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Aligning Ghana's Carbon Credit Regulation with International Climate Commitments: Legal Gaps and Institutional Imperatives

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ABSTRACT

Ghana's Environmental Protection Act 2025 (Act 1124) establishes the first statutory framework for carbon market participation in the country's history. This comment argues that the Act creates a formally adequate but structurally incomplete regime: it builds an international trading architecture on top of an unresolved property rights question generated by Ghana's pluralist land tenure system. Approximately eighty per cent of Ghana's land is held under customary tenure by stools and skins, yet the Act defers the definition of carbon rights and ownership to future regulations. This deferral is not a technical gap alone; it reflects a fundamental tension between the Article 6 market logic, which presupposes clear, state-authorised, tradeable entitlements, and the customary legal order in which land and resource rights are communally held and fiduciarily administered. Drawing on doctrinal analysis of Act 1124 and Ghana's updated Nationally Determined Contribution (2021), this comment contends that durable carbon market governance in Ghana requires not merely supplementary regulations but a coherent mediation of two normative orders. Legal pluralism provides the analytical lens for this diagnosis and for the reform framework the article proposes.

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INTRODUCTION

Ghana enacted the Environmental Protection Act 2025 (Act 1124) in January 2025, repealing Act 490 and establishing the first statutory framework for climate governance and carbon market participation.[1] The Article 6 rulebook was agreed at COP26 and implementation details resolved at COP29 in Baku in November 2024.[2] Ghana had signed a bilateral carbon credit agreement with Switzerland in 2020 and operated a Carbon Markets Office (CMO) since 2022 under a policy framework lacking statutory authority.[3] Act 1124 converts that policy architecture into law.

The answer, this comment argues, that Act 1124 is adequate in form but incomplete in substance. The Act establishes the institutional infrastructure that Article 6 requires a national designated authority, a carbon registry, a multi-stakeholder committee, a benefit-sharing fund but defers to future regulations the resolution of a prior question: who owns a carbon credit generated on land held under customary tenure? In Ghana, approximately eighty per cent of land is held under customary tenure administered by stools in the south and skins (the equivalent institution in northern Ghana, where the analogous custodial role is performed by paramount chiefs known as overlords who hold land in trust for their communities) in the north.[4] Stool land is communal property held in trust by the chief for present and future generations; the 1992 Constitution vests all stool lands in the appropriate stool.[5] Carbon sequestration is not a mineral and is not vested in the state by any existing provision.[6] The Act's silence on this point creates an indeterminate entitlement at the heart of a market system premised on certainty of title.

This indeterminacy is structurally generative. The Article 6 market architecture presupposes that the host state possesses sovereign authority to authorise ITMO transfers traceable to identifiable activities on its territory. Customary land law operates on a different premise: resource rights flow from communal membership, fiduciary obligation, and ancestral usage, not from sovereign grant. When forest carbon projects are developed on stool land, both normative orders make claims on the same

1 Environmental Protection Act 2025 (Act 1124) (Ghana) (hereinafter 'EPA 2025' or 'the Act').

2 At COP29 in Baku (November 2024), Parties adopted methodological standards for the Article 6.4 Sustainable Development Mechanism and resolved key outstanding items on corresponding adjustments under Article 6.2. The formal adoption occurred on the opening day of COP29 through the Parties taking note of the Supervisory Body's standards: see UNFCCC, 'Matters Relating to the Article 6.4 Mechanism', Decision FCCC/PA/CMA/2024/L.16 (CMA 6, Baku, 11 November 2024); Alan Macey and others, 'COP29 Outcomes' (Norton Rose Fulbright, 24 November 2024) <https://www.nortonrosefulbright.com/en/knowledge/publications/43d10ed2/cop29-outcomes>.

3 Carbon Market Office, EPA Ghana, 'Framework on International Carbon Market and Non-Market Approaches' (Government of Ghana, December 2022) (hereinafter 'CMO Framework 2022').

4 Kasim Kasanga and Nii Ashie Kotey, *Land Management in Ghana: Building on Tradition and Modernity* (International Institute for Environment and Development 2001) 5–7.

5 Constitution of the Republic of Ghana 1992, Art 267(1).

6 ibid Art 257(6).

resource. Legal pluralism the framework associated with Merry and Tamanaha provides the most precise vocabulary for describing this collision.[7]

Existing scholarship on Ghana's climate regulation has been predominantly policy-descriptive, focused on institutional architecture rather than juridical foundations.[8] The article's contribution is threefold: a critical doctrinal analysis of Act 1124's Part V against the Article 6 requirement set; a property-rights analysis of the carbon tenure problem under Ghana's pluralist land law; and a reform framework grounded in legal pluralism theory and comparative carbon governance.

1. The International Carbon Market Regime and Ghana's Regulatory Trajectory

The antecedents of the Article 6 market architecture lie in the Kyoto Protocol's Clean Development Mechanism (CDM), which established foundational principles additionality, permanence, and environmental integrity along with the first international carbon registry, internationally recognised MRV protocols, and host-country authorisation requirements.[9] The CDM's limitations are well documented: credits were certified from projects that would have proceeded regardless, permanence proved illusory for forestry projects, and governance was concentrated with limited community participation.[10] Most significantly, the CDM established no mechanism for allocating proceeds between project developers and host communities; benefits overwhelmingly flowed to developers and intermediaries.

The Paris Agreement Article 6 mechanisms respond to these deficiencies. Article 6.2 creates a decentralised framework for bilateral cooperative approaches, allowing two Parties to transfer internationally transferred mitigation outcomes (ITMOs) between national registries, subject to corresponding adjustment.[11] Article 6.4 creates a centralised Sustainable Development Mechanism governed by a Supervisory Body under CMA authority.[12] The Article 6 architecture conditions domestic framework design in ways that bear directly on Ghana's tenure problem: host Party authorisation is prerequisite for ITMO transfer; bilateral cooperation agreements must specify minimum quality criteria for ITMOs including community consent; and the host state's ability to authorise a credit presupposes that the state can establish who controls the

7 Sally Engle Merry, 'Legal Pluralism' (1988) 22 (5) Law and Society Review 869, 870.

8 See generally Adelaide Benneh Prempeh and Ernest Kofi Boateng, 'Carbon Credits: New Developments and Trends in Ghana' (Chambers and Partners 2023) <https://chambers.com/articles/carbon-credits-new-developments-and-trends-in-ghana-3>; Gideon Ofori Osabutey, 'Ghana's EPA Act 2025: Carbon Credits and Climate Regulation Implications' (Oaks Legal, 15 May 2025). Both focus on institutional architecture rather than the juridical foundations of the carbon rights question.

9 Michael Wara, 'Is the Global Carbon Market Working?' (2007) 445 Nature 595.

10 Richard G Newell, William A Pizer and Daniel Raimi, 'Carbon Markets 15 Years After Kyoto: Lessons Learned, New Challenges' (2013) 27 Journal of Economic Perspectives 123, 125–127.

11 Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UNTS 54113, Art 6.2.

12 ibid Art 6.4.

underlying mitigation activity.[13] Despite nearly 100 Article 6.2 bilateral agreements signed as of early 2025, only one ITMO transfer has been fully completed between Switzerland and Thailand in January 2024.[14] Ghana's engagement with international carbon markets predates Act 1124. The CMO published the Framework on International Carbon Market and Non-Market Approaches in December 2022[15] and received 70 project submissions for approval by December 2024.[16] Bilateral Article 6.2 arrangements were concluded with Switzerland, Sweden, Singapore, South Korea, and Liechtenstein, with 5.2 million tCO2e authorised for trade under three approved projects as of the 2025 State of the Nation Address.[17] This pre-legislative activity established operational competence but lacked legal authority; Act 1124 provides the statutory footing the 2022 Framework lacked, but inherits its unresolved questions on carbon rights and the registry-inventory interface.[18]

2. Land, Law and Carbon: The Customary Tenure Problem

Ghana's pluralist land tenure system is the structural backdrop against which Act 1124's carbon rights silence must be evaluated. Land in Ghana is held under one of two legal orders: statutory tenure derived from state authority, and customary tenure administered by traditional institutions. The overwhelming majority approximately eighty percent falls within the customary system, governed by stools in southern Ghana and skins in the north, both of which hold land in trust for their communities rather than as individual or state property.[19] Allodial title, the highest form of customary land holding, is vested in the stool or skin; below it, customary freehold and usufructuary rights vest in community members and indigenes. The 1992 Constitution confirms that stool lands vest in the appropriate stool on behalf of, and in trust for, its subjects.[20]

13 See generally Benito Müller and Axel Michaelowa, 'How to Operationalize Accounting under Article 6 Market Mechanisms of the Paris Agreement' (2019) 19(7) Climate Policy 812-819. On host Party authorisation, see also OECD, 'The Birth of an ITMO: Authorisation under Article 6 of the Paris Agreement' (2022) OECD Environment Working Papers No 195, 4–6.

14 Columbia University SIPA Center on Global Energy Policy, 'How to Fully Operationalize Article 6 of the Paris Agreement' (Columbia SIPA, 2025) noting that as of April 2025, over 90 Article 6.2 bilateral agreements had been signed, but only one ITMO transfer had been fully completed between Switzerland and Thailand in January 2024; see also Institute for Global Environmental Strategies, 'The Paris Agreement Article 6 Implementation Status Report' (A6IP 2025) reporting 99 bilateral agreements or arrangements formalised as of early 2025.

15 CMO Framework 2022 (n 3) 3–5.

16 CMO Framework 2022 (n 3) 9–10; see also Carbon Market Office, EPA Ghana, 2024 Annual Progress Report (CMO, March 2025), reporting 70 projects submitted to the CMO for approval as of December 2024.

17 President John Mahama, State of the Nation Address to Parliament (Ghana, February 2025); Carbon Market Office (n 16), confirming Government to Government arrangements with Switzerland, Sweden, Singapore, South Korea, and Liechtenstein.

18 EPA 2025 s 224 (repealing Act 490).

19 Kasim Kasanga and Nii Ashie Kotey (n 4) 5–7; see also Lorenzo Cotula, Camilla Toulmin and Ced Hesse, *Land Tenure and Administration in Africa: Lessons of Experience and Emerging Issues* (International Institute for Environment and Development 2004) noting that legal pluralism in African land tenure creates 'a lack of clear hierarchy or other form of co-ordination amongst different structures' that 'fosters tenure insecurity'.

20 Constitution of Ghana 1992, Art 267(1).

Article 257(6) vests every mineral in its natural state in the Republic, held in trust by the President. Carbon sequestered in forests, however, is not a mineral; it is a measurable reduction in atmospheric greenhouse gas generated by a biological process occurring on land. Its juridical character under Ghanaian law is undefined: the Land Act 2020 does not address carbon rights, and the Forestry Commission Act 1999's conferral of economic management rights over forest resources is analytically distinct from ownership of sequestered carbon.[21] Act 1124 acknowledges this gap explicitly by reserving to regulations the task of defining 'carbon rights and ownership'.[22]

This reservation is more consequential than it appears. Unruh identifies legal pluralism as one of five primary tenure obstacles to carbon sequestration in Africa, noting that approaches assuming a single land law for an entire national population are in tension with African legal reality.[23] Carbon credits on stool land may belong, in distinct and potentially incompatible senses, to the project developer, to the stool as allodial titleholder, or to the state as the entity authorising the ITMO transfer. All three claims are legally cognisable; none is clearly superior. This three-way indeterminacy is precisely the transaction-cost environment that North identified as inimical to market formation.[24] In the DRC, absence of harmonisation between statutory and customary tenure generated institutional shopping that systematically undermined REDD+ legitimacy.[25] In Tanzania's Kigoma pilot, contested customary access rights directly compromised project integrity.[26]

The carbon rights question is inseparable from the Free, Prior and Informed Consent (FPIC) question. FPIC is a procedural right requiring that communities be fully informed before any project affecting their territories proceeds, that consent be sought in advance and without coercion, and that communities may withhold or withdraw consent. The principle is recognised under both the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Convention on Biological Diversity (CBD), whose guidelines on engagement with indigenous and local communities including the Akwé: Kon Guidelines (2004) and the Aichi targets on traditional knowledge directly condition the design of forest and biodiversity-related projects. Forest carbon projects on stool land will affect communities' access to forest resources, income from alternative land

21 Forestry Commission Act 1999 (Act 571) (Ghana) s 2(1); and *Ghana Cocoa Forest REDD+ Emissions Reduction Programme, Resettlement Policy Framework* (World Bank 2018) 25 (noting that 'the State has the economic management rights to all of the forest and wildlife resources, which are to be held in trust for the landowners').

22 EPA 2025 s 159(f).

23 Jon D Unruh, 'Carbon Sequestration in Africa: The Land Tenure Problem' (2008) 18(4) Global Environmental Change 700, 701–702.

24 Douglass C North, *Institutions, Institutional Change and Economic Performance* (Cambridge University Press 1990) 3–5.

25 Raymond Achu Samndong and Arild Vatn, 'Competing Tenures: Implications for REDD+ in the Democratic Republic of Congo' (2018) 9(11) Forests 662, demonstrating that the lack of harmonisation between statutory and customary tenure in the DRC created opportunities for 'institutional shopping' by powerful actors, undermining the legitimacy of REDD+ implementation.

26 Emma Jane Lord, 'Fragmenting Forest Governance: Land Tenure and the REDD+ Paradox in Kigoma Pilot Project, Tanzania' (2025) 116 Political Geography 103234.

uses, and exposure to displacement risk. UNDRIP requires FPIC from communities whose territories are affected by projects of this kind.[27] Ghana voted in favour of UNDRIP and the NCCP 2013 acknowledges FPIC obligations.[28] However, UNDRIP is not directly incorporated into domestic law, and Act 1124 contains no FPIC provision and no reference to the CBD framework, which also grounds prior informed consent requirements in the context of biodiversity-related resource management. The CBD's Akwé: Kon Voluntary Guidelines (2004) adopted under the Convention to guide impact assessments for projects affecting indigenous and local communities are directly relevant to forest carbon activities, yet neither instrument is acknowledged anywhere in the Act. Existing mechanisms the Land Act 2020's consultation requirements, District Assemblies, Customary Land Secretariats were not designed for carbon market projects and confer no mandate in relation to carbon credits.[29]

An adequate FPIC mechanism for carbon market projects requires, at minimum: accessible information disclosure in local languages; a standardised consent process involving stool authorities, family heads, women's groups, and youth; a benefit-sharing agreement with prescribed minimum allocations; and a community-accessible grievance mechanism with power to suspend or revoke project authorisation. These requirements correspond closely to the standards set out in the Akwé: Kon Voluntary Guidelines adopted under the CBD, which, while non-binding, provide the most directly applicable international framework for cultural, environmental, and social impact assessments of projects affecting indigenous and local communities, and have been endorsed as applicable to forest carbon activities by multiple COP decisions. None of these elements currently exists in applicable form. The NCCP 2013 identifies the problem but does not resolve it;[30] Act 1124 does not resolve it either, expressing the Mitigation Fund's benefit-sharing objectives at a level of generality that provides no enforceable entitlement to any affected community.[31] Switzerland's bilateral arrangements typically require verifiable community consent processes, meaning Ghana's domestic FPIC gap creates a compliance risk at the bilateral level that transforms it from a domestic governance concern into a risk to the bilateral relationships on which carbon market revenues depend.

3. Ghana's Nationally Determined Contribution and the Domestic Carbon Market Obligation

Ghana's updated NDC (2021) targets an unconditional reduction of 64 MtCO2e and a conditional further reduction of 79 MtCO2e dependent on international climate finance, to be achieved through 34 mitigation programmes of action across ten

27 UN Declaration on the Rights of Indigenous Peoples, UN General Assembly Resolution 61/295, 13 September 2007, UN Doc. A/RES/61/295, arts 10, 19, 32.

28 Ghana National Climate Change Policy (Ministry of Environment, Science, Technology and Innovation 2013) (hereinafter 'NCCP 2013') 34.

29 Administration of Stool Lands Act 1994 (Act 481) (Ghana) ss 3, 8. Revenue from stool lands is distributed as follows: 25% to the stool for its maintenance; 20% to the traditional council; and 55% to the District Assembly.

30 NCCP 2013 (n 28) 34.

31 EPA 2025 ss 153–158.

sectors.[32] The NDC expressly contemplates Article 6.2 ITMOs as a structural financing component, not an optional complement to domestic ambition.[33] The conditional targets can only be achieved through international cooperative mechanisms, meaning Act 1124 is not a discretionary regulatory innovation but the legal expression of a treaty commitment.

The NDC assumes that carbon registry data will feed into greenhouse gas inventory reporting in a coherent and auditable way.[34] Act 1124 does not establish the interface between the Ghana Carbon Registry and the national inventory system. Corresponding adjustment under Article 6.2 requires that ITMO transfers be reflected in national inventory reports submitted to the UNFCCC; without a clear technical and legal linkage, corresponding adjustments cannot be computed reliably. COP29's clarification of authorisation content requirements confirms that this interface must be legally binding.[35] The absence of a statutory mechanism compelling the EPA to maintain this pipeline is a treaty-performance risk, not merely a technical deficiency.

The NDC's reliance on carbon revenues to finance conditional targets creates a political economy risk Act 1124 does not address. The Act creates a Mitigation Fund financed in part by Corresponding Adjustment Fees,[36] but no provision requires insulation from general fiscal pressures or independent audit against project performance. The corresponding adjustment mechanism also creates a selection dynamic: since the host country must debit its NDC account for every ITMO transferred, there is an incentive to transfer higher-cost mitigation activities and retain lower-cost activities for domestic NDC fulfilment.[37] The regulations must address this explicitly.

4. Assessment of the Environmental Protection Act 2025

Part V of Act 1124 'Carbon Market', sections 146–159 creates institutional infrastructure that is broadly consistent with international best practice. The EPA is designated as the national designated authority for compliance and voluntary carbon markets.[38] The Ghana Carbon Registry is given a statutory mandate as a digital platform for registering mitigation activities, tracking ITMOs, and maintaining publicly accessible records.[39] The Carbon Market Committee (CMC) is constituted with broad multi-stakeholder representation and given responsibility for approving mitigation

32 Ghana, Updated Nationally Determined Contribution under the Paris Agreement (2021) (transmitted to UNFCCC Secretariat 2021) (hereinafter 'Updated NDC 2021').

33 Updated NDC 2021 (n 32) 19–20.

34 ibid 19.

35 OECD, 'The Birth of an ITMO' (n 13) 8–10, noting that the authorisation content requirements clarified at COP29 include the first-transfer condition, the purpose of authorisation, and the host country's commitment to apply corresponding adjustments.

36 EPA 2025 s 153.

37 Columbia SIPA (n 14), noting that corresponding adjustments 'incentivise host countries to keep low-cost mitigation for themselves and offer higher-cost mitigation to buyers', creating a systematic selection dynamic that may bias the available project pipeline towards lower-value activities.

38 EPA 2025 s 148(a)–(b).

39 ibid s 150(1).

activity methodologies and advising on compliance with international standards.[40] The Corresponding Adjustment Fee mechanism, which finances the Mitigation Fund from the opportunity cost of ITMO transfers, is an innovative approach to ensuring that host country benefit is not exhausted by bilateral transactions.[41]

Against these achievements, the structural deficiencies are significant. The most fundamental is the deferral of carbon rights definition to regulations under section 159(f).[42] A market for carbon credits requires a prior market for carbon rights: the entitlement to generate, hold, transfer, and retire credits must be traceable to a legal right that the holder can enforce against third parties. Without that entitlement, credits are de facto government authorisations, tradeable only at the grace of the state. In a legal system where eighty per cent of land is held under customary tenure and multiple actors have cognisable claims on the sequestration occurring on that land, the failure to define the entitlement structure before establishing the market mechanism is analytically backwards.

The second major deficiency is the absence of detailed MRV procedures. Section 159(e) reserves operational procedures for the registry and carbon markets to regulations.[43] The corresponding adjustment obligation under Article 6.2 requires MRV to meet internationally agreed standards, and if enabling regulations are not enacted within twelve to eighteen months of the Act's commencement, the project pipeline built under the 2022 Framework will face increasing legal uncertainty. Third, the Act contains no dedicated environmental and social safeguards framework: no FPIC requirement, no environmental impact assessment requirement specific to carbon projects, and no prescribed minimum benefit-sharing allocation, leaving the general environmental appeals procedure under section 74 as the sole recourse for community disputes.[44]

On benefit-sharing, the contrast with Kenya's Climate Change (Carbon Markets) Regulations 2024 is instructive. Kenya's regulations set minimum annual social contributions at 40 per cent of prior-year aggregate earnings for land-based projects and 25 per cent for non-land-based projects, delivered through Community Development Agreements recorded in the National Carbon Registry.[45] Ghana's Act sets no equivalent minimum; the Mitigation Fund's benefit-sharing objectives are stated at a level of generality that provides no enforceable entitlement to any affected community.[46]

A proposed Carbon Market Division within the EPA is functionally distinct from the existing CMC. The CMC is an oversight and advisory body: it approves methodologies, reviews procedures, and advises on international standards.[47] It

40 ibid s 151(1).

41 ibid s 155(2). On Overall Mitigation in Global Emissions (OMGE), see Paris Agreement Art 6.4(d).

42 EPA 2025 s 159(f).

43 EPA 2025 s 159(e)–(f).

44 ibid s 74.

45 Climate Change (Carbon Markets) Regulations 2024, issued under Climate Change Act 2016 and Climate Change (Amendment) Act 2023 (Kenya), reg 14. The regulations set minimum annual social contributions at 40% of prior-year aggregate earnings (net of costs) for land-based projects and 25% for non-land-based projects.

46 ibid s 155(1)(a)–(d).

47 ibid s 152(1)(a)–(e).

has no operational authority for project registration, credit issuance, or MRV compliance review. A dedicated Carbon Market Division would be a permanent technical directorate with authority to issue, suspend, and revoke registrations; conduct compliance reviews; initiate enforcement action; and interface with bilateral counterparties on a continuing basis. USAID research confirms that communities lacking legally enforceable benefit entitlements are significantly more likely to defect from project-required land-use restrictions, creating permanence risk that compounds over longer project timelines.[48]

5. Legal Pluralism as Analytical Framework

Legal pluralism, as Merry defines it, is a situation in which two or more legal systems coexist in the same social field; in its strong form, as Tamanaha elaborates, plural normative orders operate independently of state recognition.[49] Ghana's carbon governance challenge exhibits both forms. At the weak-pluralism level, the Constitution recognises both statutory and customary law: Article 267 vests stool lands in the stool while Article 257(6) vests minerals in the President, and these provisions coexist without a rule of priority for carbon sequestration rights, which fits neither provision cleanly.[50] At the strong-pluralism level, customary practices governing community consent, resource allocation, and dispute resolution operate independently of statutory processes.

This analytical lens changes the diagnosis of Act 1124's carbon rights gap. The gap is not merely a missing regulatory provision; it is the consequence of a prior failure to determine how two normative orders the customary land order and the Article 6 market order will relate to each other in the specific domain of carbon sequestration on communally held land. That determination requires a choice among at least three approaches. Assimilation would vest carbon rights in the state as Kenya has effectively done, maximising regulatory clarity but risking replication of the colonial expropriation that characterised Ghana's minerals regime. Accommodation would recognise customary rights explicitly and create mandatory benefit-sharing mechanisms, preserving community entitlements at some transaction cost. Pluralist co-governance would establish a formal interface between customary governance institutions and statutory carbon market bodies potentially the most legitimate approach but demanding institutional capacity that may be uneven across Ghana's diverse chieftaincy structures.[51]

The regulations under section 159(f) must choose among these approaches

48 USAID, 'Land Tenure and REDD+' (USAID Issue Brief, 2012) 3, noting that secure property rights, sustained local engagement, and dedicated dispute resolution are the 'enabling conditions' for carbon projects on customary land to produce durable mitigation outcomes.

49 Merry (n 7) 870; Brian Z Tamanaha, 'Understanding Legal Pluralism: Past to Present, Local to Global' (2007) 29 Sydney Law Review 375, 390–392.

50 Constitution of Ghana 1992 Art 267(1); Janine M Ubink, *In the Land of the Chiefs: Customary Law, Land Conflicts, and the Role of the State in Peri-Urban Ghana* (Leiden University Press 2008).

51 Alan Boyle and Catherine Redgwell, *Birnie, Boyle, and Redgwell's International Law and the Environment* (4th edn, Oxford University Press 2021) ch 8.

on the basis of a principled analysis of Ghana's constitutional commitments, NDC obligations, and community rights framework. Unruh's conclusion that carbon sequestration governance that assumes a single land law for an entire national population is unrealistic in Africa[52] is reinforced by North's institutional economics: informal norms constrain formal institutions even when not acknowledged by them, and market institutions that ignore these norms will generate transaction costs and distributional conflicts that undermine their objectives.[53]

CONCLUSION

Ghana's Environmental Protection Act 2025 is a genuine advance in the country's climate law. It converts an administratively created carbon market framework into a statute, establishes the Ghana Carbon Registry on a legislative footing, and creates an institutional architecture broadly consistent with international best practice.

The Act's principal deficiency, however, is not peripheral. It builds a carbon market on top of an unresolved property rights question about who owns the carbon sequestered on customary land. In a country where eighty per cent of land is held under customary tenure, this omission is constitutive of the framework's vulnerability. The Act defers to regulations the definition of carbon rights and ownership, operational MRV procedures, and environmental and social safeguards, leaving the framework operationally incomplete in precisely the areas that determine whether ITMO transfers will meet the environmental integrity and social justice standards the international market requires.

The reform agenda has three tiers. The first and most urgent is legislative: the regulations under section 159(f) must establish a carbon rights framework determining on the basis of an explicit constitutional and policy analysis the relationship between state authorisation authority, stool allodial title, and community benefit entitlement. The Kenya model of statutory carbon vesting with mandatory Community Development Agreements and prescribed minimum benefit-sharing ratios provides one well-tested approach; accommodation and pluralist co-governance offer alternatives. What Ghana cannot sustain is the current silence: legal comparative literature and the implementation experience of analogous REDD+ frameworks in Tanzania and the DRC confirm that silence on carbon rights produces institutional shopping, distributional conflict, and permanence risk.

The second tier concerns FPIC. The regulations must establish standardised FPIC procedures tailored to the specific features of carbon market projects, grounded in existing customary governance institutions, and enforceable through dedicated grievance mechanisms rather than the general environmental appeals procedure.

The third tier is institutional. The CMO's current functions project registration, MRV compliance review, ITMO accounting, bilateral counterparty liaison demand a permanent, technically staffed, legally

52 Unruh (n 23) 703, arguing that in Africa, 'improved governance' approaches to carbon sequestration that assume a single land law for an entire national population are unrealistic, and that engagement with legal pluralism is necessary for effective implementation.

53 North (n 24) 54–60.

empowered operational arm that the existing CMC structure does not provide. A Carbon Market Division, staffed with specialists in carbon accounting, environmental law, and community engagement, is the institutional prerequisite for credible implementation.

As the first Sub-Saharan African country to establish a statutory carbon market framework aligned with Article 6.2, Ghana is setting a regional template. The analytical framework developed in this article treating the carbon rights gap as a legal pluralism problem rather than a regulatory deficiency offers a generalised diagnostic tool for that broader challenge. Where two normative orders make competing claims on the same resource, the question for law reform is not which set of regulations to enact but which relationship between the orders to establish.

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