Date: 7th June 2024

To the Special Rapporteur on Climate Change,

**REF: NAMATI SUBMISSION TO UN SPECIAL RAPPORTEUR ON CLIMATE CHANGE CALL FOR INPUT ON ACCESS TO INFORMATION**

Namati works to advance social and environmental justice by building a movement of people who know, use, and shape the law. Namati supports grassroots legal advocates, also known as community paralegals, who help people solve justice problems on the ground. Namati also convenes the Grassroots Justice Network, a global network of more than 15,000 legal empowerment practitioners in 175 countries that share knowledge and resources.

While we are impacted by lack of access to information for many issues related to the climate crisis, we chose to focus this submission on our network member’s struggle to access information in a specific sector: carbon markets. In 2022, the value of the voluntary carbon market was more than $2 billion and trading is projected to grow exponentially in the coming years, with some estimates putting the value as high as $250 billion by 2050. The future of carbon markets is at times uncertain, but they play a role in every scenario to mitigate the climate crisis put forth by the United Nations Framework Convention on Climate Change (UNFCCC). Many countries are developing new legislation to encourage carbon projects within their jurisdictions, viewing it as an opportunity for economic development.

Across our network, communities have found themselves in the middle of carbon markets they didn’t expect and they don’t understand. Building on our deep experience supporting grassroots land and environmental justice, Namati and our partners moved quickly to better understand the sector and apply lessons from grassroots justice. Namati and our network partners are supporting communities to understand their rights, negotiate fair agreements, monitor project implementation, and seek remedies when violations occur. Our engagements have [revealed](https://grassrootsjusticenetwork.org/resources/roundtable-report-carbon-markets-nature-rights-and-climate-justice/) that access to information is a key barrier to just carbon projects and often can increase the risks of human rights abuses. Frontline communities lack clear information about projects on land where they live, they often are not consulted, they rarely have access to compensation agreements, and lack access to legal and technical support that could help them navigate these complex systems. Further, the pressure to quickly open new markets and implement projects by corporate actors means that the markets often operate without adequate legal frameworks, grievance mechanisms, or accountability for rights violations.

Please find attached answers to how the challenges of accessing information create barriers to just carbon markets.

Best regards,

**Rebecca Iwerks**

**Director Land, Environment and Climate, Grassroots Justice Network**

# **Question 1. What kind of information should be collected and shared to identify and prevent negative impacts on human rights arising from climate change and climate change response measures? What kind of information can be particularly challenging to access and why?**

**Information that is challenging to access**

Communities directly impacted by carbon projects often have little access to information and documents that outline the impacts, terms, and longevity of the projects on their land. Some of the documents are claimed to be secret because of national or corporate interests. Even when documents are “publicly available,” they are often placed on difficult-to-access websites hosted by third-party verifiers (such as Verra) in English.

At the very least the following documents should be publicly available in languages relevant to the impacted communities both online and within community-accessible spaces:

* Project agreement (whether between the project operator and the national government or between the project operator and the communities)
* Community Development Agreement (if one exists)
* Feasibility Assessment
* Project Description / Project Design Document
* Validation report (audit)
* Project Reports
* Verification reports (audits)
* Carbon credit certificates

In addition to these documents, basic information about the project impacts, costs, and potential benefits should be available for communities to be able to make informed decisions about whether to allow this to proceed on their land. This includes:

* Clear, locally relevant explanation about the land that will be impacted
* A detailed explanation of how the use of the land may change for what period of time
* Revenue information throughout the life-cycle of the project, including but not limited to the sale price of the carbon credits; the total revenue generated; the costs of the project; the amount of revenue distributed to the project developer, national government, and impacted communities. To mitigate corruption, this information should be reported in a timely manner to allow for immediate tracking and accountability.
* A simplified and precise explanation of how carbon capture and additionality will be calculated
* Accounting for who is buying credits associated with the project and for what purpose, including whether they are being used to offset preventable emissions

**Information that should be collected and shared**

Buyers of carbon credits often want to support projects that are capturing carbon and avoiding social and environmental harm. Unfortunately, information about carbon projects is not collected or shared in a systematic way to allow credit buyers to easily understand the potential risks of the credit they are purchasing. Information that does exist is often shared by those with an interest in maintaining the project instead of ensuring that there is an avoidance of harm.

To allow buyers to make more informed choices about the carbon projects they support, and avoid funding human rights abuses, the following information should be clearly collected and shared about all carbon projects:

* Whether there is clear, undisputed land tenure for the land being used by the project
* A detailed explanation of how the use of the land may change for what period of time
* Revenue information throughout the life-cycle of the project, including but not limited to the total revenue generated; the costs of the project; the amount of revenue distributed to the project developer, national government, and impacted communities
* Process of obtaining the consent of any impacted communities
* Explanation of how carbon capture and additionality will be calculated
* Expected and actual gendered social and environmental impacts of the project
* The existence of a grievance mechanism
* Number of complaints to the grievance mechanism, severity of complaints, and timeliness of replies

There are a few forthcoming global avenues for this information that are important to influence:

* The proposed Sustainable Development Tool could be an avenue for consistent information about carbon projects that are approved under the UNFCCC Article 6.4. The current draft of the tool has significant gaps in the types of information that it requires, including not consistently checking for land tenure; sharing information about revenues; or confirming consent of all impacted communities.
* Rocky Mountain Institute is creating a carbon credit data framework that could be applied for investors across voluntary carbon markets. This initiative is an important opportunity to bring consistent information to light about carbon projects.

**Question 3: Are there undue barriers to obtain access to information on human rights and climate change that is up to date? (eg, language and technical accessibility, use of technology, grounds for non-disclosure, other?)**

“Are they stealing our air? Is that why it’s so dry?” This is a question from a woman living in Northern Kenya on land that was until recently used as a carbon offset for major fortune 500 companies. The question arose when she first started to learn about carbon offsets related to her land. It illustrates the wide gap in knowledge and power between communities impacted by carbon markets and those profiting in the process.

Even though many carbon actors intend for communities to benefit, there is a **large power and information imbalance between communities whose lands are impacted and the corporate and government actors involved**.

Communities affected by carbon projects face multiple barriers in gaining access to and interpreting project-related documents and meetings. Even though many companies and countries have improved their disclosure practices in the last several years, documents can be difficult for communities to obtain because of financial, internet, and language barriers.

Most document disclosure is on websites hosted by third party verifiers. For example, Verra publishes information in English on a website. When communities can access project-related documents, they are often in highly technical language and formats that make it difficult to locate specific information.

**Examples of Communities Interested in Exploring Carbon Rights**

In Sierra Leone, one of the largest blue carbon projects in the world is being developed in the Sherbo River Estuary. Intended to conserve nearly 200,000 hectares of mangroves, the initiative could protect a crucial carbon sink and build the resilience of communities that are among the most vulnerable to climate change. While communities in the estuary have expressed interest, they also have many questions about the potential restrictions on access to and use of the mangroves, how decisions about natural resource management will be made, and what benefits they can expect to receive. Namati is beginning to work with communities to engage constructively with the project developer. This represents a valuable opportunity to demonstrate how carbon payments can align with the provisions in the recently passed Customary Land Rights Act, which grants all local communities the right to Free Prior Informed Consent (FPIC) over all industrial projects on their lands.

In the Kamituga region of the Democratic Republic of the Congo, the community has organized for years to protect their forest. With support from the local organization Alternatives Ménages, Nature et Marchés, communities have learned about national laws and used them to protect local waterways. Their efforts to protect the forests are under threat from mining, logging, and other land-based investments. The community is hoping to take advantage of new national carbon markets to be able to create financial incentives to preserve their forest.

Many carbon projects are located in remote areas with diverse languages and cultural practices. Effective communication requires the translation of materials into local languages and culturally appropriate engagement methods. Businesses often lack the resources or expertise to conduct such thorough and inclusive communication efforts. Conducting in-person meetings and workshops is often necessary to effectively communicate project details and gather feedback. However, poor infrastructure, such as inadequate roads and transportation networks, complicates the logistics of engaging and disseminating information. These barriers also disproportionately affect women: Men are more likely than women to have access to the internet, means to travel, and the language necessary to navigate project-related documents.

The complexity of the actors involved in a carbon project also makes it difficult for communities to know from whom or how to access information. Many projects involve a project developer who is awarded credits by a verifier after an audit. The project developer may have an agreement with the local or national government, depending on the location. When communities face challenges with the project, they are often unaware of whether they should go to the project developer, the verifier, the auditor, or the government.

Many countries are experiencing new waves of carbon projects that are outpacing their capacity to build appropriate legal frameworks. Some of the recently developed frameworks provide for the right to access information but they do not specify the scope of information that would be accessible to the public, leaving it vague for interpretation. For instance, section 23G (4) of the Kenya Climate Change (Amendment) Act, 2023 provides that the national carbon registry shall be accessible to the public. However, the Regulations simply provide that the registrar shall keep a register of all carbon market projects but do not specify the exact information about the projects that would be publicly accessible..

Our network members, who have tried to navigate these carbon projects in the midst of a minimal legal framework, find it difficult to advocate for and protect basic community rights. When the rules for how projects should operate are not yet clear, it is difficult to understand what information should be available and how to respond when rights are violated.

**Suggestions to Overcome Barriers**

**Align National legal frameworks on Carbon markets with principles of access to information and transparency**

Emerging national legislation about carbon projects is a key opportunity to embed principles of access to information and transparency within this new market. National governments should be encouraged to include basic access to information as a fundamental element of the carbon markets they establish. Some of the strong models that have considered this alignment include *Article 21 of the Costa Rica decree: Regulation and operation regulation from the domestic carbon market, 2013* which establishes a transparency committee that seeks to ensure access to information about projects, protocols, activities, and decision making processes in the national market. In Zimbabwe, the *Schedule 1, Zimbabwe Carbon Credits Trading (General) Regulations, 2023,* provide that information should be accessible to the local communities using local newspapers or kiosks.

**Independent fund to support communities' access to legal and technical support**

In addition to access to documents, communities impacted by carbon projects need access to legal and technical support to understand the project components and come to their own decision about how to best engage with the project. Access to this type of support can reduce the risk of harm and reduce the instances of conflict.

A pooled fund for legal and technical support, funded by the private sector, could improve access and use of information by impacted communities and reduce the risk of harm by the private sector. Investors in the carbon market can set aside a portion of their funds to go to an independent fund so that communities can access the needed support to engage effectively. When communities have access to legal and technical support, they can improve engagement and outcomes throughout the lifecycle of the project, by:

* Bridging the gap between disclosure and community use of information
* Facilitating community deliberation and inclusive decision making.
* Facilitating real-time data gathering on the ground.
* Supporting pathways to dispute resolution and remedy.

Such pooled funds - across a sector, commodity, or geography – need to be in a manner that would provide a degree of separation between funding sources and recipients. Combined with the independent governance of the facility, pooling funds would minimize the perception of undue influence by funders and overcome technical accessibility barriers faced by communities.

**Implementation of the robust information access within the UNFCCC Article 6.4**

The Appeal and Grievance Mechanism established under Article 6.4 is crucial for carbon justice because, inevitably, some carbon projects don't go as planned. When things go wrong, affected communities often struggle to find a way to seek remedy. This new mechanism marks a step forward in addressing such challenges. However, the mechanism only accepts submissions in UN languages and will communicate solely in English. This is a significant barrier for communities and indigenous people whose language is not among the UN languages. Besides, the mechanism does not provide for a default setting of confidentiality to protect Environmental Human Rights Defenders (EHRDs). Leveraging the room for ongoing adjustments to the mechanism to allow for continuous improvement, experiences and lessons could enhance the mechanism.

In order to enhance the effectiveness of the mechanism under Article 6.4, there is need to offer technical assistance and capacity-building programs to help developing countries and stakeholders understand and utilize the mechanisms effectively. Moreover, it is imperative to make information about decision-making processes, project approvals, and methodologies publicly available and easily accessible in a simplified manner that targets the main users of the mechanisms - indigenous people and local communities.