

CARBON MARKETS AND THE DISPOSSESSION OF INDIGENOUS PEOPLES IN TANZANIA

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“We do not inherit the earth from our ancestors, we borrow it from our children.”¹

“First we were disposed in the name of kings and emperors, later in the name of state development, and now in the name of conservation.”²

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INTRODUCTION

Africa has contributed only about 2–3% of global greenhouse gas emissions, yet it is among the most disproportionately vulnerable regions to

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1. *The Maasai and the Earth*, SUSTAINABILITY, <https://www.activesustainability.com/environment/the-maasai-and-the-earth/> (last visited Apr. 10, 2026).

2. MARK DOWIE, CONSERVATION REFUGEES: THE HUNDRED-YEAR CONFLICT BETWEEN GLOBAL CONSERVATION AND NATIVE PEOPLES xv (2009) (quoting the Indigenous delegates to the Fifth World Parks Congress, Durban, South Africa, 2003).

the impacts of climate change.³ Over the past two decades, climate change has evolved from a scientific warning into one of the most pressing global challenges—marked by complex environmental, social, and economic consequences.

As the urgency to address climate change intensifies⁴ at both the global and national levels, the market-based solutions of voluntary carbon credit markets (carbon offsetting mechanisms) have emerged as key components of corporate and national climate strategies. In theory, these mechanisms are designed to shift the burden of greenhouse gas emissions to the responsible entities by allowing polluters to purchase carbon credits that ostensibly offset their emissions.⁵ As a result, carbon offsetting is often presented as a pragmatic, win-win solution—one that claims to benefit the environment, polluting entities, and the communities or countries that host offset projects.⁶ According to the World Economic Forum, carbon credits generally fall into three categories: reduced emissions (such as energy efficiency measures), removed emissions (through carbon capture or reforestation), and avoided emissions (for example, preserving rainforests from deforestation).⁷

The voluntary carbon market, in particular, is projected to grow significantly—“from around [US] \$2 billion in 2022 to . . . around [US] \$250 billion by 2050.”⁸ Despite its promise in reducing emissions, the carbon market conceals a complex and contested reality. Beneath the technocratic appeal lies profound ethical, ecological, and legal concerns—especially for Indigenous Peoples and marginalized communities.

Rather than delivering on the promise of climate justice,⁹ carbon markets often replicate and reinforce long-standing patterns of exclusion, erasure, and land dispossession. Critical issues in carbon credit schemes include the proliferation of *phantom credits*—instances where emissions reductions are

3. *Responding to Climate Change*, U.N. ENV'T PROGRAMME, <https://www.unep.org/regions/africa/regional-initiatives/responding-climate-change> (last visited Apr. 10, 2026).

4. *Urgent Climate Action Can Secure a Liveable Future for All*, IPCC (Mar. 20, 2023), <https://www.ipcc.ch/2023/03/20/press-release-ar6-synthesis>.

5. U.N. Climate Change, *Paris Agreement Crediting Mechanism*, U.N. FRAMEWORK CONVENTION ON CLIMATE CHANGE, <https://unfccc.int/process-and-meetings/the-paris-agreement/article-64-mechanism> (last visited Apr. 10, 2026).

6. Lei Nguyen, *The Pros and Cons of Offsetting Carbon Emissions*, EARTH.ORG (Mar. 2, 2023), <https://earth.org/offsetting-carbon-emissions/>.

7. Teresa Hartmann & Douglas Broom, *What Are Carbon Credits and How Can They Help Fight Climate Change?*, WORLD ECON. F. (Nov. 12, 2020), <https://www.weforum.org/stories/2020/11/carbon-credits-what-how-fight-climate-change/>.

8. *Where the Carbon Offset Market Is Poised to Surge*, MORGAN STANLEY (Apr. 11, 2023), <https://www.morganstanley.com/ideas/carbon-offset-market-growth>.

9. INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE: THE 1990 AND 1992 IPCC ASSESSMENTS (1992) [hereinafter IPCC 1992].

overstated or entirely fabricated, undermining the integrity of carbon markets.¹⁰ These schemes also fail to address the structural and root causes of climate change, such as continued reliance on fossil fuels and unsustainable patterns of consumption in the Global North. Instead, they rely on carbon offset mechanisms that shift the burden disproportionately onto the Global South, where projects are implemented without adequately considering local context and realities.¹¹

Another pressing concern is the lack of meaningful participation by host communities, particularly Indigenous Peoples and marginalized groups whose lands are targeted for offset projects.¹² Exclusion from decision-making processes not only violates principles of self-determination and free, prior, and informed consent, but also perpetuates historical patterns of exploitation.¹³ Furthermore, even where communities are involved, benefit-sharing arrangements are often absent or insufficient, with profits captured by corporate intermediaries rather than those directly affected by land-use restrictions and conservation measures.¹⁴

This Article examines Tanzania's domestic legal framework for carbon credit initiatives and argues that it fails to adequately protect the rights and interests of Indigenous communities. The shortcomings stem from gaps in recognition, distributive and procedural fairness, inequitable benefit-sharing, and limited community capacity. In contrast, international human rights law offers a more robust framework by affirming Indigenous Peoples' right to self-determination over their lands and resources, while also holding states

10. Patrick Greenfield, *Revealed: More than 90% of Rainforest Carbon Offsets by Biggest Certifier are Worthless, Analysis Shows*, THE GUARDIAN (Jan. 18, 2023), <https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-biggest-provider-worthless-verra-aoe>.

11. Simon Counsell, *Blood Carbon: How a Carbon Offset Scheme Makes Millions from Indigenous Land in Northern Kenya*, SURVIVAL INT'L, <https://www.survivalinternational.org/articles/carbon-offset-scheme-makes-millions-from-Indigenous-land-Northern-Kenya> (last visited Apr. 10, 2026).

12. See generally Doreen Ajiambo, *As COP30 Nears, Maasai Evictions Expose the Dark Side of Carbon Markets*, GLOB. SISTERS REP. (Oct. 16, 2025), <https://www.globalsistersreport.org/environment/cop30-nears-maasai-evictions-expose-dark-side-carbon-markets> (discussing proposed carbon sequestration projects targeting the Longido, Simanjiro, and Monduli districts, which are predominantly Maasai).

13. G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples, arts. 10, 19, 28 (Sept. 13, 2007); Elizabeth Fraser, *Displacement and Dispossession in Tanzania: How "Conservation" is Destroying the Maasai*, WORLD RAINFOREST MOVEMENT (Mar. 11, 2019), <https://www.wrm.org.uy/bulletin-articles/displacement-and-dispossession-in-tanzania-how-conservation-is-destroying-the-maasai>.

14. See generally Counsell, *supra* note 11 (discussing concerns over distribution of funds generated through carbon sales); Violet George, *New Report Shows Intermediaries Are Profiteering from Carbon Markets*, CARBON HERALD (Feb. 7, 2023), <https://carbonherald.com/new-report-shows-intermediaries-are-profiteering-from-carbon-markets/>.

accountable for the consequences of their policies. This Article concludes that the most effective way forward is for Tanzania to align its climate strategies with both international human rights standards and the cultural practices and traditional norms of Indigenous Peoples.

Part I explores the role of international human rights law and the broader climate justice movement as key instruments for differentiating and advancing the rights of Indigenous Peoples vis-à-vis those of nation-states. Part II examines Tanzania's domestic legal framework governing carbon credits. Part III analyzes Indigenous rights through the dual lenses of self-determination and recognition, as articulated under international law and within the African context. It considers how these rights are best framed in legal and normative terms and interrogates the implications of carbon credit mechanisms for Indigenous Peoples. Part IV offers a concluding analysis, examining the relationship between sovereignty and self-determination in Tanzania. The Part proposes a conceptual framework that redefines statehood to accommodate pluralism, inclusivity, and the recognition of Indigenous identities, while underscoring the imperative of aligning national legal and policy frameworks with international obligations to ensure climate justice and equitable recognition of Indigenous Peoples.

I. INTERNATIONAL LEGAL FRAMEWORKS AND THE PURSUIT OF CLIMATE JUSTICE

Briefly defined, climate justice refers to principles of democratic accountability and participation, ecological sustainability and social justice, and their combined ability to provide solutions to climate change.¹⁵ Such a notion focuses on the interrelationships between, and addresses the root causes of the social injustice, ecological destruction, and economic domination perpetrated by the underlying logics of pro-growth capitalism. In particular, climate justice articulates a rejection of capitalist solutions to climate change (e.g. carbon markets) and foregrounds the uneven and

15. Swyngedouw argues that dominant climate change discourse tends to create a post-political framing in which climate action becomes a matter of technical management, market mechanisms, or consensus policy—stripping out genuine political contestation over power, inequality, and structural economic drivers of emissions. See Erik Swyngedouw, *Apocalypse Forever? Post-Political Populism and the Spectre of Climate Change*, 27 *THEORY, CULTURE & SOC'Y* 213, 227–28 (2010). Featherstone similarly critiques how climate change is often discussed in ways that detach it from unequal social and environmental relations and neoliberal economic structures. He emphasizes the need to link climate politics to broader struggles over economic and environmental justice. See David Featherstone, *The Contested Politics of Climate Change and the Crisis of Neo-Liberalism*, 12 *ACME* 44, 48, 52–53 (2013).

persistent patterns of eco-imperialism¹⁶ and “ecological debt”¹⁷ because of the historical legacy of uneven use of fossil fuels and exploitation of raw materials, offshoring, and export of wastes.

Climate change is not only an environmental crisis but a deeply rooted issue of global inequality, intersecting with long-standing disparities in economic power, political influence, and historical responsibility. The Paris Agreement, while not providing enforceable remedies, marks a significant development by incorporating human rights into the climate regime for the first time:

Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of [I]ndigenous [P]eoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.¹⁸

This recognition underscores the dual legal imperative: states must not only act to combat climate change but must also ensure that climate actions do not violate existing human rights obligations. In this light, climate justice is not merely a question of distributive fairness but one of legal accountability and the protection of fundamental rights. While its long-term consequences will be felt worldwide, the harshest and most immediate impacts already fall disproportionately on Africa, Central and South America, Least Developed Countries, Small Island States, the Arctic, and globally on Indigenous Peoples, small-scale producers, and low-income households.¹⁹ For instance, between 2010 and 2020, mortality from floods, droughts, and storms was 15 times higher in highly vulnerable regions than in regions with very low

16. Alejandro Pedregal & Nemanja Lukić, *Imperialism, Ecological Imperialism, and Green Imperialism: An Overview*, 27 J. LABOR & SOC'Y 105, 114–21 (2024).

17. “Ecological debt” refers to the cumulative environmental harm caused by a country through its production and consumption patterns in other countries or in ecosystems beyond national jurisdiction, as well as the long-term exploitation of ecosystems and their goods and services at the expense of other countries’ equitable rights to those resources. *See Ecological Debt*, ENV'T JUST. ORGS., LIABS. & TRADE, <https://www.ejolt.org/2013/05/ecological-debt/> (last visited Apr. 10, 2026).

18. Paris Agreement to the United Nations Framework Convention on Climate Change, pmb1. ¶ 11, Dec. 12, 2015, T.I.A.S. No. 16-1104 [hereinafter Paris Agreement].

19. INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2023: SYNTHESIS REPORT: SUMMARY FOR POLICYMAKERS 5, 26 (2023).

vulnerability.²⁰ From the outset, international climate law has acknowledged this asymmetry.

The First Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) in 1990 recognized that industrialized nations bear “specific responsibilities,” observing that most greenhouse gas emissions originate from these countries and that they possess the greatest capacity to implement change.²¹ The Report also suggested that industrialized nations should cooperate with developing countries on international climate initiatives without impeding their developmental aspirations.²² These foundational principles were enshrined in the United Nations Framework Convention on Climate Change (UNFCCC), adopted at the 1992 Earth Summit in Rio de Janeiro.²³ Central to the UNFCCC is the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC)—a legal recognition that while climate change is a common concern, not all states share equal responsibility or capacity to address it.²⁴ Article 2 of the Paris Agreement establishes the regime’s long-term objective of holding the increase in the global average temperature to well below 2°C above pre-industrial levels. Article 2 pushes to limit the increase to 1.5°C and provides the framework for the implementation of the entire Agreement. It reads: “This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.”²⁵

Building on these global discussions, the Environmental Justice and Climate Change Initiative emerged as a pivotal response in 2001, following the first Climate Justice Summit held alongside Conference of the Parties (COP6) to the UNFCCC in The Hague.²⁶ In 2002,²⁷ the Initiative released a landmark statement articulating Principles of Climate Justice.²⁸ These principles marked one of the earliest efforts to articulate a normative climate

20. *Id.*

21. IPCC 1992, *supra* note 9, at 117.

22. *Id.*

23. See *History of the Convention*, U.N. CLIMATE CHANGE, <https://unfccc.int/process/the-convention/history-of-the-convention> (last visited Apr. 10, 2026).

24. See United Nations Framework Convention on Climate Change, art. 3.1, May 9, 1992, 1771 U.N.T.S. 107.

25. Paris Agreement, *supra* note 18, at art. 2.2. Beyond the principle of CBDR-RC, the Paris Agreement also invokes related concepts, including equity, *id.* at art. 1, 3, 4, 18–19, sustainable development, *id.* at art. 1, 3, 4, 7–8, 9, 12, 15, equitable access to sustainable development, *id.* at art. 1, 3, 4, 8, and climate justice, *id.* at art. 2.

26. David Schlosberg & Lisette B. Collins, *From Environmental to Climate Justice: Climate Change and the Discourse of Environmental Justice*, 5 WIREs CLIMATE CHANGE 359, 362 (2014).

27. Rosmel Rodríguez, *Historical Construction of Climate Justice*, TIREDEARTH (Nov. 30, 2024), <https://www.tiredearth.com/articles/historical-construction-of-climate-justice>.

28. EJNET, 10 PRINCIPLES FOR JUST CLIMATE CHANGE IN THE U.S.

justice framework from the perspective of environmental justice communities. They emphasized, among other things, the need to: (1) drastically reduce greenhouse gas emissions and fossil fuel dependence; (2) protect and prioritize the interests of vulnerable and frontline communities; (3) ensure a just and equitable transition to renewable energy systems; (4) promote inclusive, democratic participation in climate policymaking; (5) respond to scientific uncertainty with precautionary action; (6) protect the rights of future generations; (7) affirm the right of Indigenous Peoples and affected communities to represent and speak for themselves; (8) affirm the rights of communities dependent on natural resources for their livelihood and culture to own and manage those resources sustainably, while rejecting the commodification of nature and its resources; and (9) ensure that any market-based or technological approach to climate change—such as carbon trading or carbon sequestration—adheres to the principles of democratic accountability, ecological sustainability, and social justice.²⁹

Despite the promise of international cooperation under the UNFCCC, climate negotiations have been fraught with geopolitical tensions and asymmetries in power. The Kyoto Protocol, “which entered into force in 2005,”³⁰ codified the principle of common but differentiated responsibilities (CBDR), imposing legally binding emission reduction obligations exclusively on developed countries.³¹ Major emerging economies such as China, India, and Brazil were exempt from these commitments,³² reflecting historical disparities in contributions to climate change.³³ This exemption generated friction, particularly in the United States, which cited the lack of obligations on emerging emitters as a rationale for withdrawing from the treaty.³⁴ Such dynamics reflect broader inequities in climate governance, including the retreat by developed countries from commitments to climate

29. *Id.*

30. *Marking the Kyoto Protocol's 25th Anniversary*, U.N. (Dec. 11, 2022), <https://www.un.org/en/climatechange/marking-kyoto-protocol%E2%80%99s-25th-anniversary>.

31. Francesco Bassetti, *Success or Failure? The Kyoto Protocol's Troubled Legacy*, CLIMATE FORESIGHT (Dec. 8, 2022), <https://www.climateforesight.eu/articles/success-or-failure-the-kyoto-protocols-troubled-legacy/>.

32. Under the Kyoto Protocol, developed countries are designated as Annex I Parties, while all other countries are classified as non-Annex I Parties. Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 2303 U.N.T.S. 162, Annex I.

33. Mollie Simon, *Lessons Learned: From Kyoto to Paris*, KLEINMAN CTR. FOR ENERGY POL'Y (Jun. 8, 2017), <https://kleinmanenergy.upenn.edu/commentary/blog/lessons-learned-from-kyoto-to-paris/>.

34. *Id.*

finance—such as contributions to the Green Climate Fund³⁵—which are essential to support adaptation and mitigation in the Global South.

Given the limits of international consensus, a robust domestic legal framework employing a bottom-up approach is essential to realizing climate justice. Domestic law can provide communities, particularly those most affected, with mechanisms to participate in decision-making and seek remedies. However, national efforts must be complemented by international cooperation; without it effective climate action and accountability mechanisms remain elusive. Only through a multilateral regime can states develop monitoring systems, share resources, and coordinate legal standards.

II. THE FRAMEWORK FOR CARBON CLIMATE GOVERNANCE WITHIN TANZANIA'S DOMESTIC LAWS

In the Tanzanian context, the intersection of climate change and Indigenous rights exemplifies the challenges of climate justice. Tanzania's climate and economic policies often marginalize Indigenous Peoples, such as the Maasai, who already bear the disproportionate burdens of a changing climate.³⁶ For example, the 2017 drought in the Ngorongoro Conservation Area (NCA) resulted in the loss of 77,389 heads of cattle, 72,881 heads of goats, and 78,490 heads of sheep, a loss of approximately 70% compared to the livestock numbers in 2016.³⁷ These communities, deeply tied to their ancestral lands and ecosystems, possess subsistence-based economies and low-carbon lifestyles. They contribute minimally to the global climate crisis, yet face disproportionate impacts—including prolonged droughts, flooding, wildfires, and ecosystem degradation.³⁸

Moreover, as is discussed in more detail in Parts III and IV, the collective ownership of land among the Maasai enhances ecological resilience.³⁹ Traditional practices such as rotational grazing not only support

35. Matteo Civillini, *After US Cuts Cash, Green Climate Fund Head Urges Others to Step Up*, CLIMATE HOME NEWS (Feb. 11, 2025), <https://www.climatechangenews.com/2025/02/10/after-us-cancels-cash-for-green-climate-cuts-funds-its-head-warns-of-consequens>.

36. Joseph Ole Simel, *Pastoralism and The Challenges of Climate Change*, 3-4 INDIGENOUS AFFAIRS 30, 32 (2009).

37. Cecilia M. Leweri et al., *Rainfall Variability and Socio-Economic Constraints on Livestock Production in the Ngorongoro Conservation Area, Tanzania*, 3 SN APPLIED SCIS. 1, 6 (2021).

38. Ayansina Ayanlade et al., *Africa, in* INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, WORKING GROUP II, CLIMATE CHANGE 2022: IMPACTS, ADAPTATION AND VULNERABILITY, at 1286 (2022).

39. *Maasai Communities Harness the Resilience of Native Plants to Restore Grasslands in Tanzania*, U.N. DEV. PROGRAMME CLIMATE PROMISE (Sept. 23, 2024), <https://climatepromise.undp.org/news-and-stories/maasai-communities-harness-resilience-native-plants-restore-grasslands-tanzania>; Kokel Melubo, *Why Are Wildlife on the Maasai Doorsteps? Insights from the Maasai of Tanzania*, 16 ALTERNATIVE: AN INT'L J. INDIGENOUS PEOPLES 180, 182 (2020).

sustainable livelihoods but also promote carbon sequestration and biodiversity conservation.⁴⁰ In contrast, individualized and commodified land tenure systems tend to foster fragmentation, overexploitation, and environmental degradation. Despite this, Tanzanian domestic law offers no cause of action through which Indigenous communities can seek redress for climate-related harms or hold major emitters accountable. Nor is there a legal mechanism to recognize the collective relocation or resettlement of Indigenous communities in response to climate displacement.

Tanzania, as a State Party to the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol, and the Paris Agreement,⁴¹ has committed itself to global efforts aimed at mitigating climate change. These international legal instruments provide the normative foundation for market-based mechanisms such as carbon trading, which are intended to facilitate emissions reductions.⁴² Recognizing its significant carbon sequestration potential—particularly within its conserved and protected areas, which cover approximately 43.7% of the national territory⁴³—Tanzania has increasingly positioned itself to participate in international carbon markets.⁴⁴ At the Conference of the Parties (COP29), Tanzania secured \$408.9 million out of “the \$722.6 million pledged . . . for environmental conservation and climate-related initiatives.”⁴⁵

A carbon credit is a tradable permit granting an entity the right to emit one metric ton of carbon dioxide or an equivalent amount of other greenhouse gases (GHGs) into the atmosphere.⁴⁶ Carbon credits are created and issued by regulatory authorities that administer compliance markets, such as cap-and-trade systems, within specific jurisdictions. Participation in these markets is legally mandated for certain entities that emit GHGs, requiring them to adhere to established emissions limits.⁴⁷ Entities receive carbon credits that authorize emissions up to a prescribed limit, which typically

40. PASTRES, THE BENEFITS OF PASTORALISM FOR BIODIVERSITY AND CLIMATE 3, 4 (2022).

41. *Parties to the United Nations Framework Convention on Climate Change*, U.N. CLIMATE CHANGE, <https://unfccc.int/process/parties-non-party-stakeholders/parties-convention-and-observer-states> (last visited Apr. 13, 2026).

42. ARETA A. JEZ ET AL., MINTZ, CARBON CREDIT & CARBON OFFSET FUNDAMENTALS 8 (2022).

43. *United Republic of Tanzania - Country Profile*, CONVENTION ON BIOLOGICAL DIVERSITY, <https://www.cbd.int/countries/profile?country=tz> (last visited Apr. 9, 2026).

44. Peter Nyanje, *Carbon Market Investors Begin to Stream into Tanzania*, BUS. INSIDER (July 15, 2025), <https://businessinsider.co.tz/carbon-market-investors-begin-to-stream-into-tanzania/>.

45. Theodora Stankova, *Tanzania Earmarks \$463M for Climate Action Amid Carbon Trading Challenges*, CARBON HERALD (Apr. 29, 2025), <https://carbonherald.com/tanzania-earmarks-463m-for-climate-action-amid-carbon-trading-challenges/>.

46. JEZ ET AL., *supra* note 42, at 13.

47. *Id.*

decline over time.⁴⁸ Entities that maintain emissions below their allocated limit may sell surplus credits to other participants, creating a market-based incentive to reduce GHG emissions.⁴⁹ In practice, carbon credits are primarily traded within compliance markets.⁵⁰

In contrast, a carbon offset also represents one metric ton of carbon dioxide or its equivalent, but it differs fundamentally from a carbon credit. Whereas credits permit emissions, offsets correspond to carbon that has been avoided or permanently removed from the atmosphere.⁵¹ Offsets may arise from avoidance or reduction projects, such as renewable energy initiatives, methane capture or other emissions-reducing facilities, or from removal and sequestration projects, including reforestation, soil carbon storage, or direct carbon capture.⁵²

Entities voluntarily committing to GHG emissions reductions drive the demand for carbon offsets. Such entities may either reduce emissions directly or purchase offsets from projects that achieve reductions elsewhere, thereby fulfilling voluntary commitments.

Carbon markets can be divided into two distinct frameworks: compliance, or mandatory, markets and voluntary markets.⁵³ Compliance markets, also referred to as regulatory markets, operate under legal or regulatory mandates.⁵⁴ They allow participants to buy and sell carbon credits or offsets to meet emissions reduction obligations, such as those established under the Kyoto Protocol or subsequent international agreements. Compliance obligations typically involve a “cap” on total emissions, compelling entities that exceed their allocated limits to acquire additional credits from entities with surplus allowances.⁵⁵ Such markets are frequently described as “cap-and-trade” systems. Compliance markets are governed through international, regional, or subnational schemes, including the internationally transferred mitigation outcomes—trading mechanisms under Article 6.2 of the Paris Agreement, the European Union Emissions Trading Scheme (EU-ETS), and the California Carbon Market.⁵⁶ Each scheme specifies a unit of tradable emissions reductions and establishes protocols for

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. See CHRISTINA SEEBERG-ELVERFELDT, MICCA, ENV'T & NAT. RES. MGMT. WORKING PAPER 34, CARBON FINANCE POSSIBILITIES FOR AGRICULTURE, FORESTRY, AND OTHER LAND USE PROJECTS IN A SMALLHOLDER CONTEXT 5–11 (2010).

54. *Id.*

55. *Compliance vs. Voluntary Carbon Markets, Explained*, CFP ENERGY (Sept. 3, 2024), <https://www.cfp.energy/en/insights/compliance-vs-voluntary-carbon-markets-explained>.

56. JEZ ET AL., *supra* note 42, at 15.

tracking, verifying, and transferring reductions.⁵⁷ For example, under the Paris Agreement, a country may generate internationally transferred mitigation outcomes by reducing or removing emissions, recording the reductions in its national GHG inventory, and transferring them to another country's inventory after a corresponding adjustment.⁵⁸ Transfers may occur at governmental or corporate levels and are subject to oversight by a supervisory body charged with reviewing recognized credits.

Voluntary markets, in contrast, operate outside regulatory obligations, allowing the trade of carbon offsets to meet voluntary corporate or individual environmental commitments. Voluntary offsets cannot be used to satisfy compliance obligations under nationally determined contributions (NDCs) or other regulatory GHG reduction targets.⁵⁹ Nevertheless, they are valuable tools for companies seeking to supplement direct emissions reductions. Projects wishing to participate in voluntary markets must first register with a recognized voluntary carbon offset program or registry. For example, leading carbon offset registries in the United States comprise of the American Carbon Registry,⁶⁰ the Verified Carbon Standard (Verra),⁶¹ the Gold Standard Impact Registry,⁶² and the Climate Action Reserve.⁶³ Each registry applies specific criteria, methodologies, and protocols to quantify project-based emissions reductions, often drawing upon international sustainability standards. Once certified, projects may issue offsets, which are traded on platforms such as the American Carbon Registry, Verra, APX Inc., and Markit.⁶⁴

Until recently, the lack of a domestic legal framework created significant challenges for the development and implementation of carbon trading projects in Tanzania. In response to this regulatory gap, the Government of Tanzania enacted the Environmental Management (Control and Management of Carbon Trading) Regulations, 2022,⁶⁵ marking the country's first formal legal framework specifically addressing carbon trading activities. These Regulations establish a comprehensive legal infrastructure designed to

57. *Id.* at 15–16.

58. *Id.* at 15.

59. *Id.*

60. *A Global Leader That Delivers Ambitious Climate Results*, ACR, <https://acrcarbon.org/about-us/> (last visited Apr. 9, 2026).

61. *Verified Carbon Standard*, VERRA, <https://verra.org/programs/verified-carbon-standard/> (last visited Apr. 9, 2026).

62. *Gold Standard Registries Impact Registry*, GOLD STANDARD, <https://www.goldstandard.org/project-developers/impact-registry> (last updated Dec. 12, 2025).

63. *Carbon Market Directory*, CLIMATE ACTION RESERVE, <https://climateactionreserve.org/how/carbon-market-directory/> (last visited Apr. 9, 2026).

64. JEZ ET AL., *supra* note 42, at 15.

65. The Environmental Management Act, Regulations (2022) 42, pt. I, GOV'T NOTICE No. 636 (Tanz.).

ensure environmental integrity, transparency, and equitable benefit-sharing across all carbon trading projects operating within mainland Tanzania.⁶⁶

The 2022 Regulations delineate responsibilities across multiple domains, including institutional oversight,⁶⁷ project registration and approval processes,⁶⁸ technical verification and certification,⁶⁹ environmental and social safeguards, cost and benefit allocation, public participation,⁷⁰ and compliance enforcement.

Under this regulatory regime, the project proponent needs to have expertise in carbon trading, have the financial capacity to invest, and comply with relevant laws. The first step is to submit a Project Concept Note (PCN) to the Designated National Authority or National Focal Point (DNA/NFP), the government office responsible for overseeing carbon trading projects.⁷¹ The PCN should include basic details such as the proponent's name and address, the project's location and size, and the type of project.⁷² It must be submitted using the official application form and be accompanied by a non-refundable fee of \$250 USD for citizens and \$500 USD for non-citizens.⁷³ If the proposal meets the criteria, the DNA/NFP will issue an endorsement letter allowing the proponent to move forward with a more detailed plan.⁷⁴

The next step is preparing a Project Document (PD),⁷⁵ which sets out the project's objectives, activities, monitoring and verification methods, risks and mitigation measures, legal and social safeguards, and anticipated environmental and community impacts.⁷⁶ This document is reviewed by the National Carbon Projects Assessment Technical Committee (NCPATC), which evaluates projects against technical, social, economic, environmental, and legal standards.⁷⁷

Once the PD is approved, the project proponent must enter into contractual agreements with relevant parties, such as government agencies, local authorities, and community stakeholders.⁷⁸ These agreements outline roles, responsibilities, benefit-sharing arrangements, dispute resolution

66. *Id.*

67. *Id.* pt. IV.

68. *Id.* pt. VI.

69. *Id.* pt. VII.

70. *Id.* pt. IX.

71. *Id.* pt. IV § 9.

72. *Id.* pt. VI § 27(2).

73. *Id.* pt. VI § 26(b), at 31.

74. *Id.* pt. VI § 27(4)(a).

75. *Id.* pt. VI § 28(1).

76. *Id.* pt. V § 24(2); *id.* pt. VI § 28(5).

77. *Id.* pt. IV § 12(b).

78. *Id.* pt. VI § 29.

mechanisms, and other key terms.⁷⁹ After the agreements are signed and the necessary permits are obtained, the project can begin implementation, provided it follows the monitoring and reporting requirements.⁸⁰

To certify emission reductions or removals, the project must be independently verified by an accredited third party following an international carbon standard.⁸¹ If successful, the verifier issues a certification report, allowing the project's carbon credits to be registered in a recognized registry for trading.

III. APPLYING TANZANIA'S CARBON TRADING LEGAL FRAMEWORKS TO ITS INDIGENOUS COMMUNITIES: CHALLENGES AND ISSUES

Although the Tanzanian government affirms its sovereignty over the entirety of mainland Tanzania and Tanzania Zanzibar, including territorial waters,⁸² Tanzania is home to over 125 distinct ethnic groups. These are generally classified into four broad linguistic and cultural categories: Bantu, Cushitic, Nilo-Hamitic, and San.⁸³ Among these, four groups—the hunter-gatherer Akie and Hadzabe, and the pastoralist Barabaig and Maasai—are widely recognized, particularly within international legal and human rights frameworks, as Indigenous Peoples.⁸⁴ These communities maintain a deep and enduring connection to their lands, possess distinct cultural identities, and face common challenges including land tenure insecurity, poverty, marginalization, and limited political representation.⁸⁵

While these groups broadly share common legal rights under national and international law, the extent to which these rights are realized varies depending on geographic and administrative context. For instance, Maasai communities residing within the Ngorongoro Conservation Area (NCA) are subject to more restrictive regulatory frameworks governing land use and access to resources. These limitations arise primarily from the Ngorongoro Conservation Area Act, which imposes constraints on livelihood activities

79. *Id.* § 29(2).

80. *Id.* pt. VI § 30; *id.* pt. XI § 41.

81. See The Environmental Management Act, Regulations (2022) 42, pt. VII, GOV'T NOTICE NO. 636 (Tanz.); *How Can We Uphold the Integrity of a Growing Carbon Market?*, CARBON TANZ. (Nov. 1, 2021), <https://carbontanzania.com/how-can-we-uphold-the-integrity-of-a-growing-carbon-market/#>.

82. CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA Apr. 26, 1977, art. 2 § 1.

83. *Tanzania*, INDIGENOUS NAVIGATOR, <https://indigenousnavigator.org/indigenous-data/countries/tanzania#> (last visited Apr. 9, 2026).

84. *Id.*

85. *Id.*

and curtails the exercise of land and cultural rights.⁸⁶ As a result, the legal rights of Maasai residents within the NCA are significantly impaired relative to those residing outside the conservation area.⁸⁷

The right to self-determination lies at the heart of many contemporary human rights struggles, especially those involving Indigenous Peoples.⁸⁸ In the context of climate change—where land use, environmental governance, and cultural survival intersect—this right takes on renewed significance. For Indigenous communities, whose cultural identities and traditional scientific knowledge systems are intimately tied to land, recognition and self-determination are essential to safeguarding both their livelihoods and the ecosystems they have sustainably managed for generations.

A. Recognition of Indigenous Peoples in Tanzania

To grasp the legal and political dimensions of the concept of Indigenous Peoples, one must first examine its articulation within settler-colonial contexts, notably the CANZUS states—Canada, Australia, New Zealand, and the United States—where legal frameworks have historically grappled with questions of prior habitation, sovereignty, and the enduring impacts of colonial conquest. In these countries, Indigenous Peoples are recognized as the original inhabitants of lands and territories prior to colonial conquest and occupation, as reflected in scholarly analyses of the doctrine of discovery.⁸⁹ Yet they are outnumbered and constitute only a small portion of the population, approximately “4 per cent in Canada, 2.6 per cent in Australia, 1.5 per cent in the USA and 15 per cent in New Zealand,” while settler communities form the overwhelming majority.⁹⁰ Terms such as First Nations,

86. See Fredrick Ole Ikayo, *Re-Indigenizing Food Sovereignty in the Ngorongoro Conservation Area*, 26 VT. J. ENV'T L. 279, 279 (2025).

87. Christine Ro, *7 Myths Harming the Maasai People in Tanzania*, FORBES, <https://www.forbes.com/sites/christinero/2024/09/09/7-myths-harming-the-maasai-people-in-tanzania/> (last visited Apr. 9, 2026).

88. See, e.g., *Self-Determination and Indigenous Peoples*, AUSTL. HUM. RTS. COMM'N (Aug. 4, 2023), <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/self-determination-and-indigenous>; “*It’s Like Killing Culture*”: *Human Rights Impacts of Relocating Tanzania’s Maasai*, HUM. RTS. WATCH (July 31, 2024), <https://www.hrw.org/report/2024/07/31/its-killing-culture/human-rights-impacts-relocating-tanzanias-maasai>.

89. The doctrine of discovery was a principle developed during the colonial period that Western colonizing powers used to legitimize their claims of political and legal authority (superior sovereignty) over lands traditionally inhabited and owned by Indigenous peoples. See Robert A. Williams, Jr., *Columbus’s Legacy: Law as an Instrument of Racial Discrimination Against Indigenous Peoples’ Rights of Self-Determination*, 8 ARIZ. J. INT’L & COMP. L. 51, 71–82 (1991); ROBERT A. WILLIAMS, JR., *SAVAGE ANXIETIES: THE INVENTION OF WESTERN CIVILIZATION* (2012).

90. Kirsty Gover, *Settler-State Political Theory, ‘CANZUS’ and the UN Declaration on the Rights of Indigenous Peoples*, 26 EUR. J. INT’L L. 345, 356 (2015); WILLIAMS, *supra* note 89.

Native Americans, and Aboriginal communities are commonly used interchangeably with Indigenous Peoples, while others denote more specific entities,⁹¹ reflecting both historical aboriginality and ongoing claims to land, culture, and political rights.

Africa presents a contrasting context. Political independence did not create settler populations that outnumbered indigenous inhabitants; the majority of the population remained of African descent. As a result, some policymakers resist adopting the label “Indigenous Peoples” in Africa, asserting that all Africans are inherently indigenous to the continent.⁹² However, this perspective risks obscuring the particular marginalization experienced by certain communities who, despite being African, face social, economic, and political exclusion.

In Tanzania, this denial has been consistent and formalized. The government has refused to recognize the existence of Indigenous Peoples within its borders, a stance that undermines both individual and collective rights of communities such as the Maasai, Hadzabe, Barabaig, and Akie.⁹³ Indeed, this Article argues that Tanzania’s refusal to recognize Indigenous Peoples—and the corresponding denial of their right to self-determination—constitutes a violation of international human rights law, particularly in the context of climate-related projects (carbon credits and carbon offset mechanisms). While these communities satisfy internationally recognized criteria of indigeneity, their lack of legal recognition in Tanzania precludes meaningful participation in land governance and climate-related decision-making. Consequently, Indigenous Peoples must navigate a political system in which power is vested in majority rule and where minority claims to land, identity, and self-determination are routinely marginalized.

Although there is no universally established definition of “Indigenous Peoples” under international law, international legal standards, including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the International Labour Organization Convention No. 169 (ILO Convention 169), affirm the centrality of self-identification in establishing Indigenous status.⁹⁴ The principle of self-identification reflects a broad

91. Elizabeth Prine Pauls, *Tribal Nomenclature: American Indian, Native American, and First Nation*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/Tribal-Nomenclature-American-Indian-Native-American-and-First-Nation-1386025> (last visited Apr. 9, 2026).

92. Elifuraha Laltaika, *Chapter 2: Indigeneity, National Unity, Modernity and Public Policy in Africa*, in HANDBOOK OF INDIGENOUS PUBLIC POL’Y 35, 35–36 (Sheryl Lightfoot & Sarah Maddison ed., 2024).

93. See, e.g., *Unity Amid Diversity: Tanzania’s Approach to Indigenous Identity*, THE GUARDIAN (May 17, 2024), <https://ippmedia.co.tz/the-guardian/features/read/unity-amid-diversity-tanzanias-approach-to-indigenous-identity-2024-05-17-123828>.

94. Hum. Rts. Council, Rep. of the Expert Mechanism on the Rights of Indigenous Peoples on Its Twelfth Session, U.N. DOC. A/HRC/EMRIP/2019/3/Rev.1, at 5 (2019).

international consensus that rigid legal definitions are neither necessary nor desirable in protecting Indigenous rights.

Article 33(1) of UNDRIP and Article 1(2) of ILO Convention 169 both affirm that self-identification shall serve as the primary criterion in determining who qualifies as Indigenous. These provisions underscore the reality that Indigenous Peoples' rights are grounded not in historical precedence or sovereign status, but in the continuing existence of culturally distinct communities whose identities, livelihoods, and knowledge systems remain rooted in ancestral lands. In this context, Indigenous law and traditional scientific knowledge—such as that of the Maasai's rotational grazing systems—form the basis of sustainable environmental governance and are vital to addressing global climate challenges.

Within this conceptual framework, Indigenous Peoples are entitled to exercise their human rights through collective existence, grounded in their traditional modes of life, as an indispensable component of their right to cultural survival. The Inter-American Court of Human Rights has affirmed that cultural identification is a social and historical fact tied to autonomy and should be respected by States.⁹⁵ Within Africa, the African Commission on Human and Peoples' Rights (ACHPR) has adopted similar standards, acknowledging that self-identification, together with group acceptance, forms a critical part of establishing indigeneity.⁹⁶

The African Commission on Human and Peoples' Rights (ACHPR) also addressed the frequently advanced argument that "all Africans are Indigenous."⁹⁷ In response, the ACHPR clarified that, for the purposes of international human rights law, the term "Indigenous Peoples" refers specifically to communities whose cultural identities, ways of life, and social institutions differ markedly from those of the dominant national society.⁹⁸

The ACHPR's Working Group of Experts on Indigenous Populations/Communities has further articulated key criteria for identifying Indigenous communities in Africa.⁹⁹ The Working Group emphasizes their cultures and ways of life are markedly different from those of the dominant society, often to the extent that they face the risk of cultural extinction.¹⁰⁰ Their survival is deeply tied to access to their traditional lands and natural

95. *Xákmok Kásek Indigenous Cmty. v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 214, ¶ 37 (Aug. 24, 2010).

96. *African Comm'n on Hum. & Peoples' Rts. v. Republic of Kenya*, No. 006/2012, Judgment, ¶¶ 107–08, 157 (African Ct. on Hum. & Peoples' Rts., May 26, 2017).

97. *See* ACHPR & IWGIA, REPORT OF THE AFRICAN COMMISSION'S WORKING GROUP OF EXPERTS ON INDIGENOUS POPULATIONS/COMMUNITIES 60 (2005).

98. *Id.* at 89.

99. *Id.*

100. *Id.*

resources, which sustain their livelihoods and identities.¹⁰¹ Despite their rich heritage, these groups frequently experience discrimination and are often perceived as less developed or less advanced compared to more dominant societal sectors.¹⁰² Many live in remote, inaccessible regions, further isolating them from mainstream political and economic systems.¹⁰³ As a result, they are vulnerable to marginalization, domination, and exploitation within national structures “commonly designed to reflect the interests and activities of the national majority.”¹⁰⁴ The Working Group emphasizes that defining Indigenous Peoples solely based on their historical precedence, being the *first* inhabitants, is limiting and counterproductive.¹⁰⁵ Instead, contemporary analytical perspectives focus on issues of marginalization, cultural distinctiveness, and the right to self-identification at the international level, shifting the discourse towards recognition and inclusion.¹⁰⁶

In this regard, at least some of the 125 ethnic groups in Tanzania (Maasai, Hadzabe, Barabaig, and Akie) clearly meet the definitional criteria of Indigenous Peoples established by the ACHPR and other international bodies. Their cultural identity, knowledge systems, and communal relationship to land are profoundly rooted in longstanding traditions, spiritual cosmologies, and intergenerational stewardship practices. Yet Tanzania’s continued denial of their Indigenous status and its assertion of a homogenous national identity contravene regional and international legal obligations. Such state rhetoric and policies not only erase Indigenous identities but also functionally deprive these communities of access to justice, land security, and meaningful participation in environmental governance.

International law places positive obligations on States to recognize and protect the rights of Indigenous Peoples’ collective identity and corresponding rights.¹⁰⁷ These rights exist independently of domestic acknowledgment. Terminological substitutions such as *tribes*, *minorities*, or *vulnerable groups* do not relieve States of their responsibilities under international human rights law. Indeed, treaty-monitoring bodies have repeatedly criticized States for failing to afford formal recognition and denying effective remedies in cases of violations of rights.¹⁰⁸

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. Laltaika, *supra* note 92, at 89–90.

106. *Id.*

107. Hum. Rts. Council, Rep. of the Expert Mechanism on the Rights of Indigenous Peoples on Its Twelfth Session, U.N. Doc. A/HRC/EMRIP/2019/3/Rev.1, at 18 (2019).

108. See Int’l Convention on the Elimination of All Forms of Racial Discrimination, Comm. on the Elimination of Racial Discrimination, Repts. Submitted by States parties under Article 9 of the

One reason for Tanzania's refusal to recognize any of its ethnic groups as Indigenous Peoples under international law is a concern that recognition might incite ethnic tension or encourage tribalism. These concerns, however, reflect a fundamental misunderstanding of the Indigenous rights framework. Recognition is not a vehicle for privileging certain groups, but a remedial mechanism aimed at rectifying historical injustices. As the UN Special Rapporteur on the Rights of Indigenous Peoples has emphasized, UNDRIP "is fundamentally a remedial instrument," designed to address entrenched marginalization and discrimination rather than confer special privileges.¹⁰⁹

In the African context, the ACHPR has similarly underscored that recognizing Indigenous rights contributes to national unity, democratic development, and peace.¹¹⁰ Failing to address structural inequality and dispossession fosters instability. By contrast, inclusion and affirmative legal protections promote societal cohesion and justice.

B. The Impact of Carbon Credit Schemes on Indigenous Peoples

A persistent and critical challenge lies in the systematic exclusion of Indigenous Peoples from environmental and climate governance, rooted in the absence of formal recognition and the denial of their right to self-determination. In the absence of legal acknowledgment, Indigenous communities are consistently deprived of secure land tenure, marginalized in policy-making processes, and excluded from the design and implementation of climate adaptation and mitigation strategies. This marginalization is further exacerbated by the proliferation of carbon credit schemes, conservation programs, and development initiatives undertaken on Indigenous lands without obtaining their free, prior, and informed consent (FPIC), in direct contravention of established international legal standards.¹¹¹

The 2009 forced eviction of the Indigenous Ogiek people from their ancestral lands in Kenya's Mau Forest provides a stark example of the risks posed when conservation is pursued without regard for Indigenous rights. The Ogiek, a hunter-gatherer community with centuries-long ties to the Mau

Convention, U.N. Doc. CERD/C/FRA/CO/20-21, at 19–20 (2013) (regarding France territorial collectivities).

109. James Anaya, Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People at 8 Statement Before the Third Committee of the 64th Session of the General Assembly (Item No. 68) (Oct. 19, 2009).

110. ACHPR & IWGIAF, *supra* note 97, at 103.

111. *Maasai Demand Volkswagen Pull out of Carbon Offset Scheme on Their Lands*, SURVIVAL INT'L (July 8, 2025), <https://www.survivalinternational.org/news/14293>; DAVID R. BOYD ET AL., REF. AL TZA 2/2019, SPECIAL PROCEDURES COMMUNICATION 1–2 (Oct. 11, 2019).

Forest,¹¹² had already secured a landmark victory in May 2017 when the African Court on Human and Peoples' Rights ruled that Kenya had violated their rights.¹¹³ Kenya defended the eviction as a lawful and proportionate restriction justified by the public interest of conserving the Mau Forest.¹¹⁴ The Court rejected this claim, finding violations of multiple provisions of the African Charter on Human and Peoples' Rights, including the right to property (Article 14), recognized both individually and collectively; the right to culture (Article 17(2)–(3)), also individual and collective; and the right of peoples to freely dispose of their natural resources (Article 21).¹¹⁵

Despite this ruling, on November 2, 2023, a joint force of the Kenya Forest Service, Wildlife Service, and police entered the Sasimwani area of the Mau Forest, targeting roughly 700 Ogiek households.¹¹⁶ Homes and personal property were demolished or burned, and some residents were coerced into dismantling their own homes.¹¹⁷ The eviction was carried out allegedly under the pretext of conservation linked to forest carbon credit schemes,¹¹⁸ but in practice it displaced entire communities in flagrant violation of established human rights norms. Such actions, disguised as environmental protection, result in the erosion of cultural continuity, the disruption of social structures, and the deepening of historical injustices. These dynamics are not isolated incidents, but rather part of a broader global trend in which climate mitigation is used to rationalize territorial appropriation.

For the Indigenous Maasai people, the rapid expansion of carbon credit projects exacerbates existing threats by further restricting access to land and natural resources that are essential to their pastoral way of life.¹¹⁹ These projects often require large areas to be set aside for conservation or carbon sequestration, which directly undermines the Maasai's mobility and seasonal grazing routes, compounding pressures from ongoing land privatization and fragmentation. Because the Maasai typically hold customary rather than

112. *Ogiek Case: Protection of an Indigenous Community in Kenya*, AMNESTY INT'L (June 25, 2023), <https://www.amnesty.org/en/latest/campaigns/2023/06/ogiek-case-protection-of-an-indigenous-community-in-kenya/>.

113. African Comm'n on Hum. & Peoples' Rts. v. Republic of Kenya, No. 006/2012, Judgment, ¶ 216 (African Ct. on Hum. & Peoples' Rts., May 26, 2017).

114. *Id.* at 220.

115. *Id.* ¶ 227.

116. *Kenya Government Illegally Evicts Ogiek from Their Ancestral Forests During King Charles's State Visit*, SURVIVAL INT'L (Nov. 3, 2023), <https://www.survivalinternational.org/news/13787>.

117. *Id.*

118. Claire Marshall, *Kenya's Ogiek People Being Evicted for Carbon Credits - Lawyers*, BBC (Nov. 9, 2023), <https://www.bbc.com/news/world-africa-67352067>.

119. Ajiambo, *supra* note 12.

formal land rights, they are not meaningfully consulted in decision-making processes, leaving them vulnerable to dispossession and displacement.¹²⁰ Moreover, traditional ecological practices such as rotational grazing (pastoralism) and controlled burning—integral to maintaining the health of savannah ecosystems¹²¹—are often prohibited under carbon schemes, despite their proven role in sustaining biodiversity. At the same time, revenue from carbon credits tends to flow to governments or private companies, with little benefit to the communities whose lands are affected, thereby deepening economic insecurity and inequality. Yet dominant conservation narratives frequently frame mobile pastoralism as incompatible with environmental protection. Under carbon offset programs, these narratives are weaponized to reclassify Maasai lands as ‘degraded,’ ‘in need of restoration,’ or ‘aligned with national development interests,’ thereby justifying increased surveillance, restriction, and displacement. In this way, carbon credit initiatives intensify the marginalization of the Maasai, disrupt cultural continuity, and replicate the historical injustices long associated with conservation and land governance. According to the Maasai International Solidarity Alliance’s recent report, in areas such as Longido and Monduli, Tanzania, carbon credit initiatives will significantly limit land use and mobility, threatening traditional land use practices.¹²² These interventions proceed without genuine community consultation and with little recognition of the Maasai’s historical and ongoing contributions to biodiversity and landscape management.

Beyond the question of displacement lies a deeper issue: the commodification of land and life itself. Carbon credit markets are predicated on a transactional logic in which carbon is measured, verified, and sold as a financial asset. This logic imposes a model of property ownership and environmental management that conflicts with Indigenous worldviews.¹²³

120. See, e.g., *Tanzania: Authorities Brutally Violated Maasai Amid Forced Evictions from Ancestral Lands*, AMNESTY INT’L (June 6, 2023), <https://www.amnesty.org/en/latest/news/2023/06/tanzanian-authorities-brutally-violated-maasai-amid-forced-evictions/>; Joseph Lee, *Indigenous Maasai Ask the United Nations to Intervene on Reported Human Rights Abuses*, MONGABAY (Apr. 21, 2023), <https://news.mongabay.com/2023/04/indigenous-maasai-ask-the-united-nations-to-intervene-on-reported-human-rights-abuses/>.

121. Roderick P. Neumann, *The Production of Nature: Colonial Recasting of the African Landscape in Serengeti National Park*, in *POLITICAL ECOLOGY: AN INTEGRATIVE APPROACH TO GEOGRAPHY AND ENVIRONMENT-DEVELOPMENT STUDIES* 240, 248–49 (Karl S. Zimmerer & Thomas J. Bassett eds., 2003).

122. MAASAI INT’L SOLIDARITY ALL., *SOIL CARBON CREDITS: ANOTHER WAVE OF LAND ALIENATION IN NORTHERN TANZANIA?* 2, 18 (2025).

123. For example, the Maasai communities manage grazing lands collectively and view their relationship with the environment as a shared, intergenerational responsibility. Imposing a transactional model of carbon ownership can undermine these communal systems and disrupt cultural practices and stewardship of their ancestral territories. See, e.g., Melubo, *supra* note 39.

For many Indigenous communities, including the Maasai, land is not a commodity but a source of identity, spirituality, and collective responsibility.¹²⁴ Climate-related contracts that restrict traditional land use or impose external definitions of stewardship can undermine the cultural, political, and ecological integrity of Indigenous societies.

Even when Indigenous communities are included in climate projects or their consent is sought, these initiatives often fail to provide meaningful benefits,¹²⁵ and communities are frequently left unaware of the benefit-sharing arrangements.¹²⁶ The majority of payments flow to intermediaries,¹²⁷ while Indigenous Peoples face potential restrictions on mobility and land use.¹²⁸ For example, the implementation of carbon credit projects threatens to restrict the traditional mobility of the Maasai people, which undermines their pastoral way of life and limits their access to grazing lands. Carbon principles such as permanence and additionality are central to carbon accounting. Permanence requires that greenhouse gas (GHG) reductions or removals from a mitigation activity be lasting. Additionality mandates that such reductions would not occur without the financial incentive of carbon credit revenues.¹²⁹ However, these principles often undermine the value of Indigenous practices such as seasonal burning, rotational grazing, and herd diversification. Though ecologically sound, these practices do not fit neatly into Western scientific frameworks, and carbon projects seek to replace them with practices inspired from Western science such as rapid rotational grazing.¹³⁰ As a result, Indigenous communities are burdened with the responsibility of climate mitigation, while continuing to experience marginalization and dispossession.

One of the most insidious aspects of voluntary carbon markets is the illusion that they provide neutral, scientific solutions to the climate crisis. In reality, these markets are deeply shaped by colonial histories and

124. *The Cattle Economy of the Maasai*, NAT'L GEOGRAPHIC, <https://education.nationalgeographic.org/resource/cattle-economy-maasai/> (last visited Apr. 6, 2026).

125. See, e.g., *Indigenous Land Disputes Cloud Kenya's Carbon Market Ambitions*, CLIMATE HOME NEWS (May 15, 2025), <https://www.climatechangenews.com/2025/05/15/indigenous-land-disputes-cloud-kenyas-carbon-market-ambitions/>.

126. MAASAI INT'L SOLIDARITY ALL., *supra* note 122, at iv.

127. Luke Barratt & Joe Sandler Clarke, *How Middlemen Carbon Brokers Take a Cut from Money Meant to Help Offset Emissions*, UNEARTHED (May 2, 2022), <https://unearthed.greenpeace.org/2022/05/02/carbon-offsetting-market-climate/>.

128. MAASAI INT'L SOLIDARITY ALL., *supra* note 122, at 18.

129. *The Core Carbon Principles*, INTEGRITY COUNCIL FOR THE VOLUNTARY CARBON MKT., <https://icvcm.org/core-carbon-principles/> (last visited Apr. 6, 2026).

130. Akil Kasubhai, *Kenyan Pastoralists vs. Northern Rangelands Trust*, ARCGIS STORYMAPS (Apr. 15, 2024), <https://storymaps.arcgis.com/stories/4186114e8521427387bdbc192c40be76>.

contemporary power imbalances.¹³¹ International mechanisms such as the Clean Development Mechanism (CDM) established under the Kyoto Protocol and Article 6 of the Paris Agreement have been criticized for privileging extractive practices and market-oriented approaches over sustainable, community-led practices. These practices often exacerbate emissions and undermine the rights, territories and livelihoods of Indigenous Peoples.¹³² By enabling industrialized countries and corporations to offset their emissions through projects in developing regions, these mechanisms frequently ignore Indigenous Peoples' rights and traditional land stewardship practices.¹³³

For Indigenous Peoples, this epistemic violence delegitimizes their knowledge systems, governance structures, and spiritual relationships with land. Growing research confirms that Indigenous Peoples are effective and enduring stewards of the world's biodiversity.¹³⁴ Indigenous Peoples draw on knowledge, innovations, and practices that sustain ecosystems.¹³⁵ Yet, they continue to be marginalized by a global climate architecture that prioritizes financial instruments over lived experience and ancestral wisdom.

Climate action can be people-led, community-driven, and non-extractive, centering local knowledge, rights, and sustainable stewardship over profit-driven interventions. In Australia, the 2019–2020 bushfires heightened interest in Indigenous cultural burning as a strategy to mitigate fire risk.¹³⁶ In response, the Australian government launched a Royal Commission, which examined the history and benefits of cultural burning and recommended engaging Traditional Owners to strengthen natural disaster resilience.¹³⁷ Increased public and government support, including

131. Zeynep Durmaz & Heike Schroeder, *Indigenous Contestations of Carbon Markets, Carbon Colonialism, and Power Dynamics in International Climate Negotiations*, 13 CLIMATE J., Aug. 2025, at 1, 5, 11–15.

132. COP 25 – Was It Worth It? What Did We Do? Why Is This an Important Moment?, INDIGENOUS CLIMATE ACTION, <https://www.indigenousclimateaction.com/entries/cop25-was-it-worth-it-what-did-we-do-why-is-this-an-important-moment/> (last visited Apr. 6, 2026); Emily Boyd et al., *Reforming the CDM for Sustainable Development: Lessons Learned and Policy Futures*, 12 ENV'T SCI. & POL'Y 820, 821 (2009).

133. Durmaz & Schroeder, *supra* note 131, at 5.

134. Douglas Broom & Madeleine North, *Here's How Indigenous People Are Protecting the Planet*, WORLD ECON. F. (Aug. 7, 2023), <https://www.weforum.org/stories/2023/08/indigenous-people-protecting-planet/>.

135. *Championing Indigenous Peoples' Stewardship of Biodiversity*, U.N. ENV'T PROGRAMME (Aug. 2023), <https://www.unep-wcmc.org/en/news/championing-indigenous-peoples-stewardship-of-biodiversity>.

136. Isabella Higgins, *Indigenous Fire Practices Have Been Used to Quell Bushfires for Thousands of Years, Experts Say*, ABC NEWS (Jan. 8, 2020), <https://www.abc.net.au/news/2020-01-09/indigenous-cultural-fire-burning-method-has-benefits-experts-say/11853096>.

137. ROYAL COMM'N INTO NAT'L NAT. DISASTER ARRANGEMENTS, ROYAL COMMISSION INTO NATIONAL NATURAL DISASTER ARRANGEMENTS REPORT 19, 388, 390, 396 (2020).

funding through state programs,¹³⁸ the National Bushfire Recovery Fund, and the Black Summer Bushfire Recovery Grants Program, helped expand savanna burning initiatives.¹³⁹ By 2020, these programs generated \$15 million AUD annually for Indigenous land managers,¹⁴⁰ and by 2023, carbon projects from savanna burning produced \$50 million AUD annually, cutting over one million tons of emissions, and creating employment, training opportunities, and cultural revitalization within Indigenous communities.¹⁴¹

British Columbia, Canada, provides another example of how carbon market arrangements can be structured to incorporate Indigenous participation and benefit-sharing. Through the Atmospheric Benefit Sharing Agreement,¹⁴² Coastal First Nations are able to own and sell carbon offsets derived from forest conservation.¹⁴³ This creates incentives to limit industrial logging while establishing a long-term revenue source for Indigenous communities.¹⁴⁴ Despite the jurisdictional complexities surrounding Crown lands,¹⁴⁵ the benefit-sharing agreement marks a significant initial step toward enabling First Nations to negotiate carbon rights directly with the government through treaties and reconciliation agreements.¹⁴⁶

Comparable outcomes can also be observed in the agreement between Mosaic Forest Management and Indigenous communities in British Columbia. The agreement links forest protection with income generated from carbon credit markets. Under this arrangement, logging is postponed for

138. See, e.g., *Cultural Fire Grants*, VICTORIA STATE GOV'T, <https://www.environment.vic.gov.au/grants/cultural-fire-grants> (last visited Apr. 6, 2026) [<https://web.archive.org/web/20251113081957/https://www.environment.vic.gov.au/grants/cultural-fire-grants>].

139. *\$2 Million for Indigenous Fire Management*, AUSTL. GOV'T NAT'L EMERGENCY MGMT. AGENCY (Mar. 19, 2021), <https://www.indigenous.gov.au/news/2-million-indigenous-fire-management>; *Cultural Burning: Fighting Fire with Fire*, AUSTL. GOV'T NAT'L EMERGENCY MGMT. AGENCY (Sept. 23, 2022), <https://nema.gov.au/stories/cultural-burning-fighting-fire-with-fire>.

140. *Indigenous Fire Revolution*, THE NATURE CONSERVANCY AUSTL. (Feb. 18, 2020), <https://web.archive.org/web/20250908054933/https://www.natureaustralia.org.au/newsroom/indigenous-fire-revolution/>.

141. Judah Lieblich, *Cultural Burning Can Mitigate Climate Change and Produce Income for Native American Tribes*, 51 *ECOLOGY L.Q.*, July 2024, at 1, 7 n.47 (citing *Cultural Burning*, *supra* note 138).

142. Coastal First Nations 2015 Atmospheric Benefit Sharing Agreement, B.C.-Cent. & N. Coast First Nations, Jan. 19, 2016.

143. *Carbon Credits*, COASTAL FIRST NATIONS, <https://coastalfirstnations.ca/our-land/carbon-credits/> (last visited Apr. 6, 2026).

144. *Id.*

145. Crown land, also known as public land, refers to land in Canada that is owned and managed by either the federal or provincial governments. The authority to administer and control these lands is vested in the Crown, from which the term is derived. See V.P. Neimanis, *Crown Land*, *THE CANADIAN ENCYCLOPEDIA* (Nov. 14, 2024) <https://www.thecanadianencyclopedia.ca/en/article/crown-land>.

146. MICHELLE CONNOLLY, *FIRST NATIONS CARBON: A BCAFN DISCUSSION PAPER 8-9* (2022).

extended periods, allowing Indigenous communities to receive substantial financial returns from carbon offset sales.¹⁴⁷ Notably, Mosaic's commitment to defer logging for 25 years across roughly 100,000 acres in Vancouver Island and Haida Gwaii is projected to yield as much as CA\$300 million in carbon revenues for Indigenous Peoples.¹⁴⁸ By centering Indigenous land stewardship and systems of environmental governance, these examples illustrate that conservation objectives, economic development, and emissions mitigation are not competing aims but can operate in a legally and practically synergistic manner.

By contrast, current carbon market structures reveal not only technical shortcomings but also political failures. Carbon credit schemes, as presently designed, are inadequate responses to the intertwined crises of climate change and Indigenous dispossession. While they may reduce emissions on paper, they often do so at the expense of cultural survival, territorial sovereignty, and climate justice. For the Maasai, as for many Indigenous Peoples worldwide, the costs of carbon markets are not adequately captured by monetary valuations or emissions metrics; they are borne instead through land dispossession, exclusion from decision-making, erosion of cultural practices, and the developed states' continued inability to confront their historical emissions in a manner consistent with principles of equity and justice.

A deeper concern lies in the Environmental Management (Control and Management of Carbon Trading) Regulations, which fail to meaningfully accommodate the rights, interests, and participation of Indigenous communities—many of whom live on lands targeted for carbon offset initiatives. Although the Regulations reference benefit-sharing and public participation,¹⁴⁹ they do not guarantee FPIC, nor do they recognize Indigenous governance systems as legally binding sources of authority. This gap is particularly troubling given Tanzania's refusal to legally recognize Indigenous Peoples, despite international human rights norms.

In practice, the absence of formal recognition can lead to exclusionary project implementation, with communities treated merely as stakeholders to be consulted rather than as rights-holders entitled to land, culture, and self-determination. As carbon projects expand under market-driven logics of efficiency and climate urgency, communities risk displacement,

147. Jennifer L., *Carbon Credits End the War Between Indigenous Peoples and Loggers*, CARBON CREDITS.COM (July 29, 2022), <https://carboncredits.com/carbon-credits-end-the-war-between-indigenous-peoples-and-loggers/>.

148. *Id.*

149. The Environmental Management Act, Regulations (2022) 42, §§ 34, 36, GOV'T NOTICE NO. 636 (Tanz.).

dispossession, or passive subjection to externally imposed environmental strategies.

To prevent such outcomes, Tanzania's regulatory framework must be interpreted—and amended where necessary—to ensure alignment with the State's obligations under international human rights law. This includes instruments such as the UNDRIP,¹⁵⁰ ILO Convention 169,¹⁵¹ the African Charter on Human and Peoples' Rights,¹⁵² the Paris Agreement,¹⁵³ and the International Covenant on Civil and Political Rights.¹⁵⁴ Collectively, these frameworks obligate States to respect, protect, and fulfill the collective rights of Indigenous and marginalized communities, particularly regarding land, self-determination, and participation in environmental decision-making.

Procedural safeguards must be institutionalized to guarantee Indigenous self-determination and FPIC, ensure equitable distribution of benefits from carbon projects, and facilitate culturally appropriate, continuous consultation throughout project lifecycles. Without such protections, carbon markets risk replicating historical patterns of exploitation, imposing social, economic, and ecological burdens on communities while privileging external interests.

A rights-based approach to carbon governance is not merely aspirational; it is a legal imperative under binding international law. Such an approach is essential to ensure that climate mitigation strategies do not perpetuate structural inequalities but instead advance climate justice, uphold the dignity and agency of Indigenous Peoples, and support their self-determination within a profoundly unequal global order.

IV. CONCLUSIONS AND RECOMMENDATIONS

In the context of the escalating global climate crisis, the relationship between state sovereignty and the Indigenous Peoples' right of self-determination must be fundamentally re-evaluated. While international legal frameworks have increasingly recognized the unique rights of Indigenous communities to determine their own affairs within existing nation-states, many governments—particularly in Africa—remain hesitant to adopt or implement

150. G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples, (Sept. 13, 2007).

151. Convention Concerning Indigenous and Tribal Peoples (No. 169), June 27, 1989, 1650 U.N.T.S. 383.

152. African Charter on Human and Peoples' Rights, June 27, 1981, 1520 U.N.T.S. 217.

153. Paris Agreement, *supra* note 18.

154. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

these standards domestically.¹⁵⁵ Tanzania exemplifies this dynamic.¹⁵⁶ The state's reluctance to formally recognize Indigenous Peoples in Tanzania¹⁵⁷ stems not only from a deep-seated misunderstanding of what self-determination entails, but also reflects deeper anxieties concerning national cohesion, territorial integrity, and the perceived political implications of acknowledging group-specific rights.

These tensions are evident in official governmental positions. For instance, Tanzanian authorities have historically limited formal recognition of "Indigenous Peoples" to only a few hunter-gatherer communities, excluding pastoralists such as the Maasai. In a cited statement, officials from the Ministry of Natural Resources and Tourism argued that only certain groups are considered Indigenous because they have "maintained their traditional lifestyle," implicitly excluding pastoralist communities despite their equally longstanding customary lifeways.¹⁵⁸

At the heart of this reluctance lies a persistent conflation of self-determination with state sovereignty. In many African contexts, assertions of Indigenous identity or demands for self-determination are not treated as claims for inclusion within the state, but are instead interpreted by governments as expressions of secessionist aspirations, ethnic fragmentation, or tribalism, thereby posing a perceived threat to the cohesion and territorial integrity of the nation-state. This position is not merely theoretical; it is reflected in official state statements in international forums.

For example, at the 24th session of the United Nations Permanent Forum on Indigenous Issues, the Government of Tanzania reiterated its longstanding position that:

There are no specific category of indigenous peoples in the United Republic of Tanzania as there are more than 120 tribes and ethnic groups, Maasai being one of them. It follows that in the quest to achieve national unity, Tanzanians do not identify themselves through ethnic groupings; rather, we belong to a nation which is rich in

155. See, e.g., G.A. Res. 61/295, *supra* note 150; Convention Concerning Indigenous and Tribal Peoples, *supra* note 151.

156. Constantine Akitanda, *Unity Amid Diversity: Tanzania's Approach to Indigenous Identity*, THE GUARDIAN (May 17, 2024), <https://ippmedia.co.tz/the-guardian/features/read/unity-amid-diversity-tanzanias-approach-to-indigenous-identity-2024-05-17-123828>.

157. *Id.*

158. President John Magufuli, *An Open Letter to the Tanzanian Government with Regard to its Response to the Oakland Institute's Report, Losing the Serengeti*, THE OAKLAND INST. (June 6, 2018), <https://www.oaklandinstitute.org/open-letter-tanzanian-government-response-losing-serengeti>.

cultural diversity and made up of persons from different backgrounds.¹⁵⁹

Such claims are viewed as destabilizing challenges to the post-colonial state, whose legitimacy has historically rested on transcending ethnic difference in favor of a singular national identity. This interpretive framework casts Indigenous demands not as lawful claims for inclusion and redress, but as existential threats to the unity of the state. As a result, governments often respond by denying the existence of Indigenous Peoples altogether or by reframing Indigenous claims as generic issues of poverty, vulnerability, or underdevelopment, thereby avoiding the legal and political implications associated with formal recognition.

This logic is reflected in official state discourse surrounding the relocation of Maasai pastoralists from the Ngorongoro Conservation Area in Tanzania. In defending the relocation policy, Deputy Minister Masanja characterized the initiative as a “humanitarian” intervention advanced under the leadership of President Samia Suluhu Hassan. She stated:

I strongly urge the people of Ngorongoro to ensure that they unite with their fellow citizens, including those of Msomera and leave with dignity. Living with wildlife is very dangerous. Children are unable to attend school because they are afraid of facing lions and other dangerous wild animals. We have said no; parents are better placed to know the pains of the child. Our beloved president is the one who initiated this, and we are supporting it.¹⁶⁰

The framing of relocation as humanitarian protection, rather than as a question of Indigenous land rights, displacement, and self-determination, illustrates how state narratives frequently recast structural dispossession in developmental and welfare-oriented terms.

This conflation, however, stands in sharp contrast to the conceptual distinctions established in international law. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted in 2007, affirms that Indigenous Peoples have the right to self-determination.¹⁶¹ Importantly,

159. United Republic of Tanzania, Statement at the 24th Session of the United Nations Permanent Forum on Indigenous Issues (Apr. 25, 2025); INT’L FUND FOR AGRIC. DEV. (IFAD), UNITED REPUBLIC OF TANZANIA: COUNTRY TECHNICAL NOTE ON INDIGENOUS PEOPLES’ ISSUES (2012).

160. NGORONGORO CONSERVATION AREA RESIDENTS, THE TRUTH, FALSITY AND MISMANAGEMENT: NEED FOR AN INTERDISCIPLINARY COMMUNITY-LED MULTIFUNCTIONAL LANDSCAPE MANAGEMENT MODEL IN NGORONGORO 114 (2022).

161. G.A. Res. 61/295, *supra* note 150, at arts. 3–5.

UNDRIP does not equate self-determination with a right to independence or external sovereignty. Rather, it articulates a model of internal self-determination that operates firmly within the territorial and constitutional framework of existing states. UNDRIP provides:

Article 3: Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5: Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.¹⁶²

Understood in this way, self-determination is not principally a claim of secession or external sovereignty, but rather a demand for meaningful participation, legal recognition, and institutional space within the state. It encompasses the right of Indigenous communities to maintain and develop their own governance systems, preserve their relationships with traditional lands and resources, and exercise decision-making authority over matters directly affecting their lives and futures.

Far from undermining sovereignty, internal self-determination invites a reconceptualization of sovereignty itself as relational and pluralistic, capable of accommodating multiple legal orders and overlapping forms of authority within a single political community. As S. James Anaya explains, Indigenous self-determination is facilitative of cultural survival, integrity, and identity; it functions not as an end in itself, but as a means through which Indigenous Peoples may sustain their collective existence, institutions, and ways of life.¹⁶³ James Anaya further observes:

Constitutive self-determination does not itself dictate the outcome of such procedures; but where they occur it

162. *Id.*

163. S. JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* 82 (Oxford Univ. Press 1996).

imposes requirements of participation and consent such that the end result in the political order can be said to reflect the collective will of the people, or peoples, concerned from self-determination's constitutive aspect, which applies to discrete episodes of institutional birth or change, ongoing self-determination continuously enjoins the form and functioning of the governing institutional order. In essence, ongoing self-determination requires a governing order under which individuals and groups are able to make meaningful choices in matters touching upon all spheres of life on a continuous basis.¹⁶⁴

Similarly, according to Professor Erica-Irene A. Daes, self-determination entails a process:

[T]hrough which indigenous peoples are able to join with all the other peoples that make up the State on mutually-agreed upon and just terms, after many years of isolation and exclusion. This process does not require the assimilation of individuals as citizens like all others, but the recognition and incorporation of distinct peoples in the fabric of the State, on agreed terms.¹⁶⁵

The United Nations Declaration on the Rights of Indigenous Peoples reinforces this understanding by protecting the rights of Indigenous communities to maintain traditional governance institutions, preserve their relationships with ancestral lands and resources, and participate meaningfully in decisions affecting their communities. In this sense, self-determination functions not only as a legal principle, but also as a practical remedy for the ongoing impacts of colonialism, dispossession, and exclusion.¹⁶⁶

Nevertheless, the legal precision of instruments such as UNDRIP does not always translate into political will at the domestic level. In Tanzania, as in other post-colonial African states, national unity remains heavily shaped by historical efforts to integrate ethnically diverse populations into a single, cohesive polity. In this context, recognizing Indigenous groups as distinct with special rights can be seen as politically destabilizing. Such recognition

164. *Id.*

165. *Id.* at 87 (citation omitted).

166. S. James Anaya, *A Contemporary Definition of the International Norm of Self-Determination*, 3 *TRANSNAT'L L. & CONTEMP. PROBS.* 131, 143–45 (1993).

raises concerns over whether other ethnic or marginalized communities might assert similar claims, or whether acknowledging distinct land rights could impede state-planned infrastructure or development projects. Furthermore, Indigenous communities such as the Maasai people reside in regions that extend across contemporary borders between Tanzania and Kenya. Their recognition might be perceived as reviving debates over colonial-era boundary lines, adding another layer of complexity to state territorial claims.

The resistance to recognition has profound consequences for Indigenous Peoples, particularly in an era where climate change threatens to erode the very environmental foundations upon which their cultural and economic systems depend. Indigenous communities are uniquely vulnerable to the effects of climate change due to their close and often spiritual connection to the land and natural resources.¹⁶⁷ Pastoral communities such as the Maasai depend on predictable grazing patterns and access to water sources, shifting weather patterns, prolonged droughts, and land degradation have therefore undermined their traditional livelihoods. Despite being on the frontlines of ecological degradation, Indigenous communities often receive minimal support or protection under domestic climate policy frameworks.

This lack of protection is partly rooted in the structure of international climate law itself. The dominant framework—represented by instruments like the (UNFCCC) and the Paris Agreement—generally refrains from attributing direct legal responsibility for climate damage to individual states.¹⁶⁸ And the global nature of climate change does not assign liability to specific states or actors, making it difficult for affected communities to demand redress through international legal mechanisms. However, some jurisdictions have begun to address this gap. In the United States, for example, New York and Vermont have recently enacted legislation aimed at

167. Eunice Olembo & Agnes Kabajuni, *Centering Indigenous Voices in the Fight for Climate Justice*, MINORITY RIGHTS GROUP INT’L IDRC BLOG (Aug. 20, 2025), <https://minorityrights.org/idrc-blog/>; Julia M. Blocher & Emmanuel O. Kileli Leyani, *In Relatively Peaceful Tanzania, Climate Change and Migration Can Spur Conflict*, MIGRATION POL’Y INST. (Nov. 13, 2020), <https://www.migrationpolicy.org/article/tanzania-climate-change-migration-conflict>.

168. The UNFCCC (1992) sets out broad obligations for states to reduce greenhouse gas emissions and cooperate in addressing climate change, yet it does not include provisions that impose specific legal liability on states for climate-related harms. Likewise, the Paris Agreement (2015) establishes a system of nationally determined contributions and a framework for reporting and transparency, but it similarly does not create direct state-level legal responsibility or enforceable mechanisms for compensation. *See, e.g.*, United Nations Framework Convention on Climate Change, *supra* note 24; Paris Agreement *supra* note 18. This position is also reflected in Decision 1/CP.21 accompanying the Paris Agreement, which expressly provides that Article 8 on loss and damage “does not involve or provide a basis for any liability or compensation.” *See* Conference of the Parties, Adoption of the Paris Agreement, ¶ 51, U.N. Doc. FCCC/CP/2015/10/Add.1 (Jan. 29, 2016).

holding fossil fuel companies financially responsible for their historical contributions to climate change.¹⁶⁹ These laws seek to recover costs associated with climate-related damages and adaptation measures by imposing financial liability on major greenhouse gas emitters for past emissions and their role in driving global warming.¹⁷⁰

Parallel developments are emerging at the international level. The International Court of Justice, the principal judicial organ of the United Nations,¹⁷¹ recently issued its first advisory opinion addressing states' obligations with respect to climate change under international law.¹⁷² The Court concluded that such obligations arise not only from climate treaties like the Paris Agreement, but also from human rights law and customary international law, and that a failure to act may expose countries to legal responsibility.¹⁷³ Similarly, the Inter-American Court of Human Rights has affirmed that the right to a healthy environment is a “fundamental right for the existence of humanity” and a prerequisite for the enjoyment of other rights, further concluding that conduct causing “irreversible damage to [life-sustaining] ecosystems” is strictly prohibited.¹⁷⁴

This emerging legal trend reflects a growing shift toward climate accountability at the international, national, and subnational levels. However, such legal and institutional developments remain largely absent across much of the Global South. Consequently, the responsibility for addressing climate-induced harms, including adaptation, mitigation, and resilience-building, continues to fall predominantly within the purview of national governments. While some progress has been made at the international level, notably through the establishment of the Green Climate Fund¹⁷⁵ and the Loss and Damage Fund,¹⁷⁶ the equitable distribution, implementation, and accessibility of these funds pose another challenge. In countries like Tanzania, where the legal identity and rights of Indigenous Peoples remain

169. William F. Tarantino, *A New Era of Climate Accountability: State Climate Superfund Laws Gain Momentum*, CLASS DISMISSED (Feb. 19, 2025), <https://classdismissed.mofo.com/topics/a-new-era-of-climate-accountability-state-climate-superfund-laws-gain-momentum>.

170. *Id.*

171. U.N. Charter art. 92 (describing the International Court of Justice as “the principal judicial organ of the United Nations”).

172. Press Release, Int'l Ct. of Just., Obligations of States in Respect of Climate Change, ICJ Press Release No. 2025/36, (July 23, 2025).

173. *Id.*

174. Climate Emergency & Human Rights, Advisory Opinion AO-32/25, Inter-Am. Ct. H.R. (ser. A), ¶¶ 272, 294 (May 29, 2025).

175. *About GCF*, GREEN CLIMATE FUND, <https://www.greenclimate.fund/about> (last visited Apr. 13, 2026).

176. *Fund for Responding to Loss and Damage*, U.N. CLIMATE CHANGE, <https://unfccc.int/loss-and-damage-fund-joint-interim-secretariat> (last visited Apr. 13, 2026).

contested or unrecognized.¹⁷⁷ These domestic responses often fail to incorporate or prioritize the specific needs, knowledge systems, and contributions of Indigenous communities to biodiversity conservation. Instead, national policies continue to subordinate Indigenous interests to broader economic or conservation agendas, perpetuating exclusion and environmental injustice.

Ironically, Indigenous Peoples are not merely vulnerable to climate change—they are also vital agents in combating it. Across the globe, Indigenous land stewardship practices have proven effective in preserving biodiversity, regulating carbon cycles, and enhancing ecosystem resilience.¹⁷⁸ In the case of the Maasai, the collective ownership and communal management of land support sustainable grazing practices that help maintain the ecological balance of savannah rangelands.¹⁷⁹ These traditional systems are based not on exploitation but on reciprocity with nature—models that are increasingly recognized as essential in the global transition to sustainable development. Yet these practices are frequently undermined by state-led conservation programs and commercial land acquisitions that exclude Indigenous participation and disregard customary land tenure systems.¹⁸⁰

Advancing climate justice in Africa necessitates a rigorous rethinking of legal and institutional frameworks to ensure equitable governance of land, resources, and climate policy for Indigenous Peoples. For Indigenous communities that elect to participate in carbon markets, the legitimacy of such engagements requires a fundamental reconfiguration of market architecture. New carbon trading mechanisms must be co-designed with Indigenous communities and grounded in their normative systems, cultural values, and governance institutions.¹⁸¹ Effective regulatory oversight is indispensable to prevent the commodification and standardization of Indigenous lands and to ensure that market actors, including purchasers, comply with principles articulated by Indigenous communities rather than imposing externally defined priorities. In the absence of these protections,

177. Akitanda, *supra* note 156.

178. Rye Karonhiowanen Barberstock, *Forest Stewardship: First Nations' Traditional Practices in Mitigating Wildfires and Carbon Emissions*, INDIGENOUS CLIMATE HUB (July 15, 2024), <https://indigenousclimatehub.ca/2024/07/forest-stewardship-first-nations-traditional-practices-in-mitigating-wildfires-and-carbon-emissions/>.

179. Ashoka Mukpo, *To Protect the Planet's Rangelands, Give Pastoralists a Boost*, UN Report Says, MONGABAY (July 5, 2024), <https://news.mongabay.com/2024/07/to-protect-the-planets-rangelands-give-pastoralists-a-boost-un-report-says/>.

180. UNIV. OF ARIZ., JAMES E. ROGERS COLL. OF L., GLOBAL INSIGHTS ON CONSERVATION, PASTORALISM AND SUSTAINABLE LAND STEWARDSHIP (2025).

181. Nicole Redvers et al., *Carbon Markets: A New Form of Colonialism for Indigenous Peoples?*, 9 LANCET PLANETARY HEALTH 421, 423 (2025).

carbon markets risk entrenching extractive practices under the guise of climate mitigation. Achieving justice in the context of climate change is not limited to equitable distribution of environmental harms and benefits (distributive justice),¹⁸² nor confined to procedural justice, which centers on the fairness of the process in environmental decision-making.¹⁸³ While these dimensions are crucial, they must rest on the foundation of recognition, which addresses the failure of some groups to respect or acknowledge difference, rather than insisting on sameness or strict equality.¹⁸⁴ Without formal legal and political recognition of Indigenous Peoples, including recognition of their identities, histories, and relationships to land, any effort at redistribution or procedural inclusion is likely to reproduce structural injustices. The lack of formal recognition perpetuates a system in which Indigenous communities are marginalized and regarded as peripheral stakeholders, rather than as legitimate rights-holders with inherent rights.

Recognition in this context goes beyond symbolic acknowledgment. It entails a legal and institutional commitment to protect Indigenous land rights, to involve Indigenous Peoples in climate governance through free, prior, and informed consent, and to ensure that their voices shape the design and implementation of policies that affect them. This multidimensional approach to justice—recognition, procedural, and distributive—is essential, not only for redressing historical harms, but also for building more inclusive and resilient systems capable of responding to future climate challenges.

Tanzania, therefore, stands at a critical juncture in its legal and policy development. The government has the opportunity to realign its national frameworks into full alignment with its international legal obligations to Indigenous Peoples. Achieving this alignment requires the comprehensive operationalization of free, prior, and informed consent; the safeguarding of Indigenous self-determination and secure land tenure; formal recognition of Indigenous knowledge systems; and acknowledgment of the human right to a clean, healthy, and sustainable environment. It also necessitates adherence to international instruments, including UNDRIP, ILO Convention No. 169, and jurisprudence of the African Commission on Human and Peoples' Rights. Doing so would not threaten state sovereignty; rather, it would enrich the democratic legitimacy of the state by embracing cultural and legal pluralism. Far from inviting division, recognition of Indigenous Peoples can help secure a more durable social contract, one that reflects the diversity of

182. Derek Bell & Jayne Carrick, *Procedural Environmental Justice*, in THE ROUTLEDGE HANDBOOK OF ENVIRONMENTAL JUSTICE (Ryan Holifield et al. ed., 2017).

183. *Id.*

184. Kyle Whyte, *The Recognition Paradigm of Environmental*, in THE ROUTLEDGE HANDBOOK OF ENVIRONMENTAL JUSTICE (Ryan Holifield et al. ed., 2017).

Tanzania's population and acknowledges the coexistence of multiple legal, cultural, and environmental systems.

Moreover, integrating Indigenous rights into climate governance aligns with global trends in environmental law and human rights. As the international community grapples with the need for climate justice, countries that meaningfully engage Indigenous communities will be better positioned to access global climate finance, foster inclusive development, and demonstrate compliance with evolving human rights norms. The recognition of Indigenous Peoples is thus not only a moral and legal imperative—it is a strategic necessity for any state that aspires to equitable and sustainable development.

Recognition, therefore, must form the cornerstone of any legitimate and effective climate policy. Without it, redistribution and procedural reform will remain hollow, failing to confront the structural inequalities that have long defined the Indigenous experience. All facets of justice—recognitional, procedural, and distributive—are not only interlinked, but mutually reinforcing, and must be pursued in concert. Only through a comprehensive engagement with the full spectrum of Indigenous claims, encompassing land rights, political voice, cultural dignity, and environmental self-determination, can Tanzania articulate a legally coherent, morally defensible, and environmentally sustainable path forward in the era of anthropogenic climate disruption.