

IMPLICATIONS OF CARBON MARKETS ON INDIGENOUS CUSTOMARY TERRITORIES IN MALAYSIA

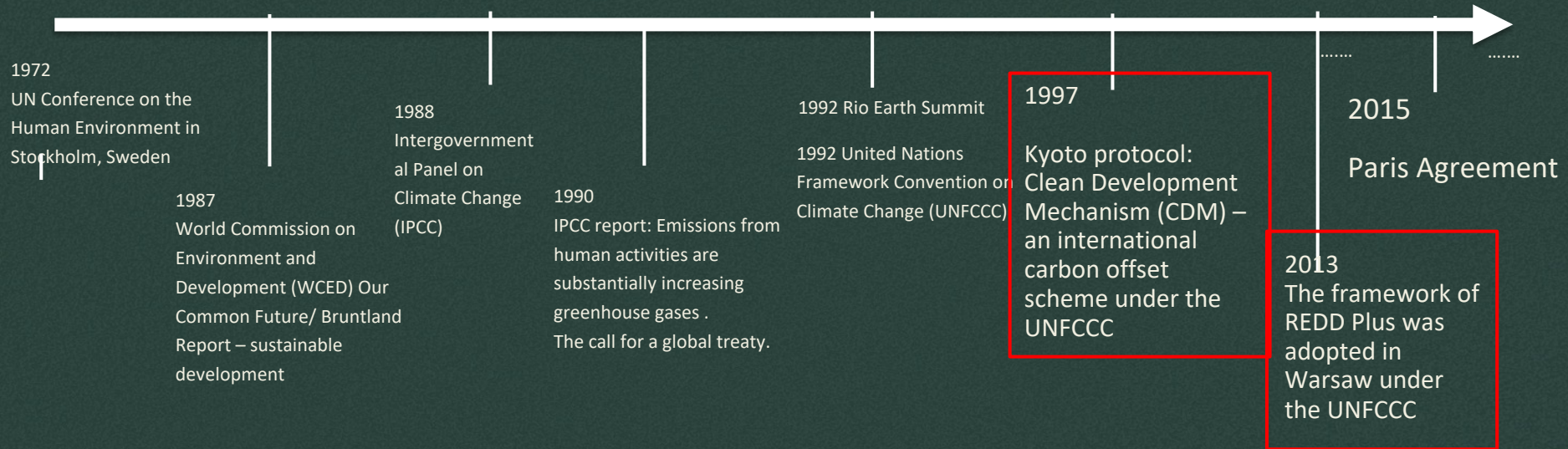
Climate Justice Now!
**Japan's Role Towards Achieving a Just and
Equitable Transition in Asia Pacific**
20 July 2024, Tokyo



OUTLINE

1. **Introduction to carbon markets**
2. **Carbon markets and the indigenous customary land rights**
3. **Why the carbon market is a false climate solution?**
4. **What are real climate solutions?**
5. **Publications**

Carbon market: A brief history



- There are many false climate solutions such as carbon markets that were created under the UNFCCC.
- CDM was created to assist developed countries in achieving compliance with their emissions reduction commitments under Kyoto Protocol.

Chronology

1994

UNFCCC

1997

Kyoto Protocol

2007

Bali Action Plan

2009

Copenhagen Accord

2010

Cancun Agreement

2011

Durban Platform

2012

Doha Gateway

2013

Warsaw Outcomes

2014

Lima Call for Climate Action

2015

Paris Agreement

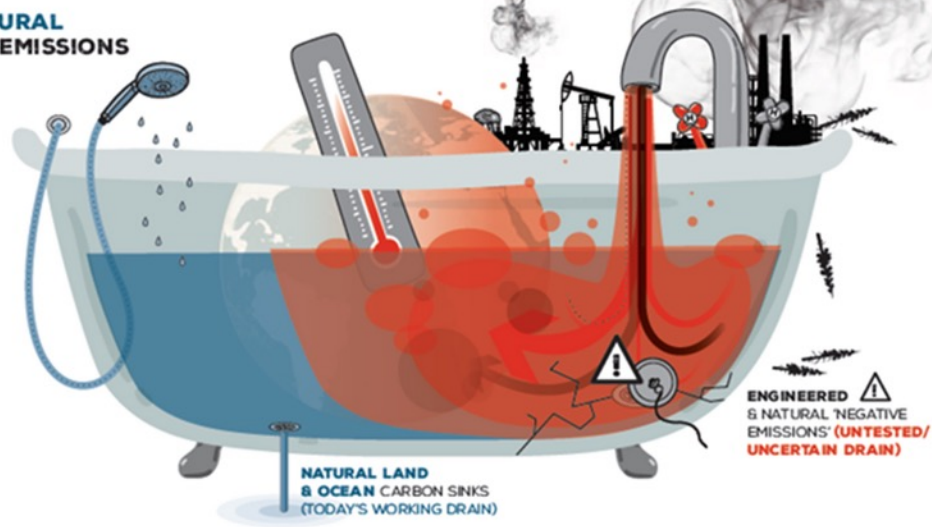


HALT GLOBAL WARMING

TURN OFF THE TAP

NATURAL
CO₂ EMISSIONS

HUMAN-MADE
CO₂ EMISSIONS



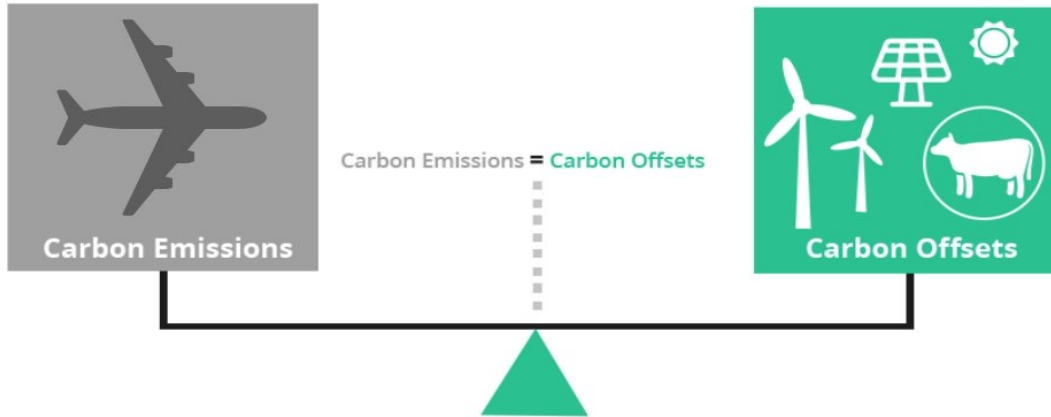
ENGINEERED
& NATURAL 'NEGATIVE
EMISSIONS' (UNTESTED/
UNCERTAIN DRAIN)



The bathtub of the Intergovernmental Panel on Climate Change (IPCC). The graphic uses a bathtub to distinguish the active carbon in what they term the "natural carbon cycle" from fossil carbon in its one-way (non) cycle. It also accurately shows that there is no reliable "engineered and natural 'negative emissions' drain."

Carbon offset

supposedly
How a Carbon Offset works.
1 CO2 Offset = 1 Metric Ton of Carbon Dioxide Reductions

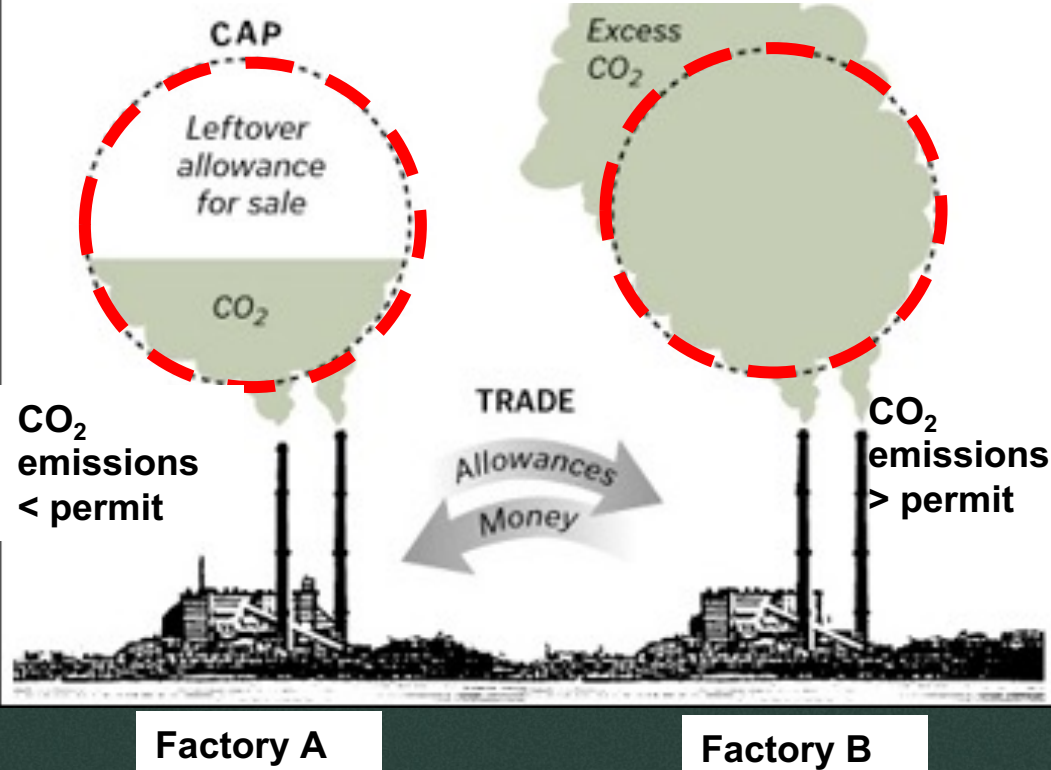


Carbon credit

- A permit or certificate that can be traded, which gives credit rights to credit holders to emit a certain amount of carbon dioxide over a period of time.
- Holders of carbon rights (the right to a carbon-rich ecosystem or artificial carbon storage) will receive payment.
- Buyers of carbon credit rights (the right to emit) will make the payment.
- A high carbon dioxide emitting company will pay holders of carbon rights in return of the latter ensuring that such carbon will continue to be sequestered in either the natural (or artificial) system.
- Carbon credit = carbon debt. If you pay your debt now, then you can pollute later.
- The credits are assumed to have been generated by activities/projects that have supposedly avoided and/or removed greenhouse gas emissions.
- Reduced emissions; Avoided emissions (not resolved under article 6 of Paris Agreement.)
- Installing solar or wind energy facilities, slowing or halting deforestation, planting trees or ecosystem restoration. Every project design is different.

Carbon market

Cap and trade/ Emission trading scheme

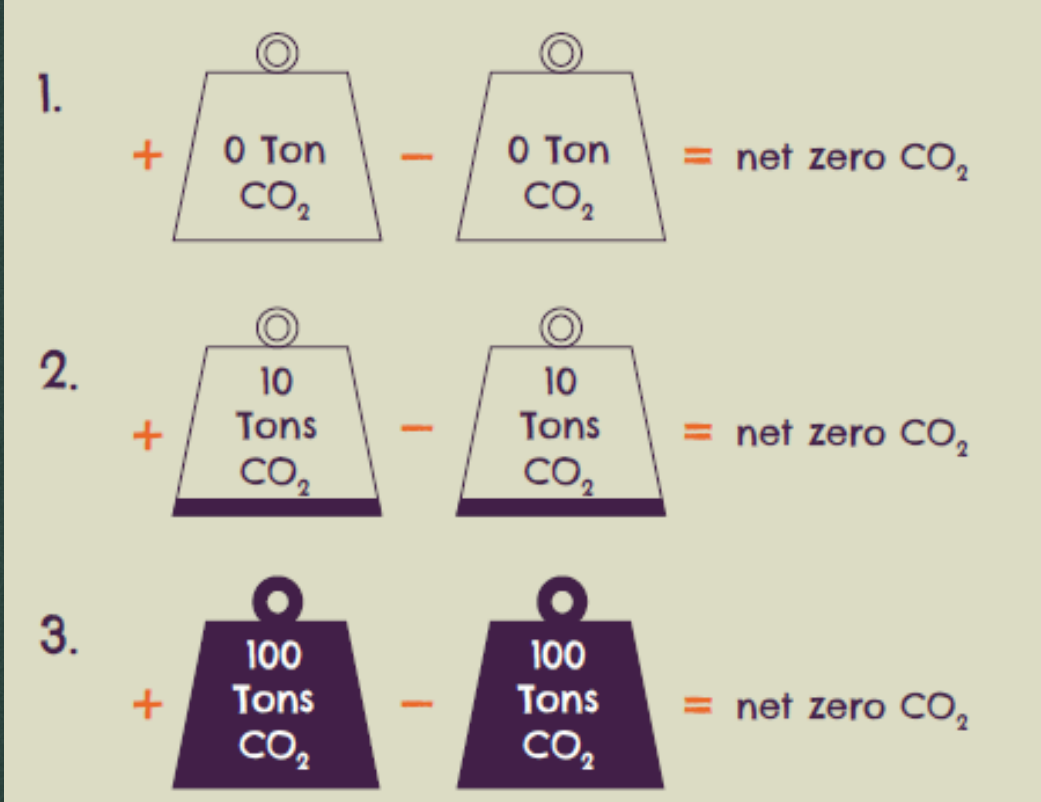


Two types of carbon markets:

1. Regulated: “Cap and trade”/ Emission Trading Scheme – Purchase of permit
2. **Unregulated: Voluntary carbon market** – Purchase of carbon offset credit

Forest carbon, blue carbon (mangrove, seagrass, salt marsh), soil carbon

The fallacy of net zero (is not real zero)



The great carbon con

- Concept: Idea, invention, plan vs. scientific fact
- You can invent a concept, but you cannot invent a fact.

- Does carbon sequestration actually result in the avoidance or removal of carbon dioxide emissions from the burning of fossil fuels?

- What happens if the carbon sequestration effort fail? (Forest fire?)

- How do you accurately quantify the amount of carbon in natural ecosystem?

- Who really owns carbon? The state? Private carbon licence holders? Community? The public?

- Forests and sensitive ecosystems are not made up of only carbon. It contains biodiversity. It has social, cultural, heritage and livelihood value. It performs ecological functions and reduces disaster risks.

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INDIGENOUS CUSTOMARY LAND RIGHTS

- The **indigenous customary land rights or titles** are rights that have been obtained from the authority of **traditional customs and customary laws**, and are commonly acknowledged and enforced by members of an indigenous community.
- They are different from the modern **documentary land titles**, which are rights obtained from **documents issued by the state under a legislation**.
- (Documentary land titles: Enclosure movement of Western Europe at the on-set of industrial revolution in the 18th century.)
- Territoriality, boundary, ancestral inheritance, continuous occupation, sustainable management of natural resources, cultural and spiritual relationship with the land.
- A territory includes agricultural and forested areas under familial ownership as well as common areas under collective rights which may comprise forests, rivers and other water bodies, burial grounds, sacred areas and other land uses.

INDIGENOUS CUSTOMARY LAND RIGHTS

Federal Constitution and Malaysian judiciary

- The Malaysian judiciary has affirmed that the indigenous customary land rights are:
 - The right to property – Article 8, Federal Constitution
 - The right to life and livelihood - Article 5, Federal Constitution
 - States have fiduciary duty to protect indigenous land rights.
- Existing policies and laws on indigenous peoples, land, forests, conservation and other natural resource laws in the three regions must urgently be reformed in order to ensure their alignment with judicial decisions and the Federal Constitution.

INDIGENOUS CUSTOMARY LAND RIGHTS

- If the rights are without any document of title or status as an indigenous communal reserve, the state tends to erroneously interpret them as **usufructuary rights** i.e. the right to use and benefit from the land, but not the right to ownership of the land itself. The land is regarded as state land.
- Issuance of land titles or reservation are not actively done. The state often unilaterally determines its own version of size and boundary of an indigenous customary territory, without transparency, consultation and consent of communities.
- Community rights are often limited only to the crops and built structures found on the land, and does not include the proprietary interest in the land itself. (Judiciary - The is the right to property.)
- Logging, plantation, mining and other resource extractive licences are freely issued by the state on indigenous land.
- The rights may be extinguished, reduced or heavily regulated when forests are reserved as production forests or conservation areas, without their free, prior and informed consent (FPIC) or the payment of adequate compensation.
- Indigenous communities usually remain within their ancestral territories (unless a forced resettlement exercise is undertaken), but yet at the same time, these territories are vulnerable to encroachments and land acquisition exercises.
- Consequence: Land rights conflict.

NEW LAWS RELATED TO CLIMATE CHANGE, SARAWAK

- Forests Ordinance 2015
- Forests Ordinance (Amendment) Ordinance 2022

- Land Code 1958
- Land Code (Amendment) Ordinance 2022.
 - Land (Carbon Storage Rules) 2022

- Environment (Reduction of Greenhouse Gases Emissions) Ordinance 2023 (regulated by the Sarawak Natural Resources and Environment Board (NREB)).

- Policy and legal jurisdiction – federal or state governments?

SARAWAK FORESTS ORDINANCE 2015

- Carbon credit, carbon registry, carbon standard rules, carbon sink , carbon standard, carbons standard rules, carbon stock/GHF , carbon trading, emissions reductions, forest carbon activity, carbon standard, greenhouse gas, nationally determined contribution, Paris Agreement, verification, verification agent
- Carbon licence means a licence granted for a forest carbon activity.
- Forest carbon activity: Any activity, action, project or groups of activities that leads to the emission reductions which are verified in accordance with a carbon standard.
- Forest produce now includes ‘carbon stocks or greenhouse gas stock in any forest whether on state land, alienated land or inland waters.’

SARAWAK FORESTS ORDINANCE 2015

- Carbon sequestration: Natural or artificial process (such as planting trees to absorb carbon dioxide) or pumping carbon dioxide from the atmosphere and to be held in solid or liquid form, thus preventing greenhouse gas build-up in the earth's atmosphere.
- Carbon sink: A natural or artificial storage area that collects chemical compounds which contain carbon dioxide and store these for an indefinite period and in its natural form, carbon sinks are made up of forests, rocks and soil and the oceans.
 - Imported carbon for storage in Sarawak – carbon, capture (utilisation) and storage (CCS/CCUS)?
- Carbon stock or GHG stock: Quantity of carbon or greenhouse gas (GHG) stored in biological and physical systems including but not limited to trees, products of harvested trees, agricultural crops, plants, wood and paper products and other terrestrial biosphere sinks, soils, seas, and sedimentary and geological sinks
 - Monoculture plantations?

SARAWAK LAND CODE 1958

- Definition of land now includes 'the column of airspace above the surface of the earth on the land'.
- Licensing of the use of land for carbon storage.
- Regulation and control of:
 - the spectrum in the column of airspace above the land, on or below the surface of the earth for carbon storage.
 - use of any land, including decommissioned oil and gas facilities for carbon storage.
 - building, installing and maintaining any carbon storage.
 - the deposit, treatment or storage of wastes of sites already or previously used for that purpose, if the area or height of waste deposit is extended.

IMPLICATIONS TO INDIGENOUS CUSTOMARY TERRITORIES

- If there is poor recognition of indigenous customary territories, how can indigenous communities be carbon rights holders? To be carbon rights holders, your land rights must be legally secured and recognised, as this is a licensed activity.
- Most carbon market projects in the country, most likely will neither involve nor provide financial and other meaningful benefits to indigenous peoples. (Even today, indigenous customary territories without land rights titles or reservation status are sites for licensed logging, monoculture plantation and mining activities.).
- Most carbon market projects will most likely benefit the state, corporations and other private parties who may potentially be the carbon rights holders through a licence or a contract. This may promote the land grabbing of indigenous customary territories and introduce a new form of land rights violations.
- Fortress conservation: introduction of new restrictions to the way of life and customs of indigenous communities (hunting, gathering of forest produce and shifting agriculture.)

IMPLICATIONS TO INDIGENOUS CUSTOMARY TERRITORIES

- 2023: In a proposed project in Sarawak, Borneo: The carbon rights holder is also the concession holder of a monoculture plantation project.
- 2022: Sabah, Borneo – Nature Conservancy Agreement (NCA) between the Sabah state government and Hoch Standard for 100 years over two million hectare of forests, without consultation and transparency. (Civil legal action has been filed by an indigenous community representative.)

PROTECTING INDIGENOUS CUSTOMARY TERRITORIES

- We can still provide financial support to the protection of indigenous customary territories, without tying this support to any carbon market or false climate projects.
- Most carbon market projects, most likely will neither involve nor provide financial and other meaningful benefits to our indigenous peoples. They may weaken indigenous customary land rights.
- Corporate financialisation of nature will not solve the climate crisis, it will exacerbate it.
- Public approach to climate finance must be prioritised: Ecological fiscal transfer (ETF), trust funds, international climate funds, tax and budgetary reforms, strengthened recognition of community conserved areas.

CHALLENGING THE NARRATIVE

- Knowledge gap between international climate advocacy and national/local forests and indigenous land rights advocacy.
 - How do you explain carbon markets to affected communities?
- Challenge of bridging the knowledge gap between federal and national/local state actors.
- Seduction of false climate solutions – “you will get paid for conserving the forest and solving the climate crisis.”

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1. It is not based on science.

2. Limited carbon budget – there is no more room for carbon offsets

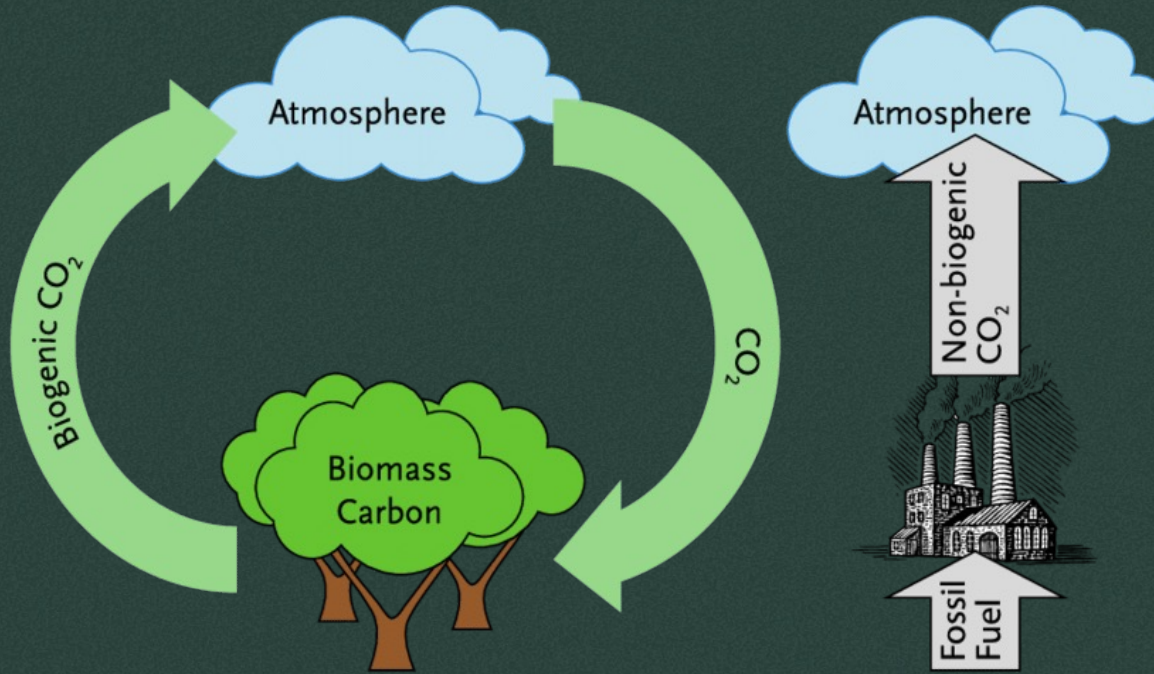
3. Forest carbon offsets risk bringing more harm than good to communities and countries.

Why carbon market is a false climate solution?

4. It opens up the opportunity for more dangerous and risky climate solutions - geoengineering etc.

5. It is susceptible to speculative, fraudulent and criminal activity: Subprime carbon, carbon bubble and carbon trading crime

1. Carbon offset is not based on science



- Carbon markets assume that a unit of carbon emitted from the burning of fossil fuels is the same as a unit of carbon that can be stored by plants, soils and the forests.
- **Fundamental difference:**
- Active, daily carbon cycle.
- Carbon emissions from fossil fuels – earth’s permanent carbon storage.
- “You cannot put geosphere into the biosphere.”

2. Limited carbon budget – there is no room for carbon offset at all

The Land Gap Report

REPORT LAND GAP CALCULATOR PRESS CONTACT Choose language

In Response to Climate Change, Governments are Relying on Land for Carbon Dioxide Removal.

We calculated how much land is included in pledges: 1.2 billion hectares.
That's the size of the world's food-producing base.

FULL REPORT EXECUTIVE SUMMARY

IPCC:

- 2022: Mitigation – CO₂ removal cannot substitute deep reductions.
- 2023: At current rates carbon budget will exhaust in 11-12 years.

3. Forest carbon offsets risk bringing more harm than good

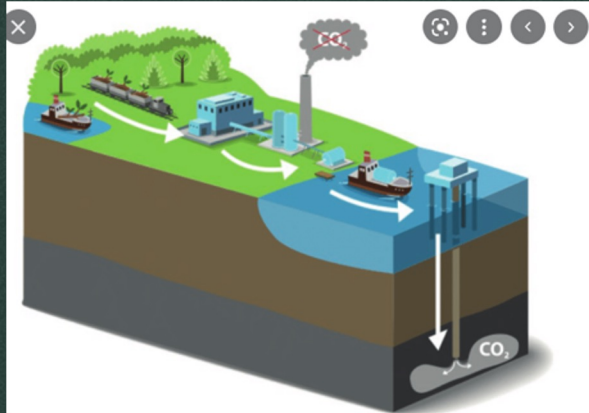
- Carbon colonisation



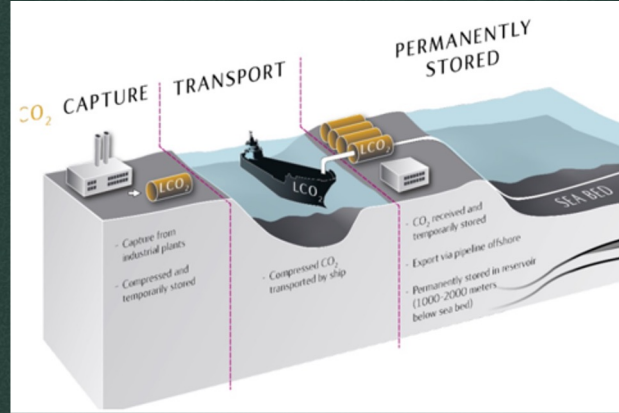
4. Carbon markets leads to more dangerous and risky false solutions

- Geoengineering - large-scale intervention in the earth's climate system

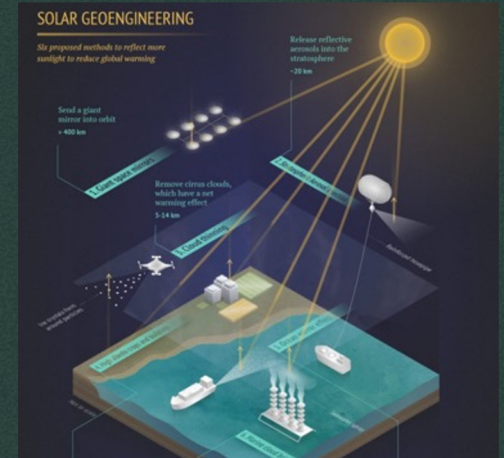
Bioenergy with carbon capture and storage (BECCS)



Carbon capture utilisation & storage

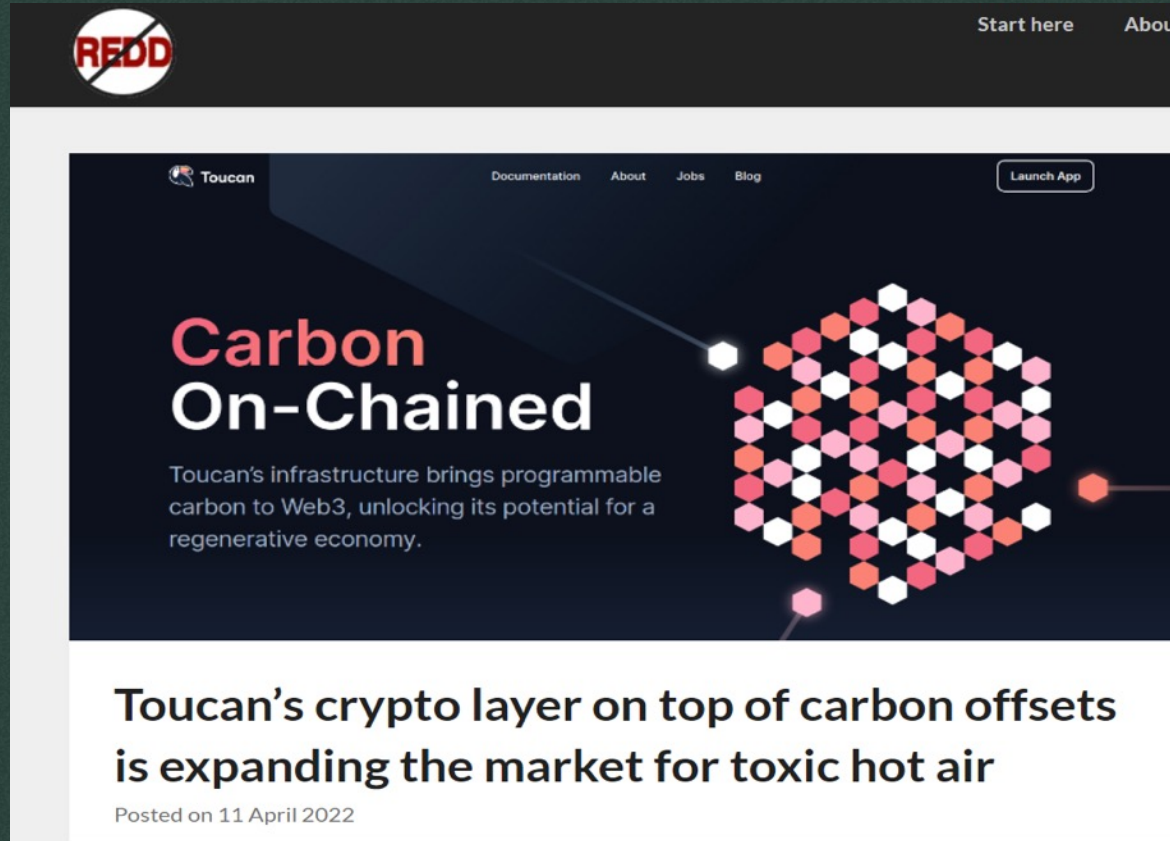


Solar geoengineering/ solar radiation (at the planetary scale)



Solar geoengineering/ solar radiation is not a CO₂ removal technology

5. Subprime carbon, carbon bubble and carbon trading crime



The image shows a screenshot of a website. At the top left is a circular logo with the word 'REDD' in red. To its right are the links 'Start here' and 'About'. Below this is a navigation bar with the Toucan logo, the word 'Toucan', and links for 'Documentation', 'About', 'Jobs', and 'Blog'. A 'Launch App' button is on the right. The main content area has a dark background with the title 'Carbon On-Chain' in large white and red text. Below the title is a paragraph: 'Toucan's infrastructure brings programmable carbon to Web3, unlocking its potential for a regenerative economy.' To the right is a graphic of a cluster of hexagons in white, pink, and red. Below this is a white box containing the article title 'Toucan's crypto layer on top of carbon offsets is expanding the market for toxic hot air' and the date 'Posted on 11 April 2022'.

REDD Start here About

Toucan Documentation About Jobs Blog Launch App

Carbon On-Chain

Toucan's infrastructure brings programmable carbon to Web3, unlocking its potential for a regenerative economy.

Toucan's crypto layer on top of carbon offsets is expanding the market for toxic hot air

Posted on 11 April 2022

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REAL CLIMATE SOLUTIONS: CFM AND AGROECOLOGY TRAINING CENTRE, MARUDI, SARAWAK





REAL CLIMATE SOLUTIONS: COMMUNITY FORESTRY MANAGEMENT (CFM)





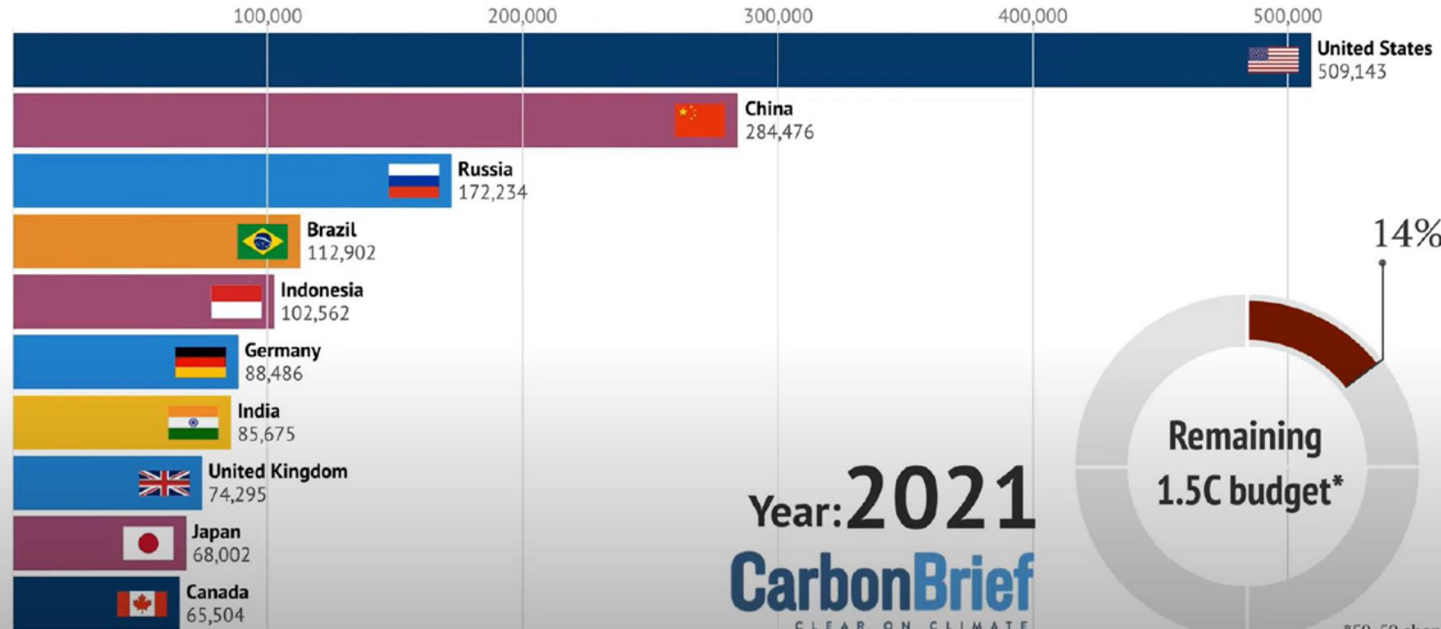
REAL CLIMATE SOLUTIONS: AGROECOLOGY



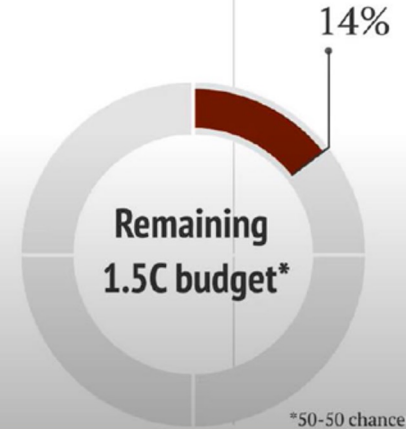
Which countries are historically responsible for climate change?

Cumulative CO2 emissions from fossil fuels, land use and forestry 1850-2021 (million tonnes)

Bar colours represent regions



Year: **2021**
CarbonBrief
CLEAR ON CLIMATE



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PUBLICATIONS



Sahabat Alam Malaysia's Cycle of Life Briefing Document Series
No. 2022/1

**The need to enhance Malaysia's
efforts in seeking international
climate funds**



Sahabat Alam Malaysia - Friends of the Earth Malaysia (SAM)
Penang: 1, Jalan Joki, 10460 George Town, Penang.
Sarawak: Lot 129A, First Floor, Jalan Tuanku Taha,
P.O. Box 216, 98058 Marudi, Sarawak.
foemalaysia(at)gmail.com
www.foe-malaysia.org



TWN Climate Change Series

7

**Addressing Climate Change in Malaysia:
A Critical Perspective on Carbon Pricing**

SAHABAT ALAM MALAYSIA

TWN
Third World Network

PUBLICATIONS



Encroachment on Orang Asli Customary Land in Peninsular Malaysia

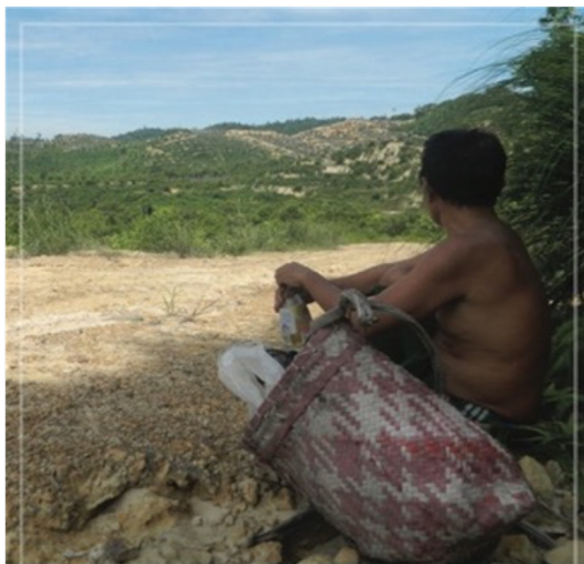
CAUSES & SOLUTIONS



DEPARTMENT OF FORESTRY
SARAWAK, MALAYSIA



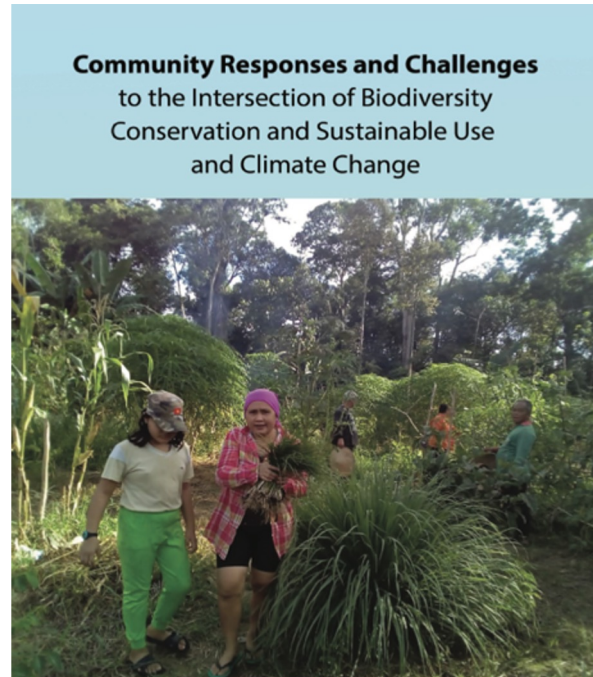
JKOASM
JALAN KEMERDEKAAN
62000 KUALA LUMPUR
MALAYSIA



THE LAND WE LOST Native Customary Rights (NCR) and Monoculture Plantations in Sarawak



SARAWAK FORESTRY
DEPARTMENT
SARAWAK, MALAYSIA



Community Responses and Challenges to the Intersection of Biodiversity Conservation and Sustainable Use and Climate Change



SARAWAK FORESTRY
DEPARTMENT
SARAWAK, MALAYSIA

TERIMA KASIH!

Sahabat Alam Malaysia
<https://foe-malaysia.org/>

