

CLARIFYING CARBON RIGHTS IN THE CONTEXT OF REDD+ IN KENYA POLICY BRIEF



FEBRUARY 2025



Indigenous Livelihoods Enhancement Partners
ILEPA
"Enhancing Indigenous Resiliency"



Key Messages

- Carbon rights do not have a universally agreed upon definition however they are generally understood to refer to the rights to benefit from sequestered carbon and reduced greenhouse gas (GHG) emissions. Typically quantified as carbon credits, each unit represents one tonne of carbon dioxide equivalent reduced or removed from the atmosphere under a recognized carbon standard.
- Carbon rights can be based on legal control of the emission reduction or removal activity or control of the underlying asset yielding the emission reductions or removals. In the context of REDD+, these intangible assets are created through legislative and/or contractual arrangements and can represent either rights to carbon stored in forests, soil, and land or rights to benefits from REDD+ projects.
- Kenya's policy and legislative texts neither define nor set out ownership of carbon rights though these rights are implicitly recognized and carbon projects have been on going for decades. The framework also mentions carbon credits, though Kenya's policy and legislative texts do not elaborate on the legal nature of a carbon credit. In the absence of explicit provisions, it becomes difficult to determine who has rights over carbon particularly where it is disputed and to determine the key application of certain legal principles and the treatment of carbon credits as related to their ownership and transfer. It also becomes difficult to determine their treatment in the case of taxation, insolvency, and taking and enforcing security, all which may be relevant to certain carbon transactions.
- To enhance REDD+ Kenya needs to assert the ownership of carbon rights in legislation in order ensure all stakeholders in REDD+ benefit. There is also need to clearly conceptualize and define the legal nature of carbon credits in order to provide clarity on their correct treatment in law. The country should also streamline procedures and processes for the transfer of carbon credits and underlying rights and uphold social safeguards in carbon rights decision making in order to balance community rights while fostering REDD+ investments.



1. Understanding Carbon Rights

The term carbon rights, though lacking an internationally agreed upon definition, has been used as shorthand for a plethora of different tradable Greenhouse Gas (GHG) rights".¹ Carbon rights are generally understood to mean the "rights to benefit from sequestered carbon and/or reduced GHGs".² They are in essence intangible assets created by legislative and/or contractual arrangements that can in the context of REDD+, be interpreted as rights to sequestered carbon contained in the soil, trees, forest, and land, or as rights to benefits arising from REDD+ projects.³ The right is usually quantified as a carbon credit, which denotes a certified unit registered under a recognized carbon standard, with one carbon credit equal to one tonne of carbon dioxide equivalent being emissions that have been reduced or removed from the atmosphere by an intervention such as REDD+.⁴

Generally, carbon rights are based on the legal control of the emission reduction or removal activity or the legal control of the underlying asset.⁵ To establish that one has legal control of emission reduction or removal activity, they must demonstrate that their actions or assets enable and control GHG emission reduction or removal. Alternatively, one may establish control by proving that they have ownership of tenure rights over the underlying asset. These rights can be connected to tenure ownership rights, some kind of control over the forest land, usufruct rights, or it can be considered as a separate interest.⁶

The centrality of carbon rights is demonstrated by funding bodies, initiatives, standards, and buyers of carbon credits requiring assurance that their making of results-based payments or their provision of carbon finance for purchases made in the voluntary carbon market (VCM) are based on REDD+ activities that offer clear infeasible title to the arising rights.⁷ Countries such as Kenya which intend to ultimately participate in jurisdictional REDD+, must establish clear and infeasible rights to the forest carbon before they can obtain result based payment.⁸

Table 1: ER/carbon right requirements relevant to national and sub-national jurisdictions under different REDD+ programmes and standards⁹

1. Green Climate Fund (GCF) REDD+ Results-Based Payments ¹⁰	In section F of the pilot program for REDD+ results-based payments, developing countries are required to (i) analyse legal title to REDD+ results, including entitlement to claim payment from the GCF, and (ii) provide assurance that no other party holds competing claims to the results under national policy, legal frameworks."
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¹ Charlotte Streck and Moritz Von Unger, Creating, Regulating and Allocating Rights to Offset and Pollute: Carbon Rights in Practice, Carbon & Climate Law Review, Vol. 10, No. 3, Special Issue on Carbon Rights (2016), pp. 178-189

² Knox, A et al, Forest Carbon Rights Guidebook: A Tool for Framing Legal Rights to Carbon Benefits Generated through REDD+ Programming; USAID: Washington, DC, USA, 2012.

³ Arjuna D and Martijn W, Forest Carbon Rights: Lessons learned from Australia and New Zealand, (Carbon and Climate Law Review, 2016) Volume 3 Issue No. 5 Page 202-208

⁴ Streck C, Shades of REDD+: The right to carbon, the right to land, the rights to decide, (Ecosystem Marketplace 2020)

⁵ Streck C and Von Unger M, Creating, Regulating and Allocating Rights to Offset and Pollute: Carbon Rights in Practice, (Climate Change Law Review, 2016) Volume 37 Page 180.

⁶ Knox, A et al, Forest Carbon Rights Guidebook: A Tool for Framing Legal Rights to Carbon Benefits Generated through REDD+ Programming; USAID: Washington, DC, USA, 2012.

⁷ VCS, Climate, Community & Biodiversity (CCB) Standards: v3.1, 21 June 2017.

⁸ Government of Kenya, National REDD+ Strategy, (GoK, 2021)

⁹ Francesca Felicani-Robles, Carbon Rights in the Context of Jurisdictional REDD+: Tenure Links and Country-Based Legal Solutions- Information Brief (FAO, 2022).

¹⁰ USAID, Forest Carbon, Markets and Communities (FCMC) Program: Finance and Carbon Markets Lexicon (USAID, 2012).

2. World Bank Carbon Fund	<p>Submit evidence demonstrating the Programme Entity's ability to transfer title to ERs, free of legally recognized interests, encumbrance or claim of a third party and provide a tentative risk rating that this ability is clear or uncontested. Include a discussion on the implications of the land and resource regime on the ability to transfer Title to ERs to the Carbon Fund. (Conditions of effectiveness and sale and purchase – schedule 1). The ability to transfer Title to ERs may be demonstrated through various means, including reference to existing legal and regulatory frameworks, sub arrangements with potential land and resource tenure rights-holders.</p>
3. ART-TREES	<p>Provide a summary of the participant's rights to the emissions reductions or removals (ERRs) generated from the accounting area, through regulatory frameworks, laws or administrative orders, or a description of how rights will be obtained in accordance with domestic law. The participant need not establish or enact new legislation or a legal framework to address carbon rights.</p> <p>However, they must explain how, under existing constitutional or legal frameworks, carbon rights and related intangible property interests are established and addressed. This explanation should include how such carbon rights and intangible property interests would be established, the legal basis for creating such rights and interests and how claims to such rights from private parties, Indigenous Peoples or sub national entities will be resolved.</p>

Additionally, the international climate change regime has been steadily evolving, and the ongoing developments further inform the increased need for regulatory attention to carbon rights in various jurisdictions. These developments include: the development and implementation of country Nationally Determined Contributions (NDC); operationalization of Article 6 of the Paris Agreement; the push for integrity in the voluntary carbon markets; and the need for REDD+ nesting.

Table 2: Developments in the international climate change regime influencing national focus on carbon rights.

1. Nationally Determined Contributions	<p>Countries are required to prepare, communicate, and maintain successive NDCs that they intend to achieve pursuant to the Paris Agreement.¹¹ Governments are showing interest in tracking, incentivizing and managing their carbon market activities related to emission reductions or removals, recognizing that these have a bearing on their NDC target.¹² Tracking is especially essential in ensuring that local projects do not oversell and limit the country's ability to meet its NDC targets. Ensuring proper management of carbon rights is important as countries increasingly include the Land Use, Land-Use Change, and Forestry sector in the scope of their NDCs.¹³</p>
2. Article 6 of the Paris Agreement	<p>Article 6 allows parties to voluntarily cooperate with each other to achieve emission reduction targets set out in their NDCs.¹⁴ International cooperation under Article 6 is necessary for accelerating investments in mitigation and raising overall ambition. With the Article 6 Rulebook finalized and agreed by Parties at COP29, countries need to develop their domestic frameworks to develop relevant national legal, policy and institutional architecture that enables, <i>inter alia</i>, clear carbon rights for successful implementation of Article 6.</p>

¹¹ Article 4, Paris Agreement.

¹² EY and Gold Standard, Carbon Credit Rights under the Paris Agreement: How Article 6 and the Implementation of NDCs May Shape Government Approaches to the Carbon Market, and What this Mean for Rights Related to Carbon Credits, (EY and Gold Standard, 2022).

¹³ UN REDD, Linking REDD+, the Paris Agreement, Nationally Determined Contributions and the Sustainable Development Goals: Realizing the Potential of Forests for NDC Enhancement and Implementation, (UN REDD, 2022).

¹⁴ Article 6, Paris Agreement.

3. Integrity on the Voluntary Carbon Markets	Voluntary Carbon Markets (VCM) enable developing countries to mobilize significant private sector climate finance. ¹⁵ A number of initiatives including the Voluntary Carbon Markets Integrity which has launched the Claims Code of Practice ¹⁶ , and the Integrity Council for the Voluntary Carbon Markets, which has published the Core Carbon Principles, ¹⁷ have provided criteria that carbon projects must meet to be considered high quality carbon credits. A clear carbon rights regime enhances integrity.
4. REDD+ Nesting	Countries participating in REDD+ are increasingly able to improve the integrity and accountability of REDD+ results across multiple scales. National governments can support the operating environment for REDD+ in their countries by aligning REDD+ efforts across scales in a process called "nesting," which ensures compatible measurements of results and alignment between national and local efforts. A nested system of REDD+ refers to site- or subnational-scale REDD+ activities that are incorporated into, reported on and formally recognized under a national REDD+ program, allowing for benefits to flow at all scales. ¹⁸ Clarifying carbon rights enables a country to design an effective nesting system. ¹⁹

2. Carbon Rights in Kenya's REDD+ Regime

Kenya's policy and legislative framework highlights an implicit acknowledgement of carbon rights and it has enabled implementation of four site-scale REDD+ projects.²⁰ These projects benefit from trading in the VCM with transfer of carbon rights being carried out contractually. Kenya's laws and policies also make reference to terminology relevant to carbon rights such as 'carbon markets', 'carbon credits', 'carbon asset', 'carbon trading', and related concepts.²¹ However the policy and legislative framework does not define carbon rights nor explicitly set out ownership rights in carbon. It also does not provide any clarity on the legal status of carbon credits in Kenya. A more detailed analysis of the relevant legal and regulatory provisions is set out below.

Forest carbon ownership

Kenya's legal framework makes no explicit provisions on who has the right to own sequestered carbon. However, the existence of a robust land and forest ownership and tenure system hinged on the Constitution and laws on the management of land, forests and other natural resources provide guidance on ascertaining the legal ownership of carbon rights emanating from REDD+ projects. The presumption, based on a review of these laws, is that ownership of REDD+ carbon rights is tied to the ownership or user rights attaching to land or forests.

Land ownership in Kenya encompasses private, community and public land,²² with tenure rights being leasehold, freehold, customary and such forms of partial interest as may be defined under

¹⁵ Voluntary Carbon Markets Integrity Initiative (VCMI), VCMI Proposal to Assist Developing Countries to Develop VCM Access Strategies, Working Paper (VCMI, 2021).

¹⁶ Voluntary Carbon Markets Integrity, Claims Code of Practice, (VCMI, 2023).

¹⁷ The Integrity Council for the Voluntary Carbon Market, Core Carbon Principles, Assessment Framework and Assessment Procedure, (ICVCM, 2024).

¹⁸ Conservation International, REDD+ Nesting, Decision Support for Conservation International and REDD+ Countries, (Conservation International, 2018.).

¹⁹ Lee, Donna et al., Approaches to REDD+ Nesting; Approaches to REDD+ Nesting: Lessons Learned from Country Experiences, (World Bank, 2018). Global initiatives to promote high integrity include the Voluntary Carbon Markets Integrity Initiative (VCMI) and Integrity Council for the Voluntary Carbon Market.

²⁰ CIFOR, International Database on REDD+ Projects and Programmes, (CIFOR, 2022). Kenya's REDD+ Projects include Mikoko Pamoja, Vanga Blue Forest, Kasigau REDD+ Project and the Chyulu Hills REDD+ Project.

²¹ Section 2, Climate Change Act, 2016; Section 2, Climate Change (Carbon Markets) Regulations 2024.

²² Articles 61, 62, and 64, Constitution of Kenya.

the Land Act and any other law.²³ Landowners under any of the above-mentioned land ownership systems may devolve and grant to others, rights, or interest in or emanating from the land, and these may include rights to sequestered carbon. Forests are classified as either public, private, or communal,²⁴ each with a different ownership and management regime. Carbon rights can in the case of public forests be owned by the National Government or a County Government (holding in trust for the people of Kenya or people resident in the county, respectively); in the case of private forests, by the registered owner of private land; and in the case of community forests, the registered community in whom ownership of the land is vested or the County Government holding the land in trust on behalf of the unregistered community. Forest adjacent communities may be granted user rights in public forests through their Community Forests Associations,²⁵ and private investors may also be granted concessions in public forests,²⁶ meaning they could obtain carbon rights.

As highlighted above the relevant provisions of Kenya's Constitution, land and forest laws are instructive in highlighting, though implicitly, the right to sequestered carbon. There is therefore need for explicit policy and legal provisions setting out who owns carbon so it is clear who may transfer legal ownership to ensure buyers obtain an indefeasible title. Clarity on who owns carbon is also important to ensure that the rights of local communities and Indigenous Peoples are protected at all instances, so they benefit from the carbon and non-carbon benefits of REDD+ activities. In the absence of such clarity, disputes are likely to arise particularly where there is contested title to land such as between the State and local communities, and Indigenous Peoples.²⁷ This leads to lack of certainty on who legally holds carbon rights in REDD+ projects established in such contested territory, and the likely marginalization of local communities and Indigenous Peoples.²⁸ Aside from contested tenure, there is also an impediment created by failure of project proponents, landholders or land administrators including government officials, to follow the letter of the law when managing and administering carbon project land.²⁹

Gaps in settling land tenure issues such as in the case of community land affect the ownership of carbon credits and the underlying carbon rights. For example, the gazettment of all community land boundaries by the Cabinet Secretary has yet to happen in full, yet this is a requirement to trigger the timeline for community land registration under the Community Land Regulations.³⁰ Further, transition is unclear/uncertain in instances where land was previously held under group ranch arrangements and was undergoing subdivision and approvals were received prior to commencement of the Community Land Act, but the process of obtaining individual title deeds was not completed before commencement of the Act. There are also cases of group ranch certificates having been issued after Community Land Act came into force under unclear circumstances, as at this point establishes of group ranches is not allowed under law.³¹ These situations fail to provide the requisite certainty for carbon project development and hinders investment.

Legal nature of carbon credits

Kenya's Climate Change Act 2016 (Act), recognizes the generation of carbon credits by both land and non-land carbon projects. Carbon credits are defined as *"a credit created when the equivalent of one metric tonne of carbon dioxide is prevented from entering the atmosphere and is equal to one tonne of carbon dioxide or the equivalent amount of a different greenhouse gas reduced, sequestered, or avoided"*.³²

²³ Section 5, Land Act, 2012.

²⁴ Section 30(1), Forest Conservation and Management Act, Act No. 34 of 2016.

²⁵ Section 48(2), Forest Conservation and Management Act, Act No. 34 of 2016.

²⁶ Section 43(2), Forest Conservation and Management Act, Act No. 34 of 2016.

²⁷ Nixon Sifuna, "The Fate of Aboriginal Habitation of Gazetted State Forests in Present Day Kenya: A Case Study of the Agitation by the Ogiek and Sengwer Traditional Communities". 2021, *Advances in Anthropology*, 11, 99-127

²⁸ Counsell Simon, *Blood Carbon: How a carbon offset scheme makes millions from Indigenous land in Northern Kenya*, (Survival International, 2023). This report highlights the marginalization of local communities and Indigenous Peoples where there are contested land registration claims.

²⁹ *Osman and 164 others vs. Northern Rangeland Trust and 8 others* (Petition 006 of 2021 [2024] KEELC 6554 [KLR]) This case while not a REDD+ project demonstrates the disputes that would arise in unregistered community land and the legal process for registering conservancies in such land.

³⁰ Section 8, Community Land Regulations, 2017.

³¹ Section 10, Community Land Act, 2016.

³² Section 2, Climate Change Act, 2016.

There is however lack of clarity on how the legal nature of a carbon credit is conceptualized and determined under Kenya's laws. It is unclear whether carbon credits are viewed as intangible property, a bundle of contractual rights, financial instruments/securities or commodities.

In the absence of explicit provisions, it becomes difficult to determine the key application of certain legal principles and the treatment of carbon credits as related to their ownership and transfer. This absence of clear legal provisions ultimately raises concerns regarding safeguards, particularly in ensuring transparency, equity and accountability in carbon market activities. Certainty over the legal nature of carbon credits is also important as it determines the key application of certain legal principles in the case of ownership and transfer, taxation, insolvency, and taking and enforcing security, all which may be relevant to certain carbon transaction structures.³³

The legal nature of carbon credit is a jurisdiction specific issue and its dependent on their legal and regulatory framework. For example in Australian States the Carbon Credits (Carbon Farming Initiative) Act 2011 ("CFI Act") creates a legislative framework for the development of offset projects and the creation of Australian Carbon Credit Units (ACCUs), from both land sector activities (including avoided deforestation) as well as energy, transport and industry. The CFI Act defines carbon credits created and issued under the Act (ACCUs) as personal property, and ACCUs are recognized as investment instruments for the purposes of the Personal Property Securities Act 2009 and can be used as collateral for financing arrangements. The CFI Act provides that ACCUs are transmissible by assignment, by will, by devolution and by operation of law.³⁴

Kenya is currently developing its carbon trading regulatory framework and this presents and opportune moment to reflect more keenly on the legal nature of carbon credits in the country so as to provide more certainty and enhance the investment environment. The proposed Draft Climate Change (Carbon Trading) Regulations, 2025 highlight the country's intention to set up a carbon exchange for the trading of carbon credits in both voluntary and compliance markets.³⁵ Only carbon credits that are registered in the National Carbon Registry (Registry) established under the Act, meet the verification and certification requirements of relevant carbon standards, and are issued by projects approved by the Designated National Authority (DNA) in compliance with the Act and its regulations, shall be eligible for trading on the carbon exchange.³⁶ Further regulations will be necessary under Kenya's Capital Markets Act to operationalize the exchange,³⁷ and there will be need to clarify the legal nature of carbon credits and their treatment in law as far as domestic carbon trading is concerned.

Transfer of carbon credits

There is no overarching legal or regulatory framework in Kenya setting out the modalities of transfer of carbon credits and underlying carbon rights. Owners of carbon credits ordinarily transfer their rights through contractual agreements, requiring observance with the country's contract laws as well as applicable environmental conservation, land and forestry laws relating to investments in these natural resources. The Climate Change (Carbon Markets) Regulations, 2024 (Regulations) further require that project proponents must indicate, when seeking project approval from the DNA, ownership of the property involved in the project and where the property is owned by a third party, provide agreements demonstrating the property owners consent for use of the property in the carbon project.³⁸ In the case of community land, project proponents must also provide documentation of free, prior and informed consent.³⁹

Additionally, the Act introduces an element of tracking in law by setting out a requirement for

³³ ISDA, Legal Implications of Voluntary Carbon Credits, (ISDA, 2021)

³⁴ Andrea B., "New Dimensions in Land Tenure: The current status and issues surrounding carbon sequestration in regional Australia", *Australasian Journal of Regional Studies*, Vol. 24, No. 3, 2018. The Australian States include Queensland, New South Wales, Victoria, Western Australia Tasmania, Southern Australia.

³⁵ Regulation 8(1), Draft Climate Change (Carbon Trading) Regulations, 2025.

³⁶ Regulation 8(3), Draft Climate Change (Carbon Trading) Regulations, 2025.

³⁷ Regulation 8(6), Draft Climate Change (Carbon Trading) Regulations, 2025.

³⁸ Regulation 16 (l), Climate Change (Carbon Markets) Regulations 2024.

³⁹ Regulation 16(m), Climate Change (Carbon Markets) Regulations.

a National Carbon Registry to be established as a system for tracking carbon credits generated and sold at the national level and from projects. The Act also empowers the Cabinet Secretary responsible for matters climate change to authorize the establishment of the REDD+ Registry and other sector registries to feed into the Registry.⁴⁰

The DNA shall maintain the National Carbon Registry and shall include information such as registers on the carbon credits projects and programmes implemented to reduce greenhouse gas emissions and the reduced emissions from deforestation and forest degradation carbon.⁴¹ Kenya is in the process of developing regulations that shall operationalize carbon registries in the country. The REDD+ registry which shall feed into the Nation Carbon Registry is also under development.

Safeguards

Safeguards are defined as a set of principles, rules and procedures put in place to ensure that no harm is done either to people or the environment during the implementation of carbon projects or other market-based mechanisms.⁴² Some of the common safeguards include the inclusion of stakeholder participation in the development and design of REDD+ programmes, development of clear and fair benefit sharing arrangements, access to grievance redress mechanisms, and the prioritisation of Free, Prior and Informed Consent (FPIC) in decision-making. At a minimum REDD+ countries are required to implement the Cancun Safeguards.⁴³

Kenya has in line with the international framework developed its National Approach to Safeguards which elaborate on the seven Cancun Safeguards and the key mechanisms recognized by the Approach include incorporation of the Cancun Safeguards within Kenya's legal framework, the promotion of transparent and effective national forest governance structures, respect for the knowledge and rights of Indigenous Peoples and effective participation of Local Communities.⁴⁴ However Kenya's Safeguards Information System is yet to be operationalized and is awaiting the establishment of an institutional framework and technical infrastructure.

Nonetheless safeguards are encapsulated in the Act which expressly provides that emission credits not taken into account shall include those that have been achieved in violation of human rights.⁴⁵ As such, REDD+ projects wishing to have their carbon credit counted must ensure that they adhere to safeguards. The Act also acknowledges the importance of REDD+ safeguards, requiring that all REDD+ projects are required to undergo REDD+ safeguard standards assessment.⁴⁶ It however fails to set out the modalities of undertaking the assessment.

The Act also requires carbon project proponents with land-based projects to enter into Community Development Agreements (CDA) with the impacted communities, with national and county governments overseeing and monitoring negotiations.⁴⁷ The Act states that the CDA's contents are to include the annual social contributions of the "aggregate earnings" of the previous year to the community, defined as "the total of all income in a carbon project without adjustment for inflation, taxation or types of double counting."⁴⁸ Additionally, the agreements are to stipulate the mode of sharing benefits from carbon markets and carbon credits between project proponents and the impacted communities. Benefit sharing in land-based projects on public and community land must be at least forty per cent (40%) of aggregate earnings less cost of doing business.⁴⁹

⁴⁰ Section 8, Climate Change Act 2016.

⁴¹ Section 23 G, Climate Change Act, 2016.

⁴² Juan Pablo Sarmiento Barletti et al, Safeguards at a glance: Supporting the rights of Indigenous Peoples and local communities in REDD+ and other forest-based initiatives, (Center for International Forestry Research (CIFOR), 2021).

⁴³ Decision 1/CP.16 The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, (UNFCCC, 2010).

⁴⁴ National Approach to Safeguards and A Safeguards Information System for REDD+ Implementation.

⁴⁵ Section 23 A (d) (ii), Climate Change Act 2016.

⁴⁶ Section 23 D(2), Climate Change Act 2016.

⁴⁷ Section 23 E(4), Climate Change Act, 2016.

⁴⁸ Section 23 E(5) (b) as read with Section 2, Climate Change Act, 2016.

⁴⁹ Section 23 E(5) (b) (i), Climate Change Act, 2016.; Regulation 29 (a), Climate Change (Carbon Market) Regulations, 2024.

The Act also provides for dispute resolution mechanisms ensuring communities have access to remedies. Disputes arising from land-based projects are to be subjected to the dispute resolution mechanism set out in the CDA in the first instance and shall be resolved within thirty days from the date it is lodged and where disputes are not resolved within thirty days, they are to be referred to the National Environment Tribunal.⁵⁰

3. Opportunities to Clarify Carbon Rights in Kenya's Policy and Legislative Framework.

Despite Kenya's lack of a clear framework defining carbon rights and conceptualizing the legal nature of carbon credits, the country has implemented several carbon projects including REDD+ ones over the years. This has been on the basis of a strong legal and regulatory framework that features constitutional protections on land and forest rights. The land and forest laws in the country have further emphasized and provided guidance on forest carbon ownership.

Kenya's legal and regulatory environment is in a state of flux as newly enacted carbon market regulations take root in the country and draft regulations on carbon trading and carbon registries are under development. As the country aims to meet its NDC and implement its other policies plans and strategies on climate change, climate finance and forestry, the ongoing legislative developments offer opportunities to further clarify carbon rights in the context of REDD+ in Kenya.

This clarity will enable the country to not only participate in the global carbon markets but also enhance its potential to obtain result based payments under jurisdictional REDD+. By offering more certainty on who owns rights to forest carbon, how these rights can be transferred, the requisite safeguards and legal nature of generated carbon credits, Kenya will attract investments, protect the integrity of its carbon projects, and enhance the country's ability to meet its national and international climate mitigation and adaptation commitments.

To further clarify carbon rights in Kenya it will be important to:

- Define and explicitly stipulate ownership of forest carbon in order to determine who can own and pass an indefeasible title to the rights, through amendment of the Forest Conservation and Management Act, 2016 to include a provision on carbon rights.
- Elaborate on the legal nature of carbon credits as they have not been explicitly conceptualized in the policy and legal framework, through insertion in the Draft Climate Change (Carbon Trading) Regulations, 2025 or the further regulations to be developed by the Capital Markets Authority on trading.
- Fast track the development of the regulations guiding the operationalization of the National Carbon Registry and sector registries which include the REDD+ registry, and the establishment of both registries. This will enhance record keeping and transparency on transfers of carbon credits in the country.
- Ensure REDD+ carbon projects comply with safeguards by operationalizing the Safeguards Information System; set out the mechanisms and modalities for undertaking the REDD+ safeguards assessment mandated in the Climate Change Act, 2016; develop and publish national guidelines on FPIC; and undertake capacity building on the safeguard elements Climate Change Act and regulations thereunder such as on benefit sharing provisions and dispute resolution mechanisms.

⁵⁰ Section 23 H, Climate Change Act, 2016.

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Acknowledgment

This policy brief was commissioned under the Climate ARK project supported by UK Partnering for Accelerated Climate Transitions programme, and was authored by Clarice Wambua and Lauriene Maingi (Cliffe Dekker Hofmeyr).

Peer reviews were provided by Ruben Perez Pena, Psamson Nzioki, Mariela Perron, Esther Kamwilu and Lina Barrera (Conservation International).

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