



**guide on**  
**carbon projects for**  
**grassroots lawyers**



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**Guide on Carbon Projects for Grassroots Lawyers**

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# I. Introduction

This guide is dedicated to lawyers representing communities interested in participating in carbon credit generation and trading projects, with a clear emphasis on respecting the autonomy of these communities.

**It is not intended to either encourage or discourage these communities from engaging in such initiatives. Rather, its goal is to equip legal professionals with comprehensive knowledge and strategies to ensure that, if and when a community chooses to participate in such initiatives, its rights and interests will be defended with the utmost rigor and efficiency.**

A community's decision to engage in the carbon market is complex and carries significant legal, environmental, and socioeconomic implications. This guide, developed in response to the increasing interest in this field, aims to serve as a reference for understanding the technical and legal aspects of carbon credit contracts. By providing this information, the guide seeks to enable lawyers to navigate the intricacies of decisions and negotiations, ensuring that the community's interests are effectively prioritized.

The document is structured around five main areas, each designed to offer grassroots lawyers a foundational understanding of different challenges and opportunities associated with carbon credit projects. It covers a deep understanding of carbon market structures and operations, a strong defense of community rights, and negotiating strategies to secure fair and equitable contracts. Additionally, the guide emphasizes the importance of Free, Prior and Informed Consultation ('FPIC') - ensuring that communities have an active voice throughout the process - and highlights the need for adaptability and flexibility to address the inherent changes and uncertainties of these projects.

This guide is intended to provide lawyers representing traditional peoples and communities with the essential knowledge for drafting carbon credit contracts. It aims to effectively address the main questions these communities may have and, especially, to point out the potential risks of approving a carbon credit project.

## 2. What are carbon markets: concepts and principles

Before analyzing the development of carbon projects in traditional territories, it is essential to understand what carbon markets are and their implications.

In the traditional economy, environmental impacts and pollution caused by production processes were not reflected in the final price of goods or services. As a result, third parties who were not involved in these processes indirectly bore the economic, health and environmental costs associated with pollution. To address this issue, there has been a shift towards holding producers accountable for the environmental impacts of their activities.

The strategy is based on the principle that incorporating the costs of pollution into product prices creates an economic incentive for producers to reduce their emissions. This principle, known as the 'polluter pays' principle, underpins the rationale behind carbon markets.

The main objective of carbon markets is to **price Greenhouse Gas ('GHG') emissions**<sup>1</sup>. In other words, the aim is to assign a **monetary value** to GHG emissions, making a carbon-dependent economy more expensive and thus creating incentives for producers to reduce their emissions.

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<sup>1</sup> It is important to mention that, despite the reference to 'carbon markets', these markets deal with emissions of all types of greenhouse gases. The analysis of these other pollutants is always made in comparison to carbon dioxide emissions (CO<sub>2</sub>), for methodological purposes.

Carbon markets are just one way of pricing carbon. It is also possible to adopt other financial strategies, such as emission taxes. These taxes could be set by the government per ton of CO<sub>2</sub> emitted, with their value adjusted over time to encourage the reduction of emissions. This type of charge is usually applied directly to GHG emission sources, such as oil refineries, coal-fired power stations, or heavy industries.

### 2.1. Types of Carbon Markets

There is more than one type of carbon market. They can be classified as: regulated, voluntary, and jurisdictional.

**Regulated carbon markets**, as the name suggests, are those established by **regulatory measures**, i.e., by state action. In these markets, a limit (a 'cap') is set for emissions. Within this limit, the regulatory agency issues GHG emission **allowances** and allocates them to the regulated actors, such as sectors or individual companies. To operate, the companies are **required** to hold the number of allowances equivalent to the emissions caused by their activities. If a company fails to keep its emissions within the established limits, it can **purchase** additional allowances on the carbon market from those companies that have kept emissions below their limits. This mechanism establishes a regulated carbon market, in which the different regulated actors buy and sell the allowances allocated by the regulatory agency.

**Jurisdictional carbon markets** are typically created by

regional public entities, such as state governments in the Brazilian case, like the state of Tocantins, Pará or Mato Grosso. In this way, the emission limits established are also regional. In Brazil, despite the existence of bills under discussion in Congress, we still don't have a federal **regulated** carbon market, but there are examples of **jurisdictional** markets, such as the Capixaba Carbon Program and Nature-Based Solutions, in the state of Espírito Santo.

Finally, **voluntary carbon markets** are those that do not involve state interference. They are created by private actors who wish to **offset** their GHG emissions voluntarily. **Voluntary carbon markets are the focus of this guide**, as they represent the market currently established in Brazil and those responsible for carbon projects in traditional territories.

In voluntary markets, the **carbon credits** traded are issued by private **certifiers**. Each carbon credit represents a reduction of the equivalent of 1 ton of carbon dioxide from the atmosphere and it can be generated by various types of **carbon projects**. In these projects, a technical study is carried out prior to their implementation in order to establish an emission **baseline**. The purpose of this baseline is to subsequently demonstrate the amount of emissions that have been **avoided** as result of the project implementation. For these 'verified emission reductions', the corresponding carbon credits are issued to be traded on the voluntary market.

There are multiple actors participating in voluntary

markets. In general terms, they are the project proponents; developers; validation and verification bodies; certification bodies; and buyers. These actors may vary from project to project, with the possibility of having more or fewer intermediaries.

**Proponents:** proponents are usually the actors who **claim the carbon project in their own name**, being its creators, through their own or financed resources. To implement these projects, proponents often hire the services of a **developer**.

**Developer:** is responsible for planning, analyzing and technically implementing the project. It is the developer who will calculate the project's baseline, estimate the credits to be generated, and establish its rules, including the possible activities to be carried out in the project.

**Validation and Verification Bodies:** once the carbon project has been developed, contracted validation and verification bodies will conduct a technical compliance check on the project documentation, including land documentation where applicable, and validate the territory conditions. After this step, the project will be ready to be submitted for carbon credits trading.

**Certification Bodies:** although a project always has a proponent and a developer, carbon credits are usually traded on platforms operated by certification bodies, many of which have international operations. Certification bodies use their own methodologies for calculating and developing carbon

projects or recognized methodologies approved by other entities, such as those of the UN Framework Convention on Climate Change. Once a carbon project is submitted to a certification body, it will be evaluated according to an approved methodology specified by the proponent. If the certification body confirms the project's compliance with the methodology, it will be able to issue and trade carbon credits.

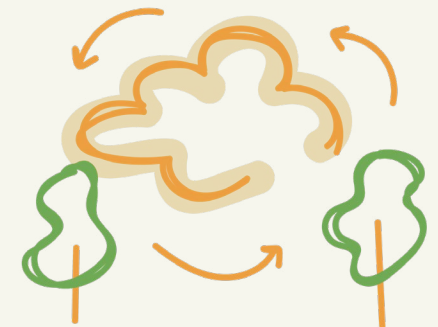
As such, carbon credits trading generally takes place on the certification body's platform, ensuring that the project has passed its evaluation and adhered to a pre-approved methodology for reducing GHG emissions. Once the project has been certified and is available on the platform, any interested party, including companies, can purchase these carbon credits. Therefore, in these cases, **the project proponent has no control over who buys the carbon credits**, as this role is assigned to the certification body.

As a result, it is not possible for the proponents to restrict purchases by a particular company or group of companies.

Finally, companies buy the carbon credits generated by the project for various reasons, such as marketing, obligations to their investors, corporate governance, or other purposes. By purchasing carbon credits, companies claim to have 'offset' the GHG emissions from their activities over a given period. However, since this is a voluntary market, meaning there is no obligation imposed on the parties, merely acquiring of carbon credits does not necessarily mean that the company has effectively reduced its emissions. In other words, a company can continue to emit GHGs in certain quantities, even if it purchases carbon credits.

Despite the distinction between regulated, jurisdictional and voluntary carbon markets, in practice there may be cases where they are related. For example, it is common for regulated markets to allow companies subject to regulation to partially achieve their GHG reduction targets by purchasing carbon credits on the voluntary market. In other words, it can happen that companies acquire these credits only because of a legal obligation.

There are various types of projects that can generate carbon credits that will be traded on the voluntary market, including forest carbon projects. In these projects, the reduction of GHG emissions is achieved through forest recovery, restoration or maintenance. They are known as projects to reduce emissions from deforestation and forest degradation combined with the conservation of forest carbon stocks, sustainable forest management and increasing forest carbon stocks - the so-called REDD+. These aspects will be analyzed more closely in this guide. To do so, it is necessary to examine the land regime of the territory where the projects will be developed.





## 3. Land issues

### 3.1 Projects eligible to generate carbon credits and the importance of property ownership

It is the role of the carbon project proponent to demonstrate to the validation and verification bodies that the planned activities comply with all legal regulations. In this sense, it is necessary to demonstrate that the proponent or the organization involved in the project has **unequivocal ownership or long-term right to use** that area.

The generation of carbon credits on the voluntary market involves several stages: registration, validation, verification and certification of credits. **Verification of the eligibility of REDD+ projects to issue carbon credits** is linked to **compliance with internationally recognized standards and certifications** from initiatives such as the [Verified Carbon Standard](#) ('VCS') and the [Climate, Community & Biodiversity Standards](#) ('CCB'), which are accreditation programs created by the certification body **Verra**<sup>2</sup>.

These standards adopt strict criteria to ensure the environmental, social and economic integrity of approved projects. Among these criteria is the requirement that the individual or legal entity declaring possession of a given territory must legally own it or be authorized to use it for economic exploitation.

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<sup>2</sup> Verra is currently considered the world's leading certification body and uses its own standards for credit certification.

In the case of indigenous and extractive communities, who do not have ownership of their territories, **the property use regime allows them to usufruct and dispose of credits on the carbon market.**

Indigenous communities have permanent possession of Union territory. These lands have a special destination, which includes a non-transferable and imprescriptible usufruct, encompassing the right to economically exploit all resources present on the occupied lands<sup>3</sup>.

In the case of extractive populations within Conservation Units, who do not have ownership - since the land is publicly owned -, but do have a use concession, they also have the autonomy to implement projects and sell carbon credits on the voluntary market, provided they comply with the environmental safeguards and guidelines applicable to the Conservation Unit, the management plan, and the provisions of the Unit's Public Use Concession Agreement, while keeping the managing bodies informed and giving them the opportunity to participate.

With regard to quilombola communities, their ownership of the land they occupy is recognized by the Federal Constitution, and it is the state's duty to issue these titles. Since collective ownership is guaranteed to quilombola communities, they are also guaranteed rights to carbon credit from these territories.

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<sup>3</sup> 'Lei 6001/1973. Art. 24: The usufruct granted to indigenous people or forest dwellers includes the right to possession, use and perception of the natural resources and all the utilities existing on the occupied lands, as well as the right to products of the economic exploitation of such natural resources and utilities.' - Free Translation.

In Brazil, the ownership of many territories is being disputed in lawsuits or is awaiting recognition by the competent authorities. In 2021, 28.5% of the Legal Amazon lacked defined land rights<sup>4</sup>. These areas have no public information regarding their ownership or intended use, so their land titles are not included in the land agencies' databases.

As an example of the challenges in land regulation in the country, the Rural Environmental Registry ('CAR') - initially a self-declaratory instrument for environmental regularization of rural properties, where squatters or property owners themselves filled in the information about the property in the public registry system - has been used to prove ownership of areas to certification bodies, even without the information being verified by the CAR's supervising public agency. This was due to the lack of oversight and control over the verification and registration of rural properties ownership.

In 2016, two thirds of rural properties declared in Pará's CAR had some kind of overlap, including definitive registrations validated on indigenous lands<sup>5</sup>. In addition, public areas without information on their destination represented 27% of the state in 2021, totaling 33.8 million hectares. Part of this area, equivalent to 12% of the state, was registered in the CAR, but due to the lack of public information on its land status (whether it is in possession or titled), it cannot be considered as private

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<sup>4</sup> IMAZON. Dez fatos essenciais sobre regularização fundiária na Amazônia.

<sup>5</sup> Agência Pública. As falhas e inconsistências do Cadastro Ambiental Rural.

property, due to the possibility that it is an occupation of public land without titling<sup>6</sup>.

Given this panorama, the absence of proof of ownership or possession by the project proponent and/or developer or the overlapping claims by more than one owner or possessor over the property may have detrimental impacts on both the generation and future trading of carbon credits. This is because, based on the rules of the certification standards, confirmation of ownership of these credits, whether by the project proponent, the project developer, or both together, is normally subject to proof of ownership or possession of the property where the project issuing the credits takes place.


It is therefore essential that the land ownership status of properties related to such projects be clarified and formalized at the administrative level, in order to ensure legal certainty for communities regarding their ownership of carbon credits from forestry projects being carried out in the territories to which they are linked, thereby confirming their right to choose to sell these credits if they so wish.

### **3.2 Ownership and possession of territories by traditional communities**

Ownership of a territory can be individual or collective. Individual ownership refers to a person's exclusive right

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<sup>6</sup> IMAZON. Leis e práticas de regularização fundiária no estado do Pará.



over a particular asset, giving this person the power to use, enjoy and dispose of it. Collective ownership, on the other hand, refers to shared rights over an asset by a group of individuals, entities or even the community as a whole. In this context, decisions regarding property under collective ownership are taken jointly, with limitations on individual use to preserve the collective interest. Brazilian law recognizes and regulates these forms of collective ownership, establishing specific rules for their management and operation.

In short, the crucial difference lies in the exclusivity of the property right. In individual property, the holder has exclusive control of the asset, while in collective property, the domain is shared, requiring the consideration of collective interests and cooperation between holders for the proper management of the asset. The recognition of collective property<sup>7</sup> and the ownership of traditional community lands, in addition to the bases provided by civil law, also has other legal foundations that acknowledge the right to traditionally occupied lands.

Land ownership for quilombola communities, for example, is provided for in Article 68 of the Acts of the Transitional Constitutional Provisions, which states that ‘the remnants of quilombola communities that are occupying their lands are recognized as definitive owners, and the state must issue them the respective titles’.

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<sup>7</sup> SOUSA et al. Os direitos sobre a propriedade coletiva: uma análise conceitual e jurídica do alcance da titulação quilombola na região norte.

In this context, quilombola communities are treated differently from indigenous and extractive communities. Not only usufruct is recognized, but also ownership of the territory and **collective domain** of the communities. Consequently, the ownership of any carbon credits is considered an exercise of the powers inherent in their domain.

It differs from the regime for indigenous and extractive communities. In the case of indigenous communities, the land is owned by the Federal Government, which grants permanent possession and exclusive usufruct of the natural resources and utilities on the traditionally occupied land. In the case of extractive communities, the land belongs to the federal entity managing the Conservation Unit, and the extractive populations hold a concession that grants them the right to use and enjoy the territory through their representative associations.

In all cases of collective ownership described, even if the community does not own the land - because it is public -, the relation between the communities and the territory they occupy has been recognized for the purposes of owning carbon credits from forestry projects. Therefore, these communities can hold the carbon credits resulting from these projects, if they choose to, due to the legal recognition of their rights over the area.

### 3.3 'Green land grabbing' and the 'carbon cowboys'

Currently, the term 'green land grabbing' has multiple definitions. Some use it to describe the encroachment of private land on other areas to secure access to rural credits and legalize their holdings. Land grabbers who have deforested beyond legal limits often use irregular declarations to evict individuals from their land and designate these areas as supposed legal reserves<sup>8</sup>.

On the other hand, the term has also been used to describe the activities of carbon projects conducted by private companies that have aggressively encroached on state lands, harassing the forest population that inhabits these areas<sup>9</sup>. This situation has also been referred to as 'carbon cowboys'.

In a future section of this guide, we will examine emblematic cases related to these activities to help you understand how land grabbers operate and how to protect your community from their harassment.

### 3.4 Restrictions on land use and occupation

In the context of carbon credit contracts, land use restrictions can represent both an opportunity and a challenge. On the one hand, these contracts can offer financial resources to communities to protect their territories from deforestation and degradation, contributing

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<sup>8</sup> SOUSA et al. Os direitos sobre a propriedade coletiva: uma análise conceitual e jurídica do alcance da titulação quilombola na região norte.

<sup>9</sup> Sumaúma. Caubóis do carbono loteiam a Amazônia.

to environmental conservation and the fight against climate change. On the other hand, they can impose limitations on the traditional use of the land by these communities, restricting economic, cultural and subsistence activities.

These restrictions can limit traditional land management practices, such as subsistence farming, natural resource gathering, logging and hunting, directly affecting the communities' way of life.

For example, if the community grows over time, designating new housing areas may not be possible according to the terms of the contract signed by the community. The contract might stipulate that a certain area of forest must be preserved without the possibility of deforestation even if it is for housing community members.

It is also important to note that a carbon credit contract is usually valid for 30 years, which can significantly limit the community's activities for an extended period. Given the nature of the community activities and their relationship with the territory, it is important to ensure, when negotiating contracts, that any restrictions on activities and their duration are aligned with the community's needs and plans.

In summary, the inclusion of indigenous, quilombola and traditional communities in carbon credit contracts must be carefully planned and executed to ensure the protection of their rights, the promotion of social justice and effective environmental conservation. It is the role of the

grassroots lawyer to ensure that the contract terms are as beneficial as possible to the community they represent, that community wishes are respected and implemented and that the contract includes mechanisms to address any potential restrictions that may arise during its execution.

Given these possibilities, in order for carbon credit contracts to be fair and effective, it is essential:

**Effective Participation:** Communities must be actively involved in all phases of the project, from planning to implementation and monitoring.

**Guarantee of Rights:** It must be ensured that contracts do not unduly restrict communities' rights to use their territories and natural resources, while allowing them to maintain their traditional practices and sustainability.

**Flexibility and Adaptability:** Contracts must be flexible enough to adapt to the changing conditions and needs of communities, as well as to account for environmental dynamics.



## 4. Free, Prior and Informed Consultation

Free, Prior and Informed Consultation is understood to be the right of traditional peoples and communities to be consulted before any intervention that may affect their way of life. Consultation is required prior to the start of any undertakings, legislative and executive acts that affect these communities.

This means that communities have the **right to accept, reject or negotiate terms** related to these interventions.

In this process, interested parties must interact transparently and collaboratively with the communities involved. This implies not only informing them about project details, but also allowing communities to express their concerns and perspectives and to actively participate in the decision-making process. Consultation must be inclusive and respect the cultural and social values of communities, giving them the opportunity to consent to or disagree with the project.

Free, Prior and Informed Consultation has its legal basis in Convention 169 of the International Labor Organization. It also shares fundamental principles, such as being conducted in good faith, through appropriate procedures, and with the adequate participation of representative community institutions. However, there is no standardized model for its implementation. To

address this gap, communities themselves have developed and popularized consultation protocols.

## 4.1. Consultation protocol

**Community consultation and consent protocols** are instruments that guarantee an expression of self-regulation in Free, Prior, and Informed Consultation. Through them, communities can compile into a single document the forms and procedures to be adopted for community consultation<sup>10</sup>, guaranteeing effective and informed participation in decisions related to projects that will directly affect their lives and livelihoods.

By establishing clear and transparent consultation processes, the protocols ensure that communities are heard from the initial planning stages to the implementation and ongoing monitoring of the project.

To help communities who are interested in drawing up their own consultation protocol, the [Observatório de Protocolos Autônomos](#) (Observatory of Autonomous Protocols) makes available on its website a bank of Protocols that have been published by the communities who drew them up, with dozens of documents from different locations around Brazil and the world.

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<sup>10</sup> JOHNY GIFFONI. Protocolos comunitários-autônomos de consulta e consentimento quilombolas: direito e negacionismo..

## 4.2 Sensitive points about FPIC

### 4.2.1 When the area of a forestry project is taken over by invaders, such as land grabbers, or is affected by fires

Legally, it is up to public bodies to protect the territories where traditional communities live, so they can provide the ecosystem service of guaranteeing the preservation of the territory. It is not the community's responsibility to ward off external threats. Land grabbing, for example, should be reported to the authorities. The same treatment should be given in the case of fires that are not the result of activities carried out by the community itself.

It is important to ensure that the community is not held responsible for any damage caused to the forestry project due to these circumstances. In this regard, it is the responsibility of the grassroots lawyer to ensure that the contract includes provisions exempting the community from any liability for losses or damages arising from invasion, deforestation, or other forms of intervention in the project area.

### 4.2.2 In the event of disagreements between community entities regarding the project implementation FPIC

The community has the autonomy to determine its form of representation and the process for evaluating any proposals, including through the use of a **consultation protocol**. It has become customary for these protocols to be presented and discussed in assemblies with community representatives.

In this way, it is up to the community to self-manage how choices about agreements and projects will be made. For this, they can count on the participation of leaders or authorized representatives and make decisions based on their own procedures.

According to this system, if, for example, a community has stipulated that carbon projects must be accepted or rejected after a simple majority vote in the assembly, and the simple majority does not accept the project, it will not prosper. In short, it is up to the community to determine its guidelines, and up to those proposing partnerships and contracts to respect its autonomy and will.

### **4.2.3 When a community wishes to withdraw from a project even though the contract has already been signed**

It is essential that carbon project contracts include provisions for the community to terminate the agreement if they wish to do so. Parameters for termination should be clearly stipulated, such as a minimum notice period required to express the intention to end the contractual relationship.

But even in the absence of such a clause in ongoing contracts, Brazilian law guarantees the possibility of termination in cases of a serious imbalance in the rights and obligations of the parties, to the detriment of the weaker party.



## **5. Fair hiring and remuneration of traditional communities**

In the previous chapters, we addressed some points related to the stages preceding the contracting of carbon projects. Once the traditional community has decided to proceed with the project, with due regard for FPIC and any consultation protocols, we move on to address some contractual concerns to be observed.

In carbon projects involving traditional territories, the community should always play a leading role. When these territories overlap with Conservation Units, the managing body may take on the role of intervening contractor, but must always respect the cultures and traditions of the community that protects the forest.

Benefit-sharing in carbon project contracts is a crucial aspect that aims to ensure that the financial and non-financial compensation generated by these contracts is fairly and equitably distributed among all parties involved. This issue is especially relevant when carbon credit projects are implemented in territories occupied by indigenous, quilombolas, and other traditional communities, or in areas of significant ecological and social value.

Adequate benefit-sharing aims to ensure contractual equilibrium, guaranteeing that the traditional community responsible for environmental preservation actions is fairly compensated for the environmental services

provided. In this way, the appropriate sharing of benefits not only ensures respect for the rights of these communities but also promotes the environmental and social sustainability of the projects.

## 5.1. Principles of Benefit-Sharing

**Justice and Equity:** The distribution of benefits must consider both individual and collective contributions to the conservation and sustainable management of natural resources, as well as historical and current rights to the land and its resources.

**Transparency:** All aspects of the contract, including the mechanisms for benefit distribution, must be clear to all parties before the contract is signed. This requires open communication and access to information.

**Participation and Consent:** The negotiation and implementation of carbon credit projects must involve the active participation of local communities and their free, prior and informed consent, ensuring that their voices are heard in decision making process.

**Recognition of Rights:** Benefit-sharing must recognize and reinforce the rights of communities over their territories and natural resources.

**Adaptability and Flexibility:** Agreements must be adaptable to changes in local, economic and environmental circumstances, ensuring that the distribution of benefits remains relevant and fair.

## 5.2. Benefit-sharing mechanisms

Mechanisms for benefit-sharing can vary significantly depending on the project context, the parties involved, and the specific objectives. They can include:

**Direct Payments:** Financial compensation paid directly to communities or individuals for the conservation of forest areas or for sustainable land use practices.

**Profit sharing:** A model in which a percentage of the profits generated from the sale of carbon credits is shared with communities.

**Community Fund:** The creation of funds dedicated to community development, financed by a portion of the income from carbon credits.

Benefit-sharing faces several challenges, including determining the fair value of the benefits, ensuring that the benefits actually reach the intended parties, and measuring the actual positive and negative socio-environmental impacts of carbon credit projects, such as the community's loss of sovereignty and autonomy over its territory, the development of a community's economic dependence on the project, cultural impacts and, as positive impacts, the intensification of environmental and biodiversity protection and the development of infrastructure and services. In addition, power imbalances and a lack of capacity-building can hinder the fair and equitable negotiation of benefit-sharing terms.



When contracting, it is also essential to observe the specific governance of each traditional community, in order to take into account their decision-making and representation methods. This helps to avoid internal disagreements over the development of carbon projects, always observing the right of refusal during FPIC, as previously mentioned. There are cases in which internal conflicts within communities have been reported, due to disagreements over the development of projects, most notably the case of the Surui Forest Carbon Project, discussed in Chapter 6 of this guide.

Well-planned and executed benefit-sharing is essential for the success and legitimacy of carbon credit projects. It not only ensures that projects are socially just and economically viable, but also reinforces the commitment to environmental conservation and long-term sustainability. To achieve these goals, it is vital to adopt an inclusive, transparent, and equitable approach to the negotiation and implementation of carbon credit contracts.

Finally, a careful analysis of potentially problematic clauses is essential, particularly those that stipulate dispute resolution mechanisms exclusively through arbitration, or that specify a forum for disputes other than the local jurisdiction. These provisions can impose significant challenges, both in terms of logistics and access to justice, especially for parties with limited resources. Choosing a distant forum or mandating arbitration can not only increase the costs involved in resolving disputes, but also create barriers to the full exercise of the parties' legal rights. Therefore, when negotiating contracts, it is

essential to assess the fairness and practicability of these clauses, always seeking to ensure that dispute resolution mechanisms are accessible, fair, and efficient for all parties involved.

## 6. Emblematic experiences

Currently, several carbon credit projects involving traditional communities and peoples can be identified in Brazil. In many of these projects, various types of conflicts have been observed between project proponents and communities, and some cases have already been taken to court to protect traditional rights.

A recent survey conducted by the Rosa Luxemburg Foundation and the Federal Rural University of Rio de Janeiro (UFRRJ) identified and compiled information on conflicts involving REDD+ carbon projects in Brazil<sup>11</sup>. The study mapped 107 REDD+ projects in Brazil, 87 of which already have or are in the process of obtaining VCS certification from Verra and at least 16 of which have reports of conflicts. Of these 107 projects, only 13 do not mention traditional populations in the project's reference area.

Below, we briefly highlight five emblematic cases, for illustrative purposes only, of potential conflicts in carbon credit project development areas involving traditional communities.

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<sup>11</sup> PAIM, E.S.; FURTADO, F.P. (orgs.). *Em nome do clima: mapeamento crítico: transição energética e financeirização da natureza*. São Paulo: Rosa Luxemburgo Foundation, 2024. Available at: <https://rosalux.org.br/wp-content/uploads/2024/03/Em-nome-do-clima-mapeamento-critico.pdf>. Accessed on: Mar. 18, 2024.

**i. The Portel/PA case:** in October 2023, the Pará State Public Defender's Office (DPE-PA) filed five public civil actions (ACP) against carbon projects developed in five state settlements. According to the DPE-PA, the projects were based on false documents resulting from land grabbing, as they involved registrations that overlapped with state settlement areas. Additionally, the Rural Environmental Registries (CAR) presented were purely environmental and do not serve as proof of ownership or possession. Furthermore, FPIC was not observed in any of the cases. There are also indications that the companies proposing the project approached families in the settlements, asking them to sign documents for CAR registration in their names, without disclosing the development of the carbon project, in exchange for stoves and food baskets.

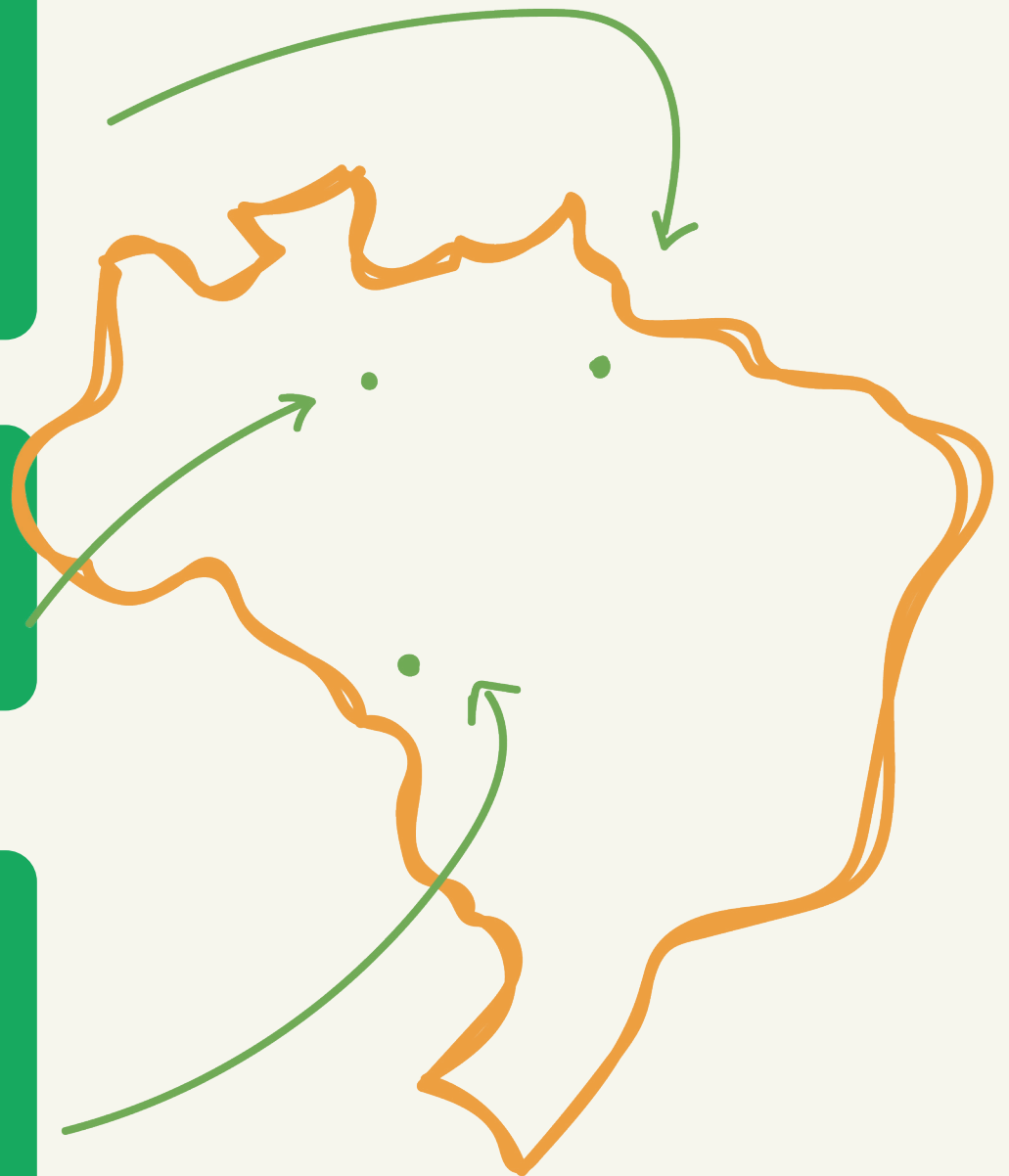
**ii. Jari Project/PA:** the project, developed in partnership between Jari Celulose and Biofílica Ambipar Environment, was accused of including public land designated for traditional communities. These lands were claimed by the Jari Celulose Group but were recognized as public by a court decision in 2012 and the property registration was canceled in 2016. In March 2023, the project had its carbon credit emissions suspended by Verra, a certification body, after having already sold 98% of its credits.



**iii. Ecomapuá/PA Project:** located on the island of Marajó/PA, the project, developed by Sustainable Carbon and Ecomapuá Conservação, has been accused of impacting the Mapuá and Terra Grande-Pracuúba Extractive Reserves. Its legitimacy has been contested by local communities, who also claim that they were not included in the distribution of resources resulting from the sale of carbon credits generated by the project.

**iv. Juma/AM Project:** the first forest carbon credit project in the voluntary market, located in the Juma Sustainable Development Reserve, was reported for establishing rules that interfered with the traditional practices of local communities by imposing restrictions on their use of the territory.

**v. Suruí Forest Carbon Project/RO/MT:** the first forest carbon project proposed in Indigenous Land, specifically in the Sete de Setembro Indigenous Land, was verified in 2013 but was interrupted due to internal disputes among the Suruí indigenous people. These disputes, exacerbated by local logging groups and ranchers, resulted in significant deforestation in the territory. The project was discontinued in 2018.



## 7. Conclusions

The purpose of this guide is to provide a comprehensive and instructive overview of the participation of traditional communities in carbon credit projects. It highlights the complexity of land issues, the importance of Free, Prior and Informed Consultation, the principles for fair hiring and remuneration of traditional communities, and discusses emblematic experiences in the field.

Through a detailed analysis, the need for a cautious and well-informed approach by the lawyers representing these communities became evident. Eligibility for carbon contracts, the risks associated with 'green land grabbing', restrictions on traditional land use, and the equitable sharing of benefits are crucial aspects to ensure that the rights and interests of communities are adequately protected and promoted.

In addition, the guide emphasizes the importance of recognizing and protecting communities' collective property and possession rights over their territories, showing that these rights are fundamental for participation in carbon credit projects. Land conflicts, the influence of external actors, and the internal dynamics of communities emerge as significant challenges, requiring special attention and strategies adapted to each context.

The emblematic cases analyzed demonstrate the diversity of situations faced by traditional communities in the context of carbon projects. These examples illustrate the potential benefits and pitfalls of these projects, underscoring the importance of transparent and fair negotiations that respect the autonomy of communities.

In conclusion, the guide reinforces the need for grassroots lawyers and others involved in carbon credit projects to adopt a holistic approach that considers the legal, environmental, social, and cultural complexities of these initiatives. Capacity-building and the empowerment of traditional communities emerge as key elements for building sustainable carbon projects that benefit all parties involved.



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