

# The Voluntary Carbon Market Explained

## Chapter 10



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## Chapter 10: How are carbon rights considered in the voluntary carbon market?

Carbon rights determine who can participate in and benefit from voluntary carbon market (VCM) activities. The holders of carbon rights are generally those who control a mitigation activity or the asset (e.g., land) underlying a mitigation activity. Carbon rights can be complicated to establish in the VCM, especially in the case of nature-based solutions (NBS) activities. Carbon rights can be clarified through national legislation or, in the absence of such legislation, through contracts.

### What are carbon rights?

Carbon rights grant the holder the right to benefit from greenhouse gas (GHG) emission reductions or removals. Carbon rights are distinct from tradable [carbon credits](#). Carbon credits represent GHG emission reductions or removals verified and issued in accordance with the rules of [carbon standards](#). Carbon rights define the underlying entitlement to benefit from GHG emission reductions or removals associated with an asset (e.g., land or forest) or activity (e.g., a VCM project). Those who hold carbon rights can engage in the generation of carbon credits as well as [transact and claim](#) the proceeds from the sale of carbon credits. Carbon rights may also entitle

holders to participate in [benefit sharing agreements](#).

### How are carbon rights determined?

Carbon rights are assigned based on the legal **control of the underlying asset** and/or on the legal **control of the emission reduction and removal activity**.

**Control of the asset** means that the holder of the carbon rights has property, management, access, usufruct or other rights to the land, infrastructure, or resource that underpins the GHG emission reduction or removal activity. Entities that control assets include private individuals, companies, non-governmental organizations (NGOs), Indigenous Peoples and local communities (IPs&LCs), and governments. How ownership rights are assigned is typically based on laws governing property ownership in the jurisdiction where the VCM activity is taking place. Holders of carbon rights based on control of an asset are entitled to benefit from the GHG emissions reductions or removals that result from activities *that use or impact that asset*.

**Control of the mitigation activity** requires an entity to demonstrate that they enable and control the GHG emission reduction or removal

activity. Rights may be claimed by those who provide services, finance, or technology (e.g., by [activity developers and financiers](#)); those who actively participate in the GHG emission reduction or removal activities (e.g., IPs&LCs); or those who have regulatory power (e.g., national or subnational governments). Holders of carbon rights based on control of an activity are entitled to benefit from the GHG emissions reductions or removals *that result from that activity*.

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### **How are carbon rights established in the VCM?**

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Activity developers are responsible for establishing carbon rights according to rules from carbon standards and any regulatory requirements from the host country. The establishment of carbon rights in the VCM can be complex.

Carbon rights can be relatively easy to establish in energy and industry-related emission reduction activities, where there are a limited number of actors with clearly defined rights and contractual arrangements. In these non-NbS activities, the number of actors involved in the implementation of the activities is limited and the entity that controls the VCM activity typically also holds the right to carbon credits. The owner can, for example, pledge this right to a buyer or engage in a forward sale of

carbon credits to secure financing for the activity.

Carbon rights can be complicated to establish in NbS activities. NbS activities take place on land (e.g., forests, farms, wetlands) and often aim to change how people use and interact with that land. The underlying land or ecosystem assets are often controlled by a different entity than the activity developer. NbS activities involve many actors and are often implemented in the context of weak or nonexistent land titles. This means that there can be tension between determining carbon rights based on control of the asset or based on control of the activity.

Land and forest rights – formal and informal – or the ability to provide ecosystem services can be a basis for claiming rights to carbon credits generated by NbS activities. IPs&LCs, land managers, and landowners may transfer carbon rights to VCM activity developers or governments in return for their consideration in benefit sharing agreements.

Secure and clear land and forest tenure facilitates the determination of carbon rights for NbS activities, but land and resource ownership are often contested. Unclear and overlapping land titles, limited recognition of customary rights, land grabbing, encroachment, and legacies of land seizure or expulsions complicate the establishment of rights. In many jurisdictions, weak land governance, corruption, and

discrimination against groups that claim unrecognized land titles exacerbates this challenge. Even where the laws and ownership are clear, activity developers may struggle to equitably calibrate the rights to benefit from VCM activities.

**Carbon standards** attempt to address these challenges by requiring VCM activity developers to demonstrate that they engaged in consultations with local stakeholders and developed **benefit sharing arrangements**. Some standards require that VCM activity developers follow Free, Prior, and Informed Consent (FPIC) processes when working with **IPs&LCs**.

Benefit sharing arrangements are a means to distribute monetary and non-monetary benefits generated by the VCM activity to those who may claim carbon rights. Beneficiaries often include **IPs&LCs**. Benefit sharing arrangements will typically consider who manages the forest or land base, who holds land titles, and who invests in GHG emission reductions and removals activities. Vulnerable communities that live in proximity to land-based mitigation activities need to be included in fair benefit sharing arrangements. Inclusivity is crucial to ensure the long-term sustainability of VCM activities.

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## Why and how can governments clarify carbon rights in the VCM?

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**Host countries** may be incentivized to clarify carbon rights by the carbon finance that legal certainty attracts. VCM activity **developers and investors** prefer to operate in regions where they are confident that they will be able to complete all of their intended activities and where agreements established with **IPs&LCs**, private individuals, or governments will be respected. NbS activities, in particular, require legal certainty, as they are often designed to be completed over several decades and involve a range of local stakeholders.

Titles to carbon and underlying assets should account for the customary and ancestral land tenure rights of **IPs&LCs**. In many ecosystems, **IPs&LCs** have been managing or sustainably using land resources for centuries but still have not obtained formal recognition of their rights. It is essential that carbon rights laws be structured equitably, with protections for all those who hold both formal and informal rights in lands and forests.

Host countries can avoid disputes about carbon rights by clarifying land tenure rights and by establishing rules for benefit sharing arrangements. Countries can go further by clarifying the precise tax, accounting, and regulatory requirements that apply to carbon credits. Host countries

can also create laws to guide benefit sharing and consultation. When engaging in such legislation, it is recommended that legislators clarify the treatment of carbon rights rather than defining new categories of rights. There is a risk of overregulating carbon rights and

markets, in particular if rules are created and not enforced, new categories of rights are created, or another layer of conflicting rights is put on an already weak system of land and property titles. See Table 10.1 for an overview of carbon rights systems in some countries.

**Table 10.1 Examples of carbon rights systems**

Land ownership	Carbon rights	Ability of non-state entities to engage in carbon offset activities	Examples
All land is owned by the government	Carbon rights follow the right to the land and are owned by the host country	Carbon rights can be transferred to private and public entities via concession or license	The Democratic Republic of Congo, Mozambique, Vietnam
Diverse land ownership, often with weak titles and limited titled land	Carbon rights (or rights to ecosystem services) are centralized and managed at the level of the national government	Private projects or transactions involving GHG emission reductions and removals are not permitted	Madagascar, Ecuador
Diverse land ownership, often with weak titles and limited titled land	Carbon rights are regulated and special rules apply	Private entities are free to participate in voluntary carbon market projects subject to restrictions	Mexico (limiting private GHG emission reductions and removals to activities resulting in carbon removals), Peru (requiring activity and tenure)
Diverse land ownership with strong private entities	Carbon rights pertain to land holders	Private entities are free to participate in voluntary carbon market projects within the limits of the law regarding land use and safeguards	Chile, Costa Rica

*Based on Streck (2020) Who owns REDD+?*

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## Further reading

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## Acknowledgments

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Date of publication: October 2023

The Voluntary Carbon Market Explained (VCM Primer) is supported by the Climate and Land Use Alliance (CLUA). The authors thank the reviewers and partners that generously contributed knowledge and expertise to this Primer.