Carbon Market Watch's submission to the public consultation on the draft UNIDROIT principles on the legal nature of verified carbon credits

Introduction

Carbon Market Watch welcomes the opportunity to submit input to UNIDROIT's draft principles on the legal nature of verified carbon credits, open for public consultation from 13 July to 21 September 2026. The comments below cover selected elements in the draft principles.

Principle 4

Applicable Law: Disadvantaging indigenous peoples and local communities

Principle 4 (2)(a)

Paragraph (1) under Principle 4 sets forth the proprietary matters that are governed by applicable law including, but not limited to, "creation of a VCC as the subject of proprietary rights" and "whether a person has a proprietary right in a VCC and the content of such right". Paragraph (2) details exclusions, covering but not limited to, "(a) matters related to the carrying out of any underlying carbon mitigation project or to rights and interests in the land and natural resources".

Principle 4(2)(a) therefore risks disconnecting the proprietary rights connected to a VCC from matters relating to the underlying carbon credit project areas where Indigenous Peoples or local communities might be involved (communities who are often already in vulnerable and disadvantaged positions when it comes to crediting projects[1]). Such a disconnect between the rights and interests of on-the-ground communities connected to the land and ownership of a carbon credit generated by a project on the same piece of land seems problematic. This could lead to a scenario where matters concerning the aforementioned communities on the ground are treated only as secondary or voluntary afterthoughts.

While it is understood that the scope of these UNIDROIT principles are limited to private law issues covering the proprietary status of VCCs themselves, a complete exclusion of connected on-the-ground matters could have implications for the proprietary rights of a VCC. For example, while free, prior, and informed consent (FPIC) is usually required for crediting projects, there may be subsequent disputes about whether indigenous peoples and local communities actually consented. If it is found that there was a lack of FPIC or a 'land grab' on the part of the developers – and this conduct is deemed illegal under the domestic law of the host State – this would presumably have implications for the proprietary status of the VCCs generated from that project. While UNIDROIT Principle 13 addresses illegality, its effects are left to other applicable domestic law. The problem is that a finding of illegality under relevant domestic law – in the case of a lack of FPIC, for example – may have legal consequences for property rights connected to a VCC, so a blanket exclusion in Principle 4 is simply too broad for such an interconnected issue.

Therefore, the rights of these communities to the land and natural resources must – at the very least – be taken into consideration where they have legal consequences for whether and how a particular VCC (that has been generated from a project on a piece of land tied to a community) can legally exist as a piece of property.

We therefore recommend deleting Principle 4 (2)(a). If this is not possible, the commentary section should clearly explain the logic behind this exclusion in greater detail and clarify how Principle 4(2)(a) is intended to operate where an illegality arising from the underlying mitigation project has legal consequences for a proprietary issue under Principle 4. In addition, the commentary should also flag to the audience (i.e.

[1] See, for example: "*Trading carbon credits for human rights: Does Article 6.4 of the Paris Agreement protect Indigenous Peoples and local communities?*" (Carbon Market Watch and Land Matrix, May 2026); "*From land grabbers to carbon cowboys: a new scramble for community lands takes off*" (Grain, September 2024); and "*Carbon markets: a new form of colonialism for Indigenous Peoples*?" (The Lancet Planetary Health, May 2025).

nation states) that the rights of indigenous peoples and local communities must always be accounted for and upheld before adopting these principles into domestic law.

Applicable Law: Concerns around the flexibility given to registries

Principle 4(3)
This principle allows the registry operator to choose the applicable law to govern proprietary matters related to its VCCs. There are four choices: the law of the State of incorporation; the statutory seat; the central place of administration; or the State from which the VCC registry is maintained. In other words, it appears that there must be a close connection between the registry operator and the selected applicable law. The complete lack of uniformity of applicable law is a challenge here, since VCCs in a given registry are generated from projects based in many different host countries. This explains – to an extent – why the draft proposes to use the registry as the connecting factor.

We have, however, concerns with the flexibility granted to a registry operator to determine its own governing law.

First, many registries, namely the biggest ones, are incorporated or based in the "Global North", so limiting applicable law to connections to the registry could exclude the laws of "Global South" countries that host VCC projects from governing proprietary matters related to VCCs generated from projects in their territories. This can result in a disconnect between the law governing the mitigation project and the law governing proprietary rights in the VCC generated by that project.

Second, even if it is reasonable to limit applicable law to connections to a particular registry, there is still a risk of forum shopping, as the registry operator has an incentive to select the jurisdiction with the least stringent rules. Furthermore, how difficult is it to, for example, establish a central place of administration 4 (3)(c) simply for this purpose?

We do not recommend giving the registry operator a choice among the four connecting factors, if UNIDROIT ultimately determines that the applicable law must be connected to a particular registry. Instead, unless there are clearly outlined reasons, the applicable law should be determined based on which of the four connecting factors has the closest connection to the registry with clear, third-party verified, justification. This should require the registry operator to investigate these connections and clearly justify its choice in, for example, a public disclosure as well as to the relevant regulator who could in turn verify and approve such a justification.

Principle 8

Retirement: Double claiming consideration

Since principles on proprietary rights should not exist in a vacuum, a link to other considerations – particularly related to the demand side of the carbon market – should be made more explicit in some cases. For example, with regard to the link between the extinguishment of proprietary rights upon retirement of a VCC and the issue of double claiming[2].

Principle 8 appears to assume that there is only one registered holder of a VCC and when a VCC is retired by this registered holder, it is no longer capable of being the subject of a proprietary right. The principles and commentary should make this point more explicit and flag to States (and other relevant market actors, such as registries and standards) that the risk of double claiming presents a significant problem regarding proprietary right: once a VCC has been retired by its authorised holder and the proprietary right has extinguished, other parties may nevertheless make a climate claim based on the climate benefit represented by that same retired VCC, even though they may not have been the authorised holder.

Principle 8's commentary should therefore encourage States and other stakeholders to ensure the risk of double claiming does not materialise in order to prevent multiple claims based on the retired VCCs. An additional principle, and related commentary, should thus be developed clarifying that no double claiming shall be permitted, for instance such that: any VCC used to satisfy a compliance obligation,[3] and/or to offset any emissions, and/or to otherwise represent lower emissions on behalf of the buying entity (e.g. in marketing, sustainability reporting), shall not be double claimed, meaning that the VCC has been subject to the application of corresponding adjustments as

[2] The "Carbon Credit Quality Initiative" or "CCQI" defines double claiming as "*A situation in which the same emission reduction or removal is claimed by two different entities towards achieving mitigation targets or goals: once by the country or jurisdiction where the emission reduction or removal occurs by reporting lower emissions or higher removals when tracking progress and demonstrating achievement of its mitigation target or goal, and once by the entity using the carbon credit*".

[3] For example, when carbon credits are integrated in a carbon tax or emissions trading system, or form part of other regulatory instruments like the Carbon Offsetting and Reduction Scheme for International Aviation.

regulated under Article 6 of the Paris Agreement in Decision 2/CMA.3, Decision 6/CMA.4, Decision 4/CMA.6, and Decision 19/CMA.7.

Principle 11

Overissuance: Confusing terminology regarding the definition of overissuance

The principle on overissuance – Principle 11 – only applies to instances where there is no "deliberate wrongdoing". Such wrongdoing is instead covered in Principle 10 under "revocation".

While it is reasonable to distinguish deliberate wrongdoing from negligence or error in this context since the applicable legal consequences may differ, "overissuance" should not be defined so narrowly. There have been many cases of overissuance occurring as a result of deliberate wrongdoing, for example, recently when C-Quest Capital made material misrepresentations in order to over-issue carbon credits. A small amendment to the terminology and organisation of the principles would therefore increase clarity.

One option is to have Principle 11 cover *both* (1) overissuance as a result of deliberate wrongdoing and (2) overissuance as a result of negligence or error. This reorganisation could ensure that the term "overissuance" is understood more broadly because both categories would fall under the umbrella concept of "overissuance", while the legal consequences could be distinguished depending on the circumstances.

Another option is to amend the title of Principle 11 from simply "overissuance" – which gives the reader the first impression that all categories of overissuance are included in this Principle – to "overissuance absent deliberate wrongdoing [...]". This change could allow readers to understand – at first glance – that Principle 11 is not intended to broadly cover every category of overissuance. In this case, there should nonetheless be a separate principle covering overissuance in cases of deliberate wrongdoing.

Overissuance: Considerable leeway afforded to project developers where VCCs have not achieved the intended climate impacts

Principle 11 (2)

Principle 11 (2) states that “a VCC is not cancelled where overissuance is demonstrated”. This means that even in the event that a VCC fails to represent one tonne of CO_2 reduced/removed, there is still no change in the legal status of the VCC. This appears to be the case in all circumstances except deliberate wrongdoing which is covered in Article 10 “revocation”. Such circumstances may include “carelessness or from wholly innocent error”, but this is simply listed as an example. Principle 11 does not distinguish between, negligence, innocent mistakes, or deliberate efforts to over-issue by taking advantage of considerable methodological flexibility as provided for by various standards. As a result, project developers are given a substantial amount of latitude – with little accountability – at least with regard to VCC proprietary rights.

The commentary section (11.11) notes that States may choose to not adopt 11 (2) since it “departs from the general principles of intangible personal property [where] a defect in the substantive conditions for the existence of an asset at the time of its creation renders the asset void from the outset”. The commentary explains the non-cancellation of VCCs in this context as an intentional departure (“doctrinal anomaly”) from standard private law rules that was made due to a policy decision to preserve market stability. Carbon crediting bodies are then expected to deal with the reduction of value of the flawed VCCs.

The drafters note that States may be uncomfortable with this departure and allows them to decline 11 (2) and “provide instead that an overissuance leads to cancellation of the VCC, with the same retrospective effect as revocation under Principle 10”. Having already prioritised market stability and certainty over, e.g. environmental integrity, the drafters then offer various approaches to mitigate the supposed damage including time bar mitigation; transfer-ripening mitigation; combined operation of the two mitigations and allocation where cancellation affects some VCCs only.

We recommend that UNIDROIT delete Principle 11 (2) and instead recommend cancellation of the proprietary rights of the credits in question. If VCCs are issued, but ultimately fall short of their intended mitigation outcome, the end result is the same: the VCCs did not correspond to the amount of CO_2 actually reduced or removed, and there is a lack of environmental integrity. Such flawed VCCs should not remain legally valid as property and should be cancelled regardless of whether the shortfall resulted from deliberate wrongdoing, negligence, carelessness, or another reason. While the consequences following cancellation may depend on the reason for overissuance (and may be determined on a case-by-case basis), the underlying rule should first and foremost be cancellation. If UNIDROIT decides to keep Principle 11 (2), we recommend that States ignore it and proceed with cancellation of the problematic VCCs.

This is separate from sanctioning those at fault. The fact is that the VCCs do not represent what they are supposed to, so they should not remain legally valid. The first priority should be cancellation of any VCCs that represent an unachieved mitigation outcome to maintain a certain level of environmental integrity in the market. Fault must then be subsequently assessed and legal consequences must be determined, but this is separate from the proprietary legal status of the VCCs themselves.

Additionally, the stability of carbon markets is also heavily dependent on the safeguards in place to address credit quality concerns. Non-cancellation of defective VCCs could directly impact overall market credibility and stability by potentially reducing trust, leading to a decrease in overall market demand and ultimately instability, which is what the drafters are trying to avoid.

Overissuance: Lack of stronger language addressing the potential legal consequences for market participants on the demand side of the market.

Principle 11 (3)

Principle 11 (3) limits the scope to proprietary status only while maintaining that this principle does not affect other arrangements between market participants nor does it prevent "any consequence that may attach to overissuance under [regulatory or] other law". This is an important element to include, but the language arguably does not go far enough. Limiting the scope to proprietary status is understandable considering that this is a property-law based framework, but issues cannot be considered in a vacuum. Since it is meant to serve as guidance to States, there should be stronger and more specific language addressing the legal consequences for market participants on the demand side of the market.

Non-cancellation of flawed or defective credits also raises specific concerns for participants on the demand side of the market. For example, Principle 11 states that if there is no wrongdoing, then there is no proprietary cancellation of the VCCs and they remain valid in this regard. If Company X bought these credits and is planning (or is in the process of) retiring them to underpin a climate claim, then – absent a truly effective agreement or solution to correct the overissuance – the VCCs could still theoretically be used to underpin Company X's claim. Such a claim may then be considered as false and misleading for being based on low-integrity credits and can be legally challenged on those grounds under consumer protection regulations.

We thus recommend amending the commentary to 11 (3) to include a more direct reference to the potential legal consequences for the demand side of the market. For example, it could clarify that such legal consequences could include, but are not limited to, consequences under a State's consumer protection legislation relating to false or misleading climate claims that are underpinned by VCCs that do not accurately represent one tonne of CO_2e.

Principle 20

Secured transactions: general

We have some general concerns surrounding security rights attached to VCCs. Principle 20 indicates that VCCs can be used as collateral in secured transactions. However, for something to serve as collateral, it would imply that it should have a reasonably stable and verifiable value.

However, there are many quality and integrity concerns that can affect the value of a credit, with for instance a peer-reviewed meta study recently finding that out of 972 million carbon credits, less than 16% constituted real emission reductions. A VCC's value can plummet if it is found to be of low quality, or even if the wider market takes a hit irrespective of the quality of the actual VCC. For instance, following a series of scandals and well-documented quality problems in the voluntary carbon market in the early 2020s, the market value collapsed amid dramatic fluctuations in prices and transactions. There appear to be considerable risks involving the use of VCCs as collateral, including if such collateral effectively allows VCCs to remain in circulation as a financial instrument, potentially for speculative purposes, over long periods of time. Arguably, this could also incentivise overissuance of credits purely for their collateral and financial value.

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