

Indigenous Peoples' Rights and Carbon Markets

What do carbon markets have to do with indigenous peoples?

Many of the projects creating carbon credits rely on land, including those that create **forest carbon credits**.¹ The growing interest in using land for this purpose is involving the customary lands and territories of indigenous peoples in many places — and sometimes threatening territorial and other associated rights.

Many indigenous peoples and communities across the globe are currently thinking about carbon markets for one of the following reasons:

1. They have found out that their lands and territories have been included by states or private actors, like companies, in plans to generate carbon credits
 - while they still have no meaningful understanding of what these plans are;
 - without the external actors obtaining their FPIC;
 - without their customary lands being recognised by law in their country;
 - without knowing whether they will benefit in any way from these plans, and how; and/or
 - without knowing if the plans will limit their rights without knowing if the plans will limit their rights and way of life.
2. They have found out that their community has supposedly signed an agreement with an external actor for a carbon project to be carried out on their land even if this did not go through the legitimate community decision-making body and process.
3. They are wondering whether carbon markets can mean something positive for them and whether to get involved. Often carbon markets have become a topic after someone from the outside has come to the community suggesting that they do a project that can create carbon credits. However, the idea to consider developing their own carbon credit projects sometimes comes from within communities themselves.⁵⁷

Carbon credit projects or programmes can generate money and other benefits, that – if certain conditions and standards are met – could support communities to pursue priorities that they have for their own livelihoods and futures. Further down, this explainer sets out some questions that can help your community consider whether a carbon credit project or programme is likely to bring you benefits. However, it is also important to understand the risks that carbon credit projects and programmes can pose to your rights and livelihoods.

¹ As mentioned in Explainer 2, there are other types of carbon credit projects and some of them do not rely as directly on using land; for example, those that produce renewable energy from ocean wind farms, and those that focus on a transition to cookstoves that produce less CO2 emissions and other air pollution.

What are some of the common risks that carbon markets pose to indigenous peoples' rights?

Many indigenous representatives – knowing that the customary land rights of their peoples are not adequately protected in national legal frameworks – have voiced concerns about the risks that carbon credit projects and programmes pose to indigenous peoples' rights, including their right to self-determination, FPIC, and to lands, territories and resources.⁵⁸

There are already examples of carbon credits in the voluntary carbon market that are being created through projects that dispossess communities of their lands and territories.⁵⁹ This can happen, for example, because developers of carbon credit projects say they have to 'protect' the area that is being used to generate carbon credits and use this as a reason to evict the communities living there, or restrict communities' access to, and use of, the area.⁶⁰ This disregards indigenous knowledge and governance systems, which have protected forests for thousands of years, and continue to do so today. Carbon credit projects may have also made it harder for indigenous peoples and communities to gain legal title to their customary lands and territories in some places.⁶¹

Some carbon credit projects have also violated indigenous peoples' right to consultation and FPIC.⁶² This can happen when organisations, companies or governments set up projects or programmes to create carbon credits on indigenous peoples' lands and territories without asking for, and getting, permission from the customary owners of the land.⁶³ Sometimes, they might ask permission, but from only one person, and not from the body that has a mandate from the people or community to make decisions on their behalf.⁶⁴ It is important to note that several communities have experienced that the topic of carbon markets has led to internal divisions.⁶⁵ This can easily be fuelled by inadequate FPIC processes, where people do not have enough or the same information.

It is also important to note that many of the risks carbon markets pose to indigenous peoples and communities can depend on context specific questions, such as what the laws of your country say about respect for indigenous peoples' rights and customary lands, whether your people and community have legal title to your customary lands, and what rules your community is expected to follow if you participate in carbon markets.

You can read more about some of the human rights risks and impacts of carbon markets in the case study on the next page.

Case Study:

the Kichwa People of the San Martin Region, Peru

In 2001, the Peruvian government established the Cordillera Azul National Park (PNCAZ), in an area of the Amazon forest overlapping with the customary territories of the Kichwa and other indigenous peoples.⁶⁶ The decision to establish the park affected at least 28 Kichwa communities, but the government did not obtain their FPIC before establishing it, nor did they compensate communities for the unlawful dispossession of their ancestral territories.⁶⁷ In 2008, the PNCAZ began to generate carbon credits. The affected Kichwa communities were not consulted about the carbon credit project and have not meaningfully participated in implementing it.⁶⁸ Affected communities have consistently raised concerns that they have received no information about agreements made between companies buying the carbon credits and the organisation managing the park.⁶⁹ It later came to light that the buyers included Shell and Total, two of the largest oil companies in the world. The communities even had to go to court to obtain information about the carbon deals.⁷⁰

Under the guise of needing to protect the PNCAZ, the Peruvian government has reportedly imposed significant restrictions on the Kichwa people's right to use, access and control their ancestral territories. Kichwa communities report having been prohibited from carrying out their traditional practices such as hunting and rotational farming in the PNCAZ. They have had to request permission to enter the park, which has limited access to their customary lands and their ability to care for them.⁷¹ Reports underscore that Kichwa people have been displaced, had their property destroyed, and faced legal threats for trying to use their lands and access culturally significant natural resources.⁷² These interferences have negatively impacted their livelihoods, their sacred relationship to their ancestral territories, and their ability to exercise their cultural rights.⁷³ According to community representatives, protected area authorities have historically opposed the demarcation of Kichwa ancestral lands inside the PNCAZ, in apparent violation of international and domestic law.⁷⁴

More than US\$80 million has been raised from selling carbon credits from the PNCAZ. At the time of writing, Kichwa communities had received none of this money.⁷⁵

An indigenous community claiming their rights in the context of a carbon project proposal

In this scenario, a developer of a carbon credit project approaches an indigenous community with a proposed agreement for a project. (Note: the same principles would apply if a state representative were to approach the community about a national carbon credit programme).

I think we need a **human rights impact assessment** to understand what this proposal could mean for us.

We need **independent legal advice** to understand this!

We decide what happens here in our territory!

What if you don't stick to the agreement? Do you have a **complaints mechanism** that is aligned with international human rights law?

Only a little part of our customary territory is formally recognised by the state. What does this proposal mean for our full collective territory?

I don't understand what you are talking about. I need more **information**.

Anyone promoting carbon credit projects or programmes in our customary lands must **respect our collective rights**.

To do that, you need to meet with us on our terms and respect our own process for collective decision-making.

Before you can proceed with anything here, you need our free, prior and informed consent. If we say no, it means there will be no project.

We can also say yes on certain conditions. We need to shape the nature and terms of the agreement; we do not need to simply accept the first deal that we are offered.

Many of **our rights that are protected under international human rights law** are important in this context. For example our rights to:

- Customary lands, territories and resources
- Self-determination (to decide our own futures)
- Autonomy and self-government
- To give or withhold our consent to activities that might negatively affect us
- Cultural integrity



Why do human rights violations happen?

Violations of indigenous peoples' human rights as a result of carbon markets can happen for a number of reasons.

Weak and fragmented system of rules: Projects or programmes set up to create carbon credits follow different rules depending on which carbon market or carbon market standard they are associated with.⁷⁶ For example, each regulatory market that allows companies to buy carbon offsets has its own set of rules. Similarly, every carbon standard that certifies carbon credits for the voluntary carbon market has its own rules.⁷⁷ What these rules say about protection of human rights vary between different markets and standards.⁷⁸ In some cases, the rules are weak when it comes to protecting the rights of indigenous peoples. When this is the case, it is often described as there being 'weak safeguards' for indigenous peoples' rights. On the other hand, if the rules were aligned with international law protecting indigenous peoples' rights, there would be 'strong safeguards'.^m

Reliance on national laws: In addition, the **implementation of these rules or safeguards** is influenced by how the different standards are **interpreted through the application of the national laws** of the country where a project or programme takes place. Many rules or safeguards rely on applying national level laws about the protection of indigenous peoples' rights.ⁿ This is a problem because national laws often do not protect indigenous peoples' rights in line with international human rights law. For example, states can claim that they will respect indigenous land rights when developing carbon programmes (and thus comply with the rules of a standard that requires that), but they often are only talking about lands that the state has recognised as belonging to indigenous peoples – not the full extent of land and territories that indigenous peoples know to be theirs according to their custom and traditions.⁷⁹

Weak verification: The implementation of rules or safeguards is also influenced by the quality of the **verification** (checking) of how the rules are followed. Investigations into the track record of third-party verification of violations of land rights in the agriculture sector suggests these systems regularly fail to pick up or act on violations of indigenous peoples' rights. Similar problems are now being seen in relation to carbon credit standard verification.⁸⁰ You can read more about this in Explainer 5, in relation to certification in Guyana (see case study in Explainer 5).

Lack of national level regulation of voluntary carbon market actors: There is a general lack of frameworks and laws within countries to regulate the actions of companies and other non-governmental bodies (such as NGOs) that run projects that generate carbon credits, to make sure that projects do not violate indigenous peoples' rights. There is also a similar lack of legal regulation of companies that buy carbon credits to ensure they avoid buying credits from projects and programmes that violate the rights of indigenous peoples.

^m TREES is a standard often presented as one of 'high integrity' that responds to many of the risks to human rights identified in the operation of the voluntary carbon market. Explainer 5 gives a short presentation of TREES.

ⁿ See for e.g., ART TREES Safeguard B Theme 2.3, discussed below in Explainer 5.

What key questions should a community think through in order to arrive at an informed opinion about carbon markets?

In light of these risks to your rights, it is important for your community to be vigilant and ask questions to weigh the potential risks and benefits of any carbon credit project or programme that may impact you:

- **Are our rights respected and protected?**

In order to know if and how your **rights to your lands, territories and resources** will be respected and protected in a carbon credit project or programme, a community needs to fully understand the rules of the relevant carbon standard.^o However, it is not enough to know what the standard says on paper – the community should also understand how the rules will be implemented; who will check (verify) that the rules are followed; how they will check; and what grievance or complaint process exists if your community finds that your rights have been violated despite what the rules say.

All of this is important because even strong rules can fail to protect indigenous peoples' rights. For example, when verification and grievance processes are weak, they may fail to identify violations or provide a real check on problems that occur in practice. And, as discussed earlier, failings can happen when rules that govern the carbon credit project or programme are implemented by applying national level laws (which often do not protect indigenous peoples' rights properly).

- **Will our way of life, cultural integrity and traditional practices be respected?**

Linked to the above questions about protection of rights, it is important to understand if the carbon standard rules^p will **restrict community members from moving freely in their territory and carrying out traditional activities** central to your way of life. For example, will your community be stopped from doing its rotational farming or gathering food and materials from your forests because those activities could be considered to impact the amount of carbon stored in the forest? There are cases where communities have been affected in this way by carbon credit projects, like the case study of the Kichwa people shows.

Key questions

- Are our rights respected and protected?
- Will our way of life, cultural integrity and traditional practices be respected?
- Are we treated as equal partners in carbon credit projects or programmes?
- Does the proposed carbon credit project or programme and wider carbon market comply with our own customary laws?
- What will we gain from participating in carbon credit projects or programmes? Can these projects or programmes contribute towards our self-determined priorities for the future?
- Will it help the climate if we sell carbon credits from our land?
- Are there any risks related to selling carbon credits ourselves?
- Is our process for internal decision-making clear?

^o Where a community is approached by a private sector actor asking the community to sign a carbon credit contract, it is vital that the community understands what the contract says. If they find it difficult to understand, it is important that the community is able to seek legal advice from a trusted ally.

^p Or a contract that the community is asked to sign.

- **Are we treated as equal partners in carbon credit projects or programmes?**

In practice, indigenous peoples' rights are only respected if your people are able to **give, or withhold, your FPIC** as to whether your lands, and carbon stored in it, are to be included in any carbon crediting project or programme. Since indigenous peoples have the right to **self-determination** (which means they must be able to decide what their political, economic, social and cultural future should look like), you must be partners in developing and designing carbon projects or programmes from the outset.

- **Does the proposed carbon credit project or programme and wider carbon market comply with our own customary laws?**

It is important that the elders, traditional authorities and cultural knowledge holders of your people and community are properly informed about carbon markets and their advantages and disadvantages in **culturally appropriate** ways, including through internal dialogues and valid **translations into your own language**. For a credible and good faith FPIC process to take place, it is essential that project or programme developers provide accessible and complete information to your people's traditional authorities and spiritual leaders. Before your community takes a decision on a carbon project or programme proposal, you might also want technical and legal advice from trusted allies and to carry out an internal cultural analysis according to custom. Elders and traditional leaders will likely need to know what carbon offsets are, including how they do or do not help address climate change (see Explainer 4 for discussion about carbon offsets), and how this relates to indigenous laws. A key question to ask internally once explanations have been provided is: **is the carbon project or programme, and the wider carbon offset market, consistent with your customary law, belief system, cosmovision and cultural rules?**

- **What will we gain from participating in carbon credit projects or programmes? Can these projects or programmes contribute towards our self-determined priorities for the future?**

Your community will likely want to consider what you may gain from participating in a carbon market project and programme; if any benefits fairly compensate you and reflect your ownership and stewardship of your lands and territories; and if you have been treated as an equal participant in determining what the benefits should be.

Since carbon credit projects and programmes generate money when credits are sold, a community may be able to access financial resources by participating. This could happen if the community participates directly as a seller of carbon credits, or through what is often referred to as '**benefit sharing mechanisms**'.⁸¹ 'Benefit sharing mechanisms' are likely to be relevant where actors external to a community (such as a company, NGO or government) are developing the carbon credit project or programme.

The purpose of these mechanisms should be to clarify what the community wants to see as compensation for allowing carbon stored in their land and forest to be sold on a carbon market. These mechanisms can set out agreements about what portion of the money generated from the sale of carbon credits goes to the community, and how. They can also specify other conditions that a community has set for their participation (often talked about as 'non-monetary benefits'). Examples of these could be access to livelihood activities, technologies, or social services.⁸²

Too often, however, external project or programme developers make arrangements for so-called benefit sharing without meaningfully talking to the customary rights-holders and landowners about what compensation or reward they want from their participation (see Box 6 in Explainer 5 for example).⁸³ Further, many people note that the way the concept of 'benefit-sharing' is currently used by carbon project developers is backwards; it assumes that the external project developer is the one to 'share' benefits with the customary land owners. In reality, however, if a community decides to allow an external actor to develop a carbon credit project on their land, it is the community that is sharing with the developer.

Only if your community is able to meaningfully shape what the carbon credit project or programme should look like and how you will benefit, and has given your FPIC (including any conditions) to the final proposal, will you know if the project or programme can positively contribute to your self-determined visions for the future.



Case Study:

the Yurok People of California, United States

The Yurok people are the largest federally recognized Tribe in California, United States. Their customary lands were originally more than one million acres, but over time the US government took away almost all of that land, leaving the Yurok with only 5000 acres.⁸⁴

In 2011, the Yurok people entered a direct agreement with the California Air Resources Board (CARB), the government agency that regulates California's carbon market.⁸⁵ Under the agreement, the Yurok earned one carbon credit for each metric ton of carbon they could show they sequestered in their forests. The Yurok people have used the revenue from carbon markets to help buy back their customary lands. By 2018, carbon credits had generated enough money for the Yurok people to buy back almost 60,000 acres of their lands.⁸⁵

The Yurok people's experience with carbon markets is celebrated by many as a blueprint for indigenous groups seeking to reclaim their lands and resources. But their decision to participate in carbon markets reportedly remains contentious within the Tribe. Some Yurok people, for instance, have stated they are concerned that by participating in carbon markets they are enabling greenwashing and giving companies a license to pollute.⁸⁶

⁸⁴ California has a regulated carbon market. Regulatory carbon markets are explained briefly in Explainer 2.

- **Will it help the climate if we sell carbon credits from our land?**

If your community sees sufficient benefits from engaging with a carbon credit project or programme, you might want to do so even if this will not help address climate change. However, your people and community might at least want to think through whether it is important to you for the specific project or programme to have a positive climate impact — especially since such projects and programmes are often presented to communities as a climate solution. There is increasing evidence that carbon markets that are based on carbon offsetting do not actually reduce overall global emissions. Some of the reasons for this are discussed in the next explainer, Explainer 4.

In considering climate impact, your community might be interested in understanding **who will be buying the credits and what the buyers will do with them**. For example, will they be used by a company that releases fossil fuels to offset their emissions, or are they not used as offsets by the buyer? A community might, for example, decide to only agree to a carbon project if there will be restrictions on who can buy the carbon credits or what claims the buyer can make when buying the credits.⁸⁷ For example, the community can oppose a corporate buyer using the credits to say that it has reached its 'net zero' emission goal, but might be okay with taking the payment from the company as compensation for the community's longstanding effort to protect their forests.

- **Are there any risks related to selling carbon credits ourselves?**

If your community is considering participating directly in carbon markets as a seller of carbon credits, you will need to determine: which carbon credit standard bodies will allow you to sell credits as an indigenous community; what the rules are for generating the credits; and what **obligations you may take on by signing associated agreements or contracts** with project developers or buyers. An important consideration is what would happen if your community cannot for some reason fulfil its contractual obligations (for example, to deliver a certain amount of verified carbon credit units to a buyer company). Finally, your community should be aware of carbon offset-buying companies shifting to ever more **sophisticated satellite monitoring systems** for forest carbon project areas.⁸⁸ In relation to this, the community should look out for contract clauses that give companies power to collect and sell information from your territories.

- **Is our process for internal decision-making clear?**

If your community finds it is interested in exploring engaging with a carbon market project or programme, it is **important that the community agrees on what process** this exploration should follow and how a final decision should be made. For example, who will be responsible for engaging with external actors on this topic; how often and in what circumstances must those who are responsible report back and consult with the whole community; how should a final decision to sign an agreement with an external actor be made and who must be present when this happens? These are important questions because there have been instances where communities have experienced miscommunication and internal divisions when carbon contracts have been signed without the knowledge of or agreement of the whole community.⁸⁹ If your community has developed an FPIC protocol, this would likely provide guidance already agreed by the community about how such negotiations with external parties should take place.

Further resources:

- Greenfield, P. (2023, January 21). The 'carbon pirates' preying on Amazon's Indigenous communities. *The Guardian*. <https://www.theguardian.com/environment/2023/jan/21/amazon-indigenous-communities-carbon-offsetting-pirates-aoe>
- Yale Environment 360. *Forest Equity: What Indigenous Peoples Want From Carbon Markets*. <https://e360.yale.edu/features/levi-sucre-romero-indigenous-lands-carbon-credits>

Endnotes

57 Direct communication, on file with authors.

58 See for e.g., Greenfield, "The 'carbon pirates,'" *The Guardian*, 2023; Yale Environment 360, "Forest Equity: What Indigenous Peoples Want From Carbon Markets," Yale School of the Environment, December 15, 2022, <https://e360.yale.edu/features/levi-sucre-romero-indigenous-lands-carbon-credits>.

59 See for e.g., Matthew Sommerville, "Land Tenure and REDD+", US Agency for International Development (USAID), February 2013: p.2, <https://www.land-links.org/wp-content/uploads/2016/09/Land-Tenure-and-REDD.pdf>. <https://www.forestpeoples.org/sites/default/files/documents/CERD%20urgent%20action%20request%20Kichwa%20PNCAZ%2015.7.22%20EN.pdf>.

60 See for e.g., Blanca Begert, "When Carbon Credits Drive People From Their Homes," *Sapiens*, December 9, 2021, <https://www.sapiens.org/culture/carbon-credits-peru/>; Greenfield, "Nowhere else to go" *The Guardian*, January 19, 2023, <https://www.theguardian.com/environment/2023/jan/18/forest-communities-alto-mayo-peru-carbon-offsetting-aoe>.

61 See for e.g., FPP, "Press Release: Indigenous Kichwa Community take Peruvian State and National Park to Court," July 1, 2021, <https://www.forestpeoples.org/en/press-release/kichwa-take-Peru-state-PNAZ-court>.

62 See for e.g., Simon Counsell, "Blood Carbon," Survival International, March 2023, https://assets.survivalinternational.org/documents/2466/Blood_Carbon_Report.pdf?_gl=1*19vrkg4*_ga*NTU4MzM1MTE2LjE2OTQ1Njg0MzA.*_ga_VBQT0CYZ12*MTY5NDU2ODQyOS4xLjAuMTY5NDU2ODQyOS4wLjAuMA

63 See for e.g., Counsell, "Blood Carbon," 2023: p.49.

64 See for e.g., Andres Bermudez Lievano, "The Yurupari Jaguars Territory Divided by a Carbon Credit Project," Pulitzer Center, October 26, 2022, <https://pulitzercenter.org/stories/yurupari-jaguars-territory-divided-carbon-credit-project>.

65 Bermudez Lievano, "Yurupari Jaguars," 2022; Private communications with authors.

66 Miguel Valderrama Zevallos et al., "Conservation Without Indigenous Peoples," FPP, November 23, 2022, p. 14, <https://www.forestpeoples.org/sites/default/files/documents/JA-519%20Traditional%20Kichwa%20forms%20of%20occupation%20and%20control%20-%20ENG%20v5%20amended%20FINAL.pdf>.

67 In 2022 Kichwa representatives petitioned the United Nation Committee on the Elimination of Racial Discrimination, underscoring that there was no proper consultation process prior to establishing the park, among other violations. See CERD, "Early Warning and Urgent Action Procedures: Request," Letter, July 15, 2022, <https://www.forestpeoples.org/sites/default/files/documents/CERD%20urgent%20action%20request%20Kichwa%20PNCAZ%2015.7.22%20EN.pdf>.

68 CERD, "Urgent Action Request," 2022.

69 Valderrama Zevallos et al., "Conservation." 2022, p. 15.

70 CERD, "Urgent Action Request," 2022, para. 16.

71 CERD, "Urgent Action Request," 2022.

72 Valderrama Zevallos et al., "Conservation." 2022, p. 14.

73 CERD, "Urgent Action Request," 2022.

74 CERD, "Urgent Action Request," 2022; Private communication on file with authors.

75 CERD, "Urgent Action Request," 2022, para. 14-15.

76 Rainforest Foundation UK, "Credits Where They Are Not Due: A Critical Analysis of the Major REDD+ Schemes," July 2023, https://www.rainforestfoundationuk.org/wp-content/uploads/2023/07/Carbon-Credits_final_ENG.pdf.

77 Rainforest Foundation, "Credits Where They Are Not Due," 2023.

78 Rainforest Foundation, "Credits Where They Are Not Due," 2023, p. 46.

79 Discussion in UN Human Rights Council, "Green financing, a just transition to protect Indigenous Peoples' rights," Special Rapporteur on the rights of Indigenous Peoples, September 2023, para. 47-51, <https://www.ohchr.org/en/calls-for-input/2023/green-financing-just-transition-protect-indigenous-peoples-rights>.

80 Environmental Investigation Agency UK and Grassroots, "Who Watches the Watchmen?" November 2015, <https://eia-international.org/wp-content/uploads/EIA-Who-Watches-the-Watchmen-FINAL.pdf>.

81 Streck et al., Chapter 11, VCM Primer, Climate Focus, 2021, <https://vcmprimer.org/chapter-11/>.

82 Streck et al., Chapter 11, VCM Primer.

83 See for e.g., Greenfield, "The 'Carbon Pirates,'" *The Guardian*, 2023.

84 Yurok Tribe, "Testimony Regarding Natural Solutions to Cutting Pollution and Building Resilience," US House of Representatives, October 22, 2019, <https://www.congress.gov/116/meeting/house/110110/witnesses/HMTG-116-CN00-Wstate-MyersF-20191022.pdf>

85 Carolyn Kormann, "How Carbon Trading Became a Way of Life for California's Yurok Tribe," *New Yorker*, October 10, 2018, <https://www.newyorker.com/news/dispatch/how-carbon-trading-became-a-way-of-life-for-californias-yurok-tribe>; Beth Rose Middleton Manning and Kaitlin Reed, "Returning the Yurok Forest to the Yurok Tribe," <https://law.stanford.edu/wp-content/uploads/2019/02/39StanEnvILJ71.pdf>; Yurok Tribe, "Testimony Regarding Natural Solutions," 2019.

86 Kormann, "Carbon Trading for Yurok Tribe," *New Yorker*, 2018.

87 Discussion in UN Human Rights Council, "Green financing rights" Special Rapporteur 2023, para. 51.

88 Jawahar Hingorani, "Verra and Pachama pilot digital MRV to measure forest carbon," SG VOICE, November 21, 2022, <https://www.sqvoice.net/investing/markets/17905/verra-and-pachama-pilot-digital-mrv-to-measure-forest-carbon/>.

89 See for e.g., Bermudez Lievano, "Yurapari Jaguars," 2022.