embody the unparalleled opportunity we have for joint actions and

solutions for our climate crisis. Communities want more than mere safeguards and benefits - they want the recognition of their rights and a seat at the decision-making table.

3. Nature-Based Solutions

3.1. *What are Nature-Based Solutions?*

Nature-Based Solutions (NBS) are broadly defined by Natalie Seddon and colleagues as solutions to societal challenges that involve working with nature. Specifically, they imply a wide range of actions to protect, restore and sustainably manage both natural and modified landscapes to achieve climate, biodiversity, and sustainable development goals.

When anchored in culturally appropriate solutions and the self-determined priorities of local peoples, nature-based actions have the potential to strengthen synergies, reduce trade-offs, transform human-environment interactions, and effectively drive system-wide transformation.

Unfortunately, such strategies are increasingly associated with limiting and potentially harmful actions and investments. Chief among these are compensatory actions conducted in one part of the world to redeem harms done by others elsewhere. Examples of this include the growing demand for climate and biodiversity offsets that fail to consider the historical and synergistic impacts of Greenhouse Gas (GHG) emissions, the permanence of biodiversity loss, and the social, economic, and cultural implications of land grabs, human rights abuses, and transformed rural economies.

In the absence of robust and ambitious policy interventions to curb source emissions, decarbonize supply chains, and enhance progress towards human-rights based approaches, circular economies and locally led solutions, the magnitude of land needed to mitigate the externalities of a growing and largely unsustainable global economic system will invariably exacerbate inequalities and injustices for the world's rural peoples.

3.2. *So, what's at stake?*

Together, Indigenous Peoples, local communities, and Afro-Descendant Peoples hold customary rights to over half of the global land mass, but legally own only 10 percent of this area. This leaves them - and the areas they steward - vulnerable to the growing demand for land, natural resources, and the pursuit of NBS.

Yet, evidence from the last decade shows that securing the land rights of Indigenous Peoples, local communities, and Afro-descendant Peoples, and particularly the women within these groups, while supporting their self-determined priorities and governance institutions, represents by far the most effective, equitable, and scalable solutions at our disposal.

Forests that are legally owned or governed by communities exhibit lower rates of deforestation; store more carbon, are better protected, support biodiversity, and generate more benefits for more people than forestlands managed by either private or public entities.

As the Local Biodiversity Outlook and ICCA Consortium's [Territories of Life](#) reports indicate, Indigenous Peoples and local communities play an outsized role in the governance, conservation, and sustainable use of the world's nature and biodiversity, and their success is closely tied to the appropriateness of their locally adapted institutions, cultural traditions, and land ethics.

3.3. Unfortunately, rural peoples everywhere face increasing challenges.

Indigenous Peoples, local communities, and Afro-descendent Peoples – especially the women amongst them – continue to bear the brunt of [violence and criminalization](#) perpetrated against environmental and land rights defenders. Under the guise of pandemic recovery plans, communities now face increasing risk of rollbacks, diminishing civic space, and growing threats to their livelihoods and security.

According to a recent study by the Rights and Resources Initiative (RRI) and the Campaign for Nature, between 1.6 and 1.8 billion people currently live in important biodiversity areas and could be affected by plans to protect 30 percent of the planet by 2030, potentially exposing them to human rights abuses and forced displacements that continue to plague conservation efforts in many parts of the world. And yet, recognizing their tenure rights would cost [less than 1 percent of the cost of resettlement](#), in addition to generating broader livelihood and conservation benefits.

Similarly, research published in Nature shows that some 300 million people live in areas targeted for tropical forest restoration, and many of these initiatives rely on intensive bioenergy plantations and monocultures planted in previously sustained natural forests and subsistence farmlands, without the benefit of community-led solutions and contributions to more integrated and sustainable initiatives.

Conditions for the realization of community rights in the context of emission reductions from deforestation and forest degradation initiatives are not substantially better. A 2021 [analysis](#) of 31 REDD+ countries carried out by RRI, with researchers from McGill University, shows that:

- I. Only 3 countries legally recognize community rights to emission reduction credits, and 3 others tie such rights to land or forest ownership
- II. Only half of the total area held by communities in the reviewed countries is legally recognized, placing their land and carbon rights at risk of capture by others
- III. Only 5 of the reviewed countries have developed benefit-sharing mechanisms, and only 2 have operational feedback grievance redress mechanisms

More broadly, community land rights have simply not been a priority of REDD+ countries or international climate financing institutions. As noted in a [recent study](#) by Rainforest Foundation Norway, less than 1 percent of total climate financing from the past decade has gone to supporting initiatives by Indigenous Peoples and local communities, and only a fraction of this was dedicated to securing their collective land and resource rights.

3.4. Amidst these various challenges, there remains credible ground for optimism.

- I. The science is clear: To achieve global climate and biodiversity goals, we must dramatically improve the protection and sustainable use of our living world and bring to an end all activities that directly or indirectly impinge on this. To get there, we must first protect the sovereignty and dignity of Indigenous Peoples and local communities over their lands and the knowledge they hold.
- II. Most tropical forested countries have legislative instruments that could facilitate the legal recognition of community-based tenure rights, and we now have the tools and instruments needed to characterize such opportunities and scale-up actions.
- III. There is a ground swell of support for rights-based climate, conservation, and sustainable development action, marked by increasing donor coordination and engagement to support the self-determined climate and conservation priorities of rightsholders.
- IV. Many of the most influential companies and investors behind the demand for NBS are aware of the risks posed by insecure land rights and are eager to work with civil society and rightsholders to identify alternative pathways and overcome emerging threats.
- V. We have a robust [Land Rights Standard](#) to support rights-based approaches in the context of climate, biodiversity, and sustainable development actions and investments to ensure all future actions are effectively, equitably, and transparently realized.
- VI. Rightsholders are increasingly connected, coordinated, and mobilized to effectively engage national and international constituencies, advance their self-determined priorities, pursue collective actions, and hold public and private actors and institutions accountable for their actions.

Together, these elements provide reason for hope and the advancement of rights-based natural climate and biodiversity solutions.

About the Rights and Resources Initiative

The Rights and Resources Initiative is a global Coalition of 21 Partners and more than 150 rightsholders organizations and their allies dedicated to advancing the forestland and resource rights of Indigenous Peoples, Afro-descendant Peoples, local communities, and the women within these communities. Members capitalize on each other's strengths, expertise, and geographic reach to achieve solutions more effectively and efficiently. RRI leverages the power of its global Coalition to amplify the voices of local peoples and proactively engage governments, multilateral institutions, and private sector actors to adopt institutional and market reforms that support the realization of their rights and self-determined development. By advancing a strategic understanding of the global threats and opportunities resulting from insecure land and resource rights, RRI develops and promotes rights-based approaches to business and development and catalyzes effective solutions to scale rural tenure reform and enhance sustainable resource governance.

RRI is coordinated by the Rights and Resources Group, a non-profit organization based in Washington, D.C. For more information, please visit www.rightsandresources.org.

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