

A woman with braided hair, wearing a light-colored t-shirt, carries a young child on her back. They are standing in a lush, green field of tall grasses and plants. The background shows a vast, hazy landscape under a cloudy sky.

CARBON OFFSETTING AT THE COST OF HUMAN RIGHTS?

The case of TotalEnergies' BaCaSi project in Congo



COMMISSION
JUSTICE & PAIX
Depuis 1997 - Pointe Noire



Secours
Catholique
Caritas France



CCFD
TERRE
SOLIDAIRE

“

THIS PROJECT HAS BROUGHT US TO THE BRINK

”

Main authors: Judith Lachnitt, Myrto Tilianaki

Contributors: Clémentine Baldon, Nikos Braoudakis,
Gabriel Brunnich, Jean-François Dubost, Kahina Lelouvier,
Benoît-Xavier Lordon, Brice Mackosso, Isabelle Manimben,
Sarah Martin, Samuel Pommeret, Marion Wintergerst

**Document produced by the communication department of
Secours Catholique – Caritas France
106, rue du Bac, 75341**

Iconography: Élodie Perriot

Cover photo: Élodie Perriot

Translator: Anna Savage

SCCF Model: Communication Department – Editorial Production
Department / SCCF

October 2023

CONTENTS

FOREWORD	4
CARBON OFFSETTING: A THREAT TO THE RIGHTS OF LOCAL POPULATIONS?	6
BaCaSi: carbon offsetting by TotalEnergies in Congo	7
TESTIMONIES OF THOSE AFFECTED	9
CARBON OFFSETTING, AN INEFFECTIVE TOOL THAT DISTRACTS FROM REAL EMISSION REDUCTION MEASURES	11
Carbon offset ecosystem	12
Carbon offsetting: an ineffective tool	12
Carbon offsetting: a greenwashing tool	13
BAGASI PROJECT IN CONGO: POPULATIONS EVICTED	14
Insufficient consultations, conducted in hindsight	15
A project threatening the way of life of indigenous peoples	16
Farmers displaced and deprived of economic activities	17
WHAT ARE THE RESPONSIBILITIES OF THE PARTIES INVOLVED IN THE PROJECT?	18
The responsibility of the Congolese State for the evictions of landowners	19
TotalEnergies' duties to prevent human rights violations	20
Free and informed consent: an essential prerequisite for any project	20
LATE AND INSUFFICIENT REMEDIAL ACTIONS	22
Lack of equity in the working conditions offered to agroforesters.....	23
“Work has come for you”: a broken promise and tensions with employees	23
Almost two years into the project, efforts are still ongoing to identify “potential negative impacts”	24
RECOMMENDATIONS	27
To the Congolese State	28
Recommendations for TotalEnergies and the project leaders	29
Recommendations for Parties to the United Nations Framework Convention on Climate Change (UNFCCC).....	29

FOREWORD

The impacts of climate change particularly affect the most vulnerable populations, even though, paradoxically, they are the least responsible for it. Our organisations, which are committed internationally, bear witness to this observation. Inspired by the words and actions of the most affected communities, we act to converge ecological and social imperatives. Over the past several years, we have been advocating for climate justice to promote policies that reduce greenhouse gas emissions globally with due consideration of their effects on populations, particularly the most vulnerable. Policies limiting greenhouse gas emissions should not lead to increased poverty or infringe upon human rights.

Pope Francis, in the encyclical *Laudato Si*, summarises it as follows: “We are faced not with two separate crises, one environmental and the other social, but rather with one complex crisis which is both social and environmental. Strategies for a solution demand an integrated approach to combating poverty, restoring dignity to the excluded, and at the same time protecting nature.”

According to the Intergovernmental Panel on Climate Change (IPCC), significant reductions in emissions across all sectors are imperative to limit global warming to 1.5°C by the end of the century and avoid the worst consequences of climate change.

“

**WE ARE FACED NOT WITH TWO SEPARATE
CRISES, ONE ENVIRONMENTAL AND THE
OTHER SOCIAL, BUT RATHER WITH ONE
COMPLEX CRISIS WHICH IS BOTH SOCIAL
AND ENVIRONMENTAL. STRATEGIES FOR
A SOLUTION DEMAND AN INTEGRATED
APPROACH TO COMBATING POVERTY,
RESTORING DIGNITY TO THE EXCLUDED,
AND AT THE SAME TIME PROTECTING
NATURE.**

It is up to us, collectively, to act decisively to best preserve “our common home” and ensure that everyone has the resources to adapt to the impacts of climate change.

Carbon offsetting is increasingly popular among various actors as a means to fund afforestation projects in the countries of the South, in order to “absorb” the emissions linked to their activities. Many multinational companies acquire or lease tens of thousands of hectares of fertile and nourishing land in order to “offset” part of the greenhouse gas emissions stemming from their activities, either through direct land management or indirectly by purchasing carbon credits¹.

However, at a time of climate emergency, this practice is controversial not only due to its lack of effectiveness², but also because it detracts attention from the efforts needed to drastically reduce greenhouse gas emissions. This false solution relieves those who employ it of their responsibility. More importantly, the growing demand for land to plant trees comes with the risk of further financialisation of nature, along with the grabbing of extensive land areas to the detriment of local populations, their lifestyles, and their ability to produce their food resources.

1 A carbon credit is equivalent to one tonne of CO₂ avoided and/or sequestered.

2 Julia Jones, Simon Lewis, “Forest Carbon Offsets Are Failing”, *Science*, 381/6660, August 2023, pp. 830-831.

Local communities, often accompanied by civil society groups with whom we collaborate, seem to be more and more affected by this type of activity.

The Diocesan Commission for Justice and Peace of Pointe-Noire (DCJP), Secours Catholique Caritas France (SCCF), and CCFD-Terre Solidaire wanted to analyse the negative impacts of these carbon offset



POLICIES LIMITING GREENHOUSE GAS EMISSIONS SHOULD NOT LEAD TO INCREASED POVERTY OR INFRINGE UPON HUMAN RIGHTS.

projects on populations: do they pose a risk to people's right to access land, especially indigenous peoples? Are they competing with agricultural land use that ensures food sovereignty? Could they, under the pretext of reducing carbon emissions, perpetuate the exploitation of natural areas by multinational corporations?

We have tried to answer all these questions by studying the BaCaSi (Batéké Carbon Sink) project, an afforestation initiative led by TotalEnergies in the Republic of Congo.

Discussing with project leaders and conducting on-site missions helped to identify obvious issues, particularly concerning the rights of communities and indigenous peoples. However, the ecological transition must also be social, as no climate change mitigation measures can succeed without considering the human dimension.

Bishop Miguel Angel OLAVERRI (SL) President of Metropolitan Archbishop of Pointe-Noire
Chairman of the Diocesan Commission for Justice and Peace

Véronique Devise, President of Secours Catholique – Caritas France

Sylvie Bukhari-de Pontual, President of CCFD – Terre Solidaire

CARBON OFFSETTING: A THREAT TO THE RIGHTS OF LOCAL POPULATIONS?

Carbon offsetting is gaining popularity among diverse actors, including companies, which finance afforestation projects in the countries of the South, to “absorb” emissions related to their activities. This is the case of TotalEnergies, which launched the BaCaSi project in November 2021 in the Republic of Congo, on the Batéké Plateaux, north of Brazzaville. According to the company, this project aims to foster the “sustainable development of an area of 55,000 hectares, including the conservation of remaining patches of forest, the planting of trees on 38,000 hectares over 10 years and 2,000 hectares of agroforestry schemes managed with the local communities¹”. According to the company, this project would “sequester more than 10 million tons of CO₂ over 20 years²,” enabling them to reach their carbon neutrality goals by 2050³, without having to commit to substantial emission reductions.

While these mechanisms are gaining popularity among actors responsible for greenhouse gas emissions, including multinational companies, their effectiveness is now widely questioned⁴. One primary concern is the inherent time lag between the moment when activity-related greenhouse gases are emitted and the period required for trees to absorb these emissions through photosynthesis⁵. Thus, a tonne of CO₂ emitted in 2023 will not be “offset” by newly planted trees before decades, not until they have grown enough to capture carbon, assuming the trees do not die prematurely (during fires or droughts for example) and effectively capture carbon as originally projected, which is the best-case scenario. It is therefore not possible to postulate equivalence between immediate and verifiable emissions, and the presumed long-term emission reduction via the purchase of carbon credits.

Moreover, compensation fails to incentivise companies to transition to lower-emission activities and carries the risk of delaying the implementation of measures to mitigate the impacts of the ongoing climate crisis.

Furthermore, large-scale tree-planting projects in the Global South are increasing the demand for land, which can result in population displacement and undermine food security. This process, not only serves as a substantial impediment to cor-

COMPENSATION FAILS TO INCENTIVISE COMPANIES TO TRANSITION TO LOWER-EMISSION ACTIVITIES AND CARRIES THE RISK OF DELAYING THE IMPLEMENTATION OF MEASURES TO MITIGATE THE IMPACTS OF THE ONGOING CLIMATE CRISIS.

porate climate action but also, in addition to misleading consumers, often comes at the expense of the most vulnerable populations. The BaCaSi study highlights the significant risks associated with carbon offset projects regarding the rights of local communities in developing countries. The access restriction to forests within the project area, the loss of livelihoods, and the absence of sustainable economic alternatives are critical concerns, disrupting the cultural, social, and economic order of the affected populations and territories. It is this impact on the rights of local communities that we highlight through the study of the BaCaSi project.

1 TotalEnergies, “The BaCaSi project : a pioneering partnership for a sustainable development in the Republic of the Congo”, 15 December 2022, <https://totalenergies.com/media/news/press-releases/bacasi-project-pioneering-partnership-sustainable-development-republic>

2 TotalEnergies, “Total and Forêt Ressources Management to Plant a 40,000-Hectare Forest in the Republic of Congo”, 16 March 2021.

3 TotalEnergies, “More energy, less emissions”, Sustainability & Climate 2023 Progress Report, March 2023 <https://totalenergies.com/transformation>.

4 Julia Jones, Simon Lewis, “Forest Carbon Offsets Are Failing”, op. cit.

5 Photosynthesis allows trees to absorb carbon dioxide from the air to promote the growth of their leaves, branches, and roots.

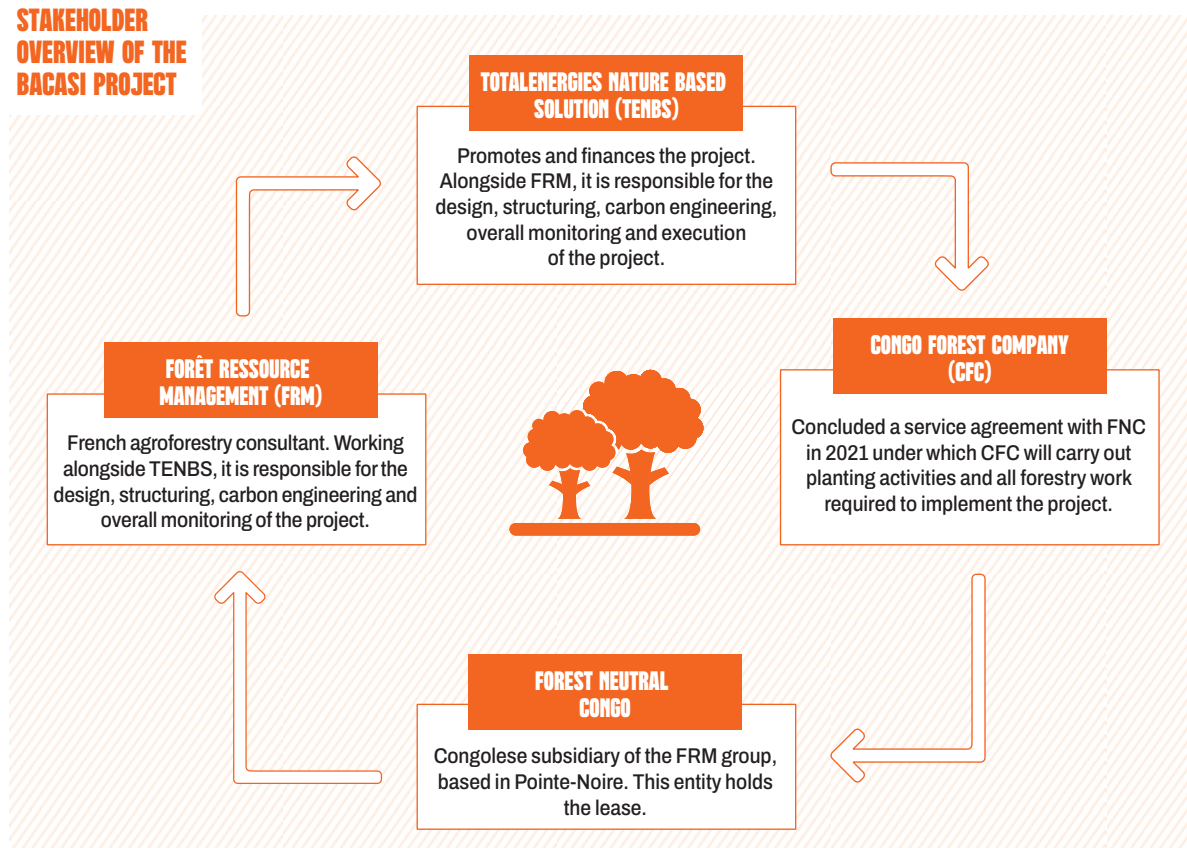
BACASI: CARBON OFFSETTING BY TOTALENERGIES IN CONGO

The BaCaSi project originated from a contract signed on 16 March 2021, involving the Republic of Congo, TotalEnergies (the project initiator), and the Forêt Ressources Management group (FRM), the local project designer, which then subcontracts to its subsidiary Forest Neutral Congo (FNC)⁶. As per the decree in the Official Gazette of the Republic of Congo on 8 October, the Congolese State declassified 70,000 hectares of land in the Batéké Plateaux into private domain of the State with the intention of establishing a 60-year emphyteutic lease between the Government of the Republic of Congo and Forest Neutral Congo (FNC)⁷. According to SourceMaterial, which obtained the lease agreement between the Congolese State and Forest

Neutral Congo, the government would guarantee the tenant the eviction of all alleged landowners, holders of traditional and customary rights who would claim the land⁸.

The BaCaSi project area is situated near Ngo, a central locality in the Republic of Congo in the Plateaux region, 250 kilometres from the capital, Brazzaville. More specifically, the afforestation efforts are taking place in the nearby savannahs, traditionally used for cassava cultivation and, to a lesser extent, for yam and groundnut. The TotalEnergies planting area also includes gallery forests that are used for this same type of agricultural activity, as well as for hunting and foraging wild fruits and mushrooms. The introduction of access restrictions to these areas and the change in land use following the planting project's launch in November 2021 have led to a number of protests among the Ngo population.

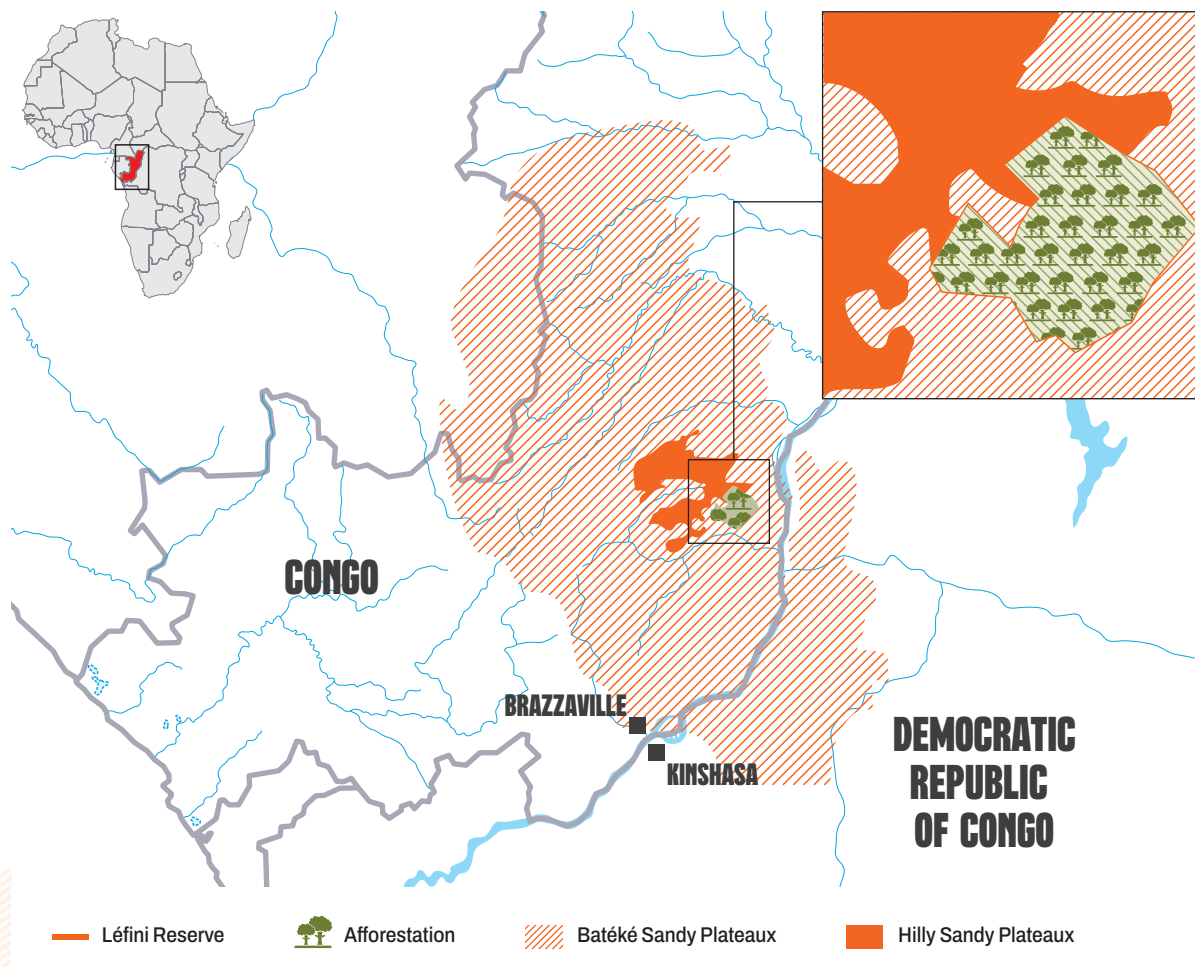
STAKEHOLDER OVERVIEW OF THE BACASI PROJECT



6 TotalEnergies, "The BaCaSi project : a pioneering partnership for a sustainable development in the Republic of the Congo", op. cit.

7 Decree published in the Official Gazette of the Republic of Congo, 18 September 2020.

8 Mickaël Correia, Olivia Acland, "Derrière le "greenwashing" de TotalEnergies, l'expropriation des paysans au Congo", Mediapart, 12 December 2022, www.mediapart.fr/journal/ecologie/121222/derriere-le-greenwashing-de-totalenergies-l-expropriation-de-paysans-au-congo.



BATÉKÉ PLATEAUX

The Plateaux department, located on the border of the Democratic Republic of Congo (DRC), represents a geographical transition zone between northern and southern Congo. This region boasts agricultural, livestock, and fishing potential, making substantial contributions to the local population's livelihoods. The Plateaux region is mainly characterised by extensive tall grass savannahs dotted with forest patches and a few ponds. The Plateaux forest estate is made up of four distinct areas, including the Léfini Reserve in the northern part of the forest. The allocation of this area is part of the National Afforestation and Reforestation Programme (PRONAR)¹, initiated by the Congolese government in 2011, which concedes 1 million hectares of forest and agroforestry planting for economic, environmental, and social purposes.

1 Website of the Ministry of Forest Economy of Congo, <http://economie-forestiere.gouv.cg/le-ministere/organismes-sous-tutelle/pronar>.

A community meeting is taking place outdoors in a rural setting. A group of people, including men, women, and children, are gathered. Some are sitting on the ground, while others are standing. Two men in white shirts are standing and speaking to the group. The background shows lush green trees and a small wooden structure. The overall atmosphere is one of a community gathering.

TESTIMONIES OF THOSE AFFECTED

The DCJP, SCCF, and CCFD-Terre Solidaire have joined forces to **gain deeper insights into the realities of the people affected by the BaCaSi project, amplify their voices, and develop recommendations based on their demands.** This report draws from data collected during various field missions and regular exchanges with the following three groups of people impacted¹:

- ▶ **landowners** identified by the Congolese government, possessing either land title or customary use rights to the land leased to TotalEnergies for the BaCaSi project. This group predominantly comprises lineage chiefs involved in collective land management. Their families cultivated some plots and rented others to farmers for food crop cultivation. They have **lost their assets as well as the income from their agricultural activities.** For clarity purposes, in this report, we will use the term “landowners” in a broad sense, encompassing the holders of land rights in all their diversity of uses, whether registered or not;
- ▶ **farmers who grow cassava** (tenants of the former or hired workers) **who now face a loss of their livelihoods;**
- ▶ **indigenous peoples, banned from accessing the forest from late 2021 to early 2023, which has directly threatened their harvesting activities, thereby jeopardising their livelihoods and income.** The tree planting site affects four indigenous communities located near Ngo: the Olly community (408 residents), Indion community (253 residents), Socofran community (207 residents), and Ngo 2 community (142 residents).

In addition to these interviews, we initiated discussions with TotalEnergies and its partners in November 2022 to gain insights into the framework of the BaCaSi project and learn about the initiatives undertaken by the project leaders to meet the needs of local communities and indigenous peoples. Additionally, we spoke several times with agronomic and forestry researcher Adrien Peroches, to consolidate our understanding of agricultural technical systems in the Congo Basin.

This report represents an extension of the long-standing advocacy efforts of our organisations, aimed at ensuring the rights and food sovereignty of local populations in the

PEOPLE AFFECTED BY THE BACASI PROJECT



Landowners

with a legal right to the land or a customary right of use expropriated land.



Farmers

renting land from the former and no longer able to grow cassava.



Indigenous populations

no longer able to access the forest included in the project perimeter.

countries of the South. Our field investigations confirmed the lack of acceptability of a project imposing a top-down development model. It failed to consider existing agricultural practices and proceeded without prior consultation with the local population to identify their needs. Furthermore, these populations claim not to benefit from any economic advantages deriving from the project in terms of employment opportunities and income.

1 We collected testimonies from approximately 40 people in March 2023.



**CARBON OFFSETTING,
AN INEFFECTIVE TOOL THAT
DISTRACTS FROM REAL
EMISSION REDUCTION
MEASURES**

CARBON OFFSET ECOSYSTEM

The concept of global carbon offsetting originated from the 1997 Kyoto Protocol, which established carbon markets as one of the key pieces of the international climate policy framework. This mechanism enabled developed countries to finance projects aimed at reducing their greenhouse gas emissions in the countries of the South.

At COP21 in 2015, the Paris Agreement introduced new mechanisms for the carbon market. Article 6 of the Paris Agreement paves the way for the establishment of a new international market for "emission reductions" where carbon credits could be traded. The article, adopted at COP26 in Glasgow in November 2021, replaces the mechanisms outlined in the Kyoto Protocol.

Over the past decade, there has been a growing interest in carbon markets, with projections estimating the voluntary carbon market value to range between US\$10 billion and US\$40 billion by 2030¹. The credits, offered at very low prices (many under one or two euros), do not, however, encourage the reduction of greenhouse gas emissions at source². The global carbon market, where most of these voluntary credits are traded, lacks regulation and public oversight. Furthermore, a recent investigation³ by *The Guardian*, *Die Zeit*, and *SourceMaterial* revealed that most of the carbon credits purchased and supposed to offset greenhouse gas emissions had not contributed to any meaningful environmental improvements.

CARBON OFFSETTING: AN INEFFECTIVE TOOL

Carbon offsetting implies absolute equivalence between activity-related emissions and the reduction of emissions through a tree planting project. However, it is not possible to guarantee equivalence between specific greenhouse gas emissions and presumed absorptions. According to scientific consensus⁴, emissions released into the atmosphere have long-lasting effects, extending for at least a century. Also, to be truly effective, offset projects should be able to guarantee carbon storage over several centuries while taking into account the fact that trees do not have the same storage capacity based on growth and species. This is one of the main limitations of carbon offsetting: ongoing storage projects, whether by forest or soil, offer no guarantee in terms of sustainability and permanence of sequestration⁵. Sequestered emissions can easily be released due to forest fires, logging, or natural disasters, which are becoming more frequent due to global warming.

Moreover, it is mathematically impossible to plant enough trees to meet the cumulative net-zero emissions targets announced by governments and companies, as there is simply not enough land available on the planet⁶. Oxfam analysed the net-zero emission targets of the four largest oil and gas companies (Shell, BP, TotalEnergies, and Eni)⁷. Their climate plans alone, which entail millions of hectares of land, would require an area twice the size of the UK⁸. If the entire oil and gas sector were to adopt similar targets, it would require land about half the size of the United States,

Two distinct carbon offset systems exist: one is associated with the Paris Agreement, binding the States that have ratified it; the other is the voluntary offset market, accessible to any public or private entity.

Article 6 of the Paris Agreement provides for the creation of carbon markets overseen by the United Nations Framework Convention on Climate Change (UNFCCC). The regulations governing this market are currently being defined. Since 2015, various interpretations of Article 6 have clashed and continue to be discussed within the COP (Conference of the Parties). In addition to the carbon offsetting mechanism outlined in the Paris Agreement, there is a voluntary offset market for all actors who want to offset their emissions: individuals, local authorities, small and medium-sized enterprises, multinational corporations, NGOs. Unlike the UN-regulated market, the voluntary market is not regulated by a central authority. While not subject to legal regulation, voluntary carbon offsetting has created its own quality standards.

1 Shell, "Voluntary Carbon Markets Set to Become at Least Five Times Bigger by 2030", *Reuters*, 19 January 2023, www.reuters.com/markets/carbon/voluntary-carbon-markets-set-become-least-five-times-bigger-by-2030-shell-2023-01-19/

2 Alain Karsenty, "Histoire des crédits carbone : vie et mort d'une fausse bonne idée ?", *The Conversation*, 6 September 2023.

3 Greenfield, Patrick, Revealed, "More than 90% of Rainforest Carbon Offsets by Biggest Certifier Are Worthless, Analysis Shows", *The Guardian*, 18 January 2023, www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-biggest-provider-worthless-verra-aoe.

4 Mason Inman, "Carbon Is Forever", *Nature Clim Change*, 1, 2008, pp. 156-158, <https://doi.org/10.1038/climate.2008.122>.

5 Alain Karsenty, "Planter des arbres, une solution réaliste pour compenser nos émissions ?", March 2021, www.connaissancedesenergies.org/tribune-actua-lite-energies/planter-des-arbres-une-solution-realiste-pour-compenser-nos-emissions.

6 Aditi Sen, Nafkote Dabi, "Tightening the Net: Net zero climate targets – implications for land and food" (briefing paper), Oxfam, 2021, <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/621205/bp-net-zero-land-food-equity-030821-summ-en.pdf;jsessionid=9C9865CDDDB87D7B39F7E-5DB783AA0B?sequence=18>.

7 *Ibid.*

8 *Ibid.*

or one-third of the world's arable land⁹. All these elements reveal the ineffectiveness of this approach in terms of effective reduction of CO₂ emissions over time.

CARBON OFFSETTING: A GREENWASHING TOOL

Implemented at company, product, or service level, offsetting allows to sustain emissions (later to be offset). This approach, however, is incompatible with the urgent need for a substantial reduction in global emissions.

The International Energy Agency (IEA) has called to cease exploration for new oil and gas sites¹⁰. However, TotalEnergies is continuing to develop new fossil fuel projects, such as the highly controversial and extensive Tilenga/EACOP project, which plans to build new oil wells in Uganda and transport the extracted oil to Tanzania through a 1,400-kilometre-long pipeline¹¹. Thus, despite the continuation of its climatic activity, the development of the BaCaSi project, like other carbon offset initiatives¹², allows TotalEnergies to showcase its ambition to achieve carbon neutrality by 2050¹³ on its so-called "direct" emissions (Scope 1 and 2), while it is its indirect emissions (Scope 3) that represent the largest proportion of its carbon footprint¹⁴.

Carbon offsetting therefore appears to be a greenwashing tool that diverts from real emission reduction strategies. It enables high-carbon-footprint companies to maintain the *status quo*. This system perpetuates a situation in which "economic powers continue to justify the current global system, where priority tends to be given to speculation and the pursuit of financial gain, which fail to take the context

Carbon neutrality implies a balance between greenhouse gas emissions and the absorption of carbon from the atmosphere by carbon sinks, reservoirs, natural or artificial, that capture atmospheric carbon. Achieving this balance requires two levers: on the one hand, reducing part of the emissions at source and on the other hand, offsetting the others through carbon sequestration. However, as no clear division between the two strategies has been established, companies have seized on the concept of carbon neutrality, focusing mainly on carbon offsetting.

into account, let alone the effects on human dignity and the natural environment¹⁵". Addressing the climate crisis means changing our development models rooted in resource overexploitation and overconsumption.



A company's GHG emissions can be divided into three categories, known as "scopes".

Scope 1: all direct emissions from the company's activities.

Scope 2: all indirect emissions associated with energy (consumption of electricity, heat or steam).

Scope 3: all indirect emissions that take place upstream or downstream of the value chain.



9 *Ibid.*

10 Sharon Wajsbrot, "Climat. L'Agence internationale de l'énergie appelle à renoncer immédiatement à tout nouveau projet fossile", *Les Échos*, 18 May 2021, www.lesechos.fr/industrie-services/energie-environnement/energie-laie-plaide-pour-renoncer-des-maintenant-a-tout-nouveau-projet-fossile-1315859.

11 Laurence Caramel, "En Tanzanie, le projet d'oléoduc de TotalEnergies mis en cause par des ONG pour violations des droits humains", *Le Monde*, 5 October 2022, www.lemonde.fr/afrique/article/2022/10/05/tanzanie-le-projet-d-oleoduc-de-totalenergies-mis-en-cause-par-des-ong-pour-violations-des-droits-humains_6144452_3212.html.

12 TotalEnergies website, <https://totalenergies.com/sustainability/climate-and-sustainability-energy>

13 TotalEnergies, "More energy, less emissions", art. Cit.

14 César Dugast, Florian Zito, "Assignation en justice de TotalEnergies : le procès d'une neutralité carbone en mal de transparence", *Carbone 4*, 15 March 2022, www.carbone4.com/article-total-neutralite.

15 *Laudato Si*, 56, quoting *Evangelii gaudium*.



**BACASI PROJECT
IN CONGO: POPULATIONS
EVICTED**

INSUFFICIENT CONSULTATIONS, CONDUCTED IN HINDSIGHT

The land allocated to the BaCaSi project mainly consists of savannahs and gallery forests used for cassava cultivation, as well as the foraging of forest products and medicinal plants by indigenous peoples and farmers in Ngo.

On the Batéké Plateaux, family farming (a predominant economic activity, employing more than three-quarters of the population) is primarily carried out by women (sometimes organised into unions) who grow cassava, groundnut, and yam. In this region, the Ngo area is one of the two main yam production basins, and agricultural products are mainly intended for sale in local markets. The income generated from these agricultural activities is rather low compared to other regions in Congo, due to a lack of infrastructure and adequate equipment to cultivate and sell productions.

Indigenous populations, constituting a minority, do not have access to customary or commercial land (due to lack of resources) and find employment as daily workers alongside local farmers or seasonally exploit the resources of declining forest islands (gathering, hunting, etc.).

Both the testimonies of the local populations and the information provided by TotalEnergies¹ align on the fact that the communities were **informed of the project and its implications only a year after the agreement of the 3 November 2020 was signed, formalising the “eviction” of the populations**². In that respect, the operators of the BaCaSi project claim that consultations, social surveys, censuses, and other social meetings have been conducted **since 2021**³, as well as specific consultations with communities in the project's area of social influence in **June and July 2023**⁴.

Even though the project leaders had already started work within the planting area, the populations of Ngo impacted by the BaCaSi project, with whom we conducted interviews, all reported they had been informed of the project after its implementation. Some interviewees even claim to have discovered the project and the ban on cultivating their plots while working their fields. Others mentioned being informed of the BaCaSi project early one morning, at 5am, by the town crier, who told them that agricultural activities were now limited. Those absent during this announcement say they became aware of the project's existence through signs installed near the planting site (see photos below).

The information conveyed by the project operators regarding the planting's objectives appears to have been quite vague. Some people say they understood that it would be an artificial forest “to fight global warming,” which would be “beneficial for them”. As for the landowners, all of them affirmed that they had not been informed about the project's goals. Employees of the company FRM, leader of the BaCaSi project, reportedly came to tell them that they no longer were permitted to carry on with their activities.

“Two people from BaCaSi came to warn us, they told us that they now occupied the land and that we no longer had the right to cultivate it.” **Farmers, Ngo, 19 March 2023.**

“Tractors arrived overnight in the BaCaSi area to start work. I told them [FNC employees]: ‘You haven't done any awareness, give us a few months to prepare’, but they told me that the matter was no longer up for discussion, the State had taken our land.” **Landowner, Ngo, 19 March 2023.**



Signs installed on the project area, photo taken during a field mission.

1 Livelihood Rehabilitation Plan presented by Forest Neutral Congo.

2 Mickaël Correia, Olivia Acland, “Derrière le “greenwashing” de TotalEnergies, l'expropriation des paysans au Congo”, op. cit.

3 Livelihood Rehabilitation Plan presented by Forest Neutral Congo.

4 *Ibid.*

Interviewees expressed a sense of injustice regarding the way the project was presented to them, **as a done deal**. Regarding this last point, according to a letter from TotalEnergies in March 2023, information meetings and consultations were held in Ngo to present each stage of the project and address the queries of local communities. However, according to the members of the affected communities in Ngo, these meetings were largely insufficient. Furthermore, these consultations, carried out over a year after the project launch, did not allow a real integration of the users of the requisitioned land in the project's development.

A PROJECT THREATENING THE WAY OF LIFE OF INDIGENOUS PEOPLES

In interviews conducted in April 2022, some indigenous peoples reported that they had lost their access to the forests located within the project site, from late 2021. These areas played a crucial role in ensuring their livelihoods. Due to this restriction, these communities have been deprived of food resources such as *gnetum africanum* (koko), asparagus, and fish caught in the river near the forest, within the BaCaSi project perimeter. Residents of the Ngo 2 community have also stated that they experienced a significant reduction in their income, as many of them used to earn money by selling the products collected.

“ We rely on the land for food, but also for medicinal plants [...] FNC said they would improve our lives, but at the moment, we have even less food than before and we can no longer hunt or work for the Bantus. ” **Member of the Socofran indigenous community, Ngo village, 16 March 2023.**

During our mission in March 2023, the communities reported that they had regained access to the forest⁵ for certain uses, such as food foraging.

According to statements from representatives of the Olly indigenous community, the forest access restriction also prevented them from reaching their cemetery located within the project area. They were forced to look for another burial site for their deceased and use palm leaves as a substitute for coffins, since they no longer had access to the woods present in the gallery forests. They told us they felt humiliated by this situation. However, according to Decree No. 2019-200⁶, which outlines the procedures for safeguarding the cultural assets as well as sacred and spiritual sites of indigenous peoples⁷, both public and private companies are responsible for carrying out, in collaboration with indigenous communities, and following their free, informed, and prior consent, a mapping of sacred sites and spiritual sites, including cemeteries⁸ (Article 2). This mapping must be an integral part of any project that could impact their lives (Article 7)⁹.

INDIGENOUS POPULATIONS IN THE REPUBLIC OF THE CONGO

Article 1 of the Congolese Law No. 05-2011, dated 25 February 2011, on the promotion and protection of the rights of indigenous communities, recognises that without prejudice to any prior occupation of the national territory, the term indigenous populations means populations who are different from the national population by their cultural identity, lifestyle, and extreme vulnerability.

Indigenous populations in the Republic of the Congo, i.e. the first occupants of the land prior to the migration of the Bantu populations, constitute a minority segment of the population. Often derogatorily referred to as “pygmies”, they represent a vulnerable and marginalised group, compared to the broader Congolese population, frequently encountering discrimination and degrading treatment. This situation is noticeable in their working conditions, housing, access to land, natural resources, education, healthcare services, and justice, their situation in relation to the administration or their participation in public life.

5 Mickaël Correia, Olivia Acland, “Derrière le “greenwashing” de TotalEnergies, l'expropriation des paysans au Congo”, op. cit.

6 Decree No. 2019-200 of 12 July 2019 which outlines the modalities for the protection of cultural property, sacred sites and spiritual sites of indigenous peoples, Republic of Congo, www.clientearth.fr/media/lb2f4uui/2019-07-12-decret-n2019-200-du-12-juillet-2019-determinant-les-modalites-de-protection-biens-culturels-des-populations-autochtones-ext-fr.pdf.

7 Decree No. 2019-200, which outlines the modalities for the protection of cultural property, sacred sites and spiritual sites of indigenous peoples, OJ, No. 31-2019, p. 782, www.sgg.cg/JO/2019/congo-jo-2019-31.pdf.

8 *Ibid.*

9 *Ibid.*



© SCDF

Planting of acacias on the BaCaSi project site.

Our exchanges with the local communities of Ngo revealed several inconsistencies between the commitments provided by TotalEnergies regarding the preservation of the rights of these communities and the accounts we received from them. In its vigilance plan¹⁰, TotalEnergies places significant emphasis on identifying “all human rights” that could be adversely affected and the importance of building trust with local communities. However, the testimonies we collected show that, in addition to restricting access to the forest and livelihoods, the BaCaSi project poses a significant threat to the way of life and culture of indigenous peoples.

FARMERS DISPLACED AND DEPRIVED OF ECONOMIC ACTIVITIES

According to the census conducted by the DCJP, at least 259 farmers were growing crops on the land now occupied by the BaCaSi project. All these people have been impacted by the loss of their agricultural activity. Those we met expressed a deep feeling of injustice, and some mentioned that they have been unable to carry out economic activities for two years. Moreover, these farmers had leased this land to landowners with contracts that had already been settled. The loss of arable land for the populations ordered to vacate the area has exposed them to a significant loss of income, leaving them in a precarious situation.

“ This project has brought us to the brink. What are we going to do now? How are we going to live? ” **A woman who came from Brazzaville to cultivate the land three years ago, Ngo, 16 March 2023.**

TotalEnergies tried to downplay the problem by arguing that while farmers cannot plant new crops, they can wait for the cassava harvest, already planted to free up the perimeter.

“ I left Brazzaville to come here, I have children, and today I am left in a helpless situation. Now what are we going to do, how are we going to live? ” **Farmer, Ngo, 19 March 2023.**

Furthermore, according to testimonies, the local project operator, FNC, allegedly damaged part of the cassava crops while creating a tractor passage for the BaCaSi project. In a press release¹¹, TotalEnergies stated that “all manioc fields on the site have remained untouched and all the stakeholders historically present on the site are being identified and will be offered alternatives for future farming rotations, including prepared lands or other appropriate remediation to be defined with them¹²”. During a field mission in March 2023, the farmers met claimed to have not received compensation for their loss of income and access to land.

10 TotalEnergies, Universal Registration Document, 2022, https://totalenergies.com/sites/g/files/nytnzq121/files/documents/2023-03/TotalEnergies_URD_2022_EN.pdf

11 TotalEnergies, “The BaCaSi project : a pioneering partnership for a sustainable development in the Republic of the Congo”, op. cit.

12 *Ibid.*

A photograph of a rural village scene. In the background, there are several wooden houses with corrugated metal roofs. A flag is flying on a pole in front of one of the houses. There are palm trees and other tropical vegetation. In the foreground, several people are sitting on blue plastic chairs, looking towards the camera. The text is overlaid on a blue background in the center of the image.

**WHAT ARE
THE RESPONSIBILITIES
OF THE PARTIES INVOLVED
IN THE PROJECT?**

THE RESPONSIBILITY OF THE CONGOLESE STATE FOR THE EVICTIONS OF LANDOWNERS

According to information collected by the DCJP in September 2022, the landowners interviewed claimed that compensation for the expropriation of families' customary lands (registered during a "ceremony" referred to as the "symbolic franc") amounted to approximately 1,200 CFA francs per hectare, which is equivalent about 1.90 euros. Furthermore, one of the ten families identified (see the 2020 map) has still not received compensation to this day. It is important to clarify that the term "family" in this context refers to groups of people consisting of up to a hundred members, which means that the compensation received is divided between each of them. One of the members who held a customary right of use stated that he had initiated a process to obtain a title deed.

Traditionally, land has been passed down the family line, from one generation to the next, overseen by local chiefs. However, since 2018, a specific system has been put in place to enable customary landholders to acquire land titles. This procedure now requires customary rights holders to register their land. However, according to Lilian Laurin Barros a legal expert based in Brazzaville, registration fees, ranging from 300,000 to 1 million CFA francs (455 to 1,500 euros), make the cost prohibitive¹.

THE STATE MUST MONITOR COMPLIANCE BY THESE PRIVATE ACTORS AND PROTECT THE RIGHTS OF THOSE AFFECTED.

On the map presented by FNC to the owners, the family that has not received compensation is nevertheless listed (see map below). During our interview, a member of this family mentioned that his family was not involved in the symbolic franc ceremony, during which the landowners received financial compensation from the government. He reached out to the Congolese ministries in an attempt to obtain compensation, but was unsuccessful. He then turned to TotalEnergies to understand what he perceived as an injustice, but the company shifted the responsibility onto the Congolese State.

“The BaCaSi project totally blocked me. I am forced to rent a 40-hectare plot of land located 16 kilometres from Ngo. It's not as good as before and it's far away, I have to drive there many times by motorcycle [to transport equipment and staff] and fuel is expensive. Before, I grew cassava and employed 45 people in this area, on land that belonged to me. Now, I rent land, I can no longer pay for my children's education, that's the hardest part.” **Former landowner, Ngo, 19 March 2023.**

However, Article 23 of the Congolese Constitution and Act No. 11-2004 dated 26 March 2004, which outlines the procedure for expropriation in the public interest, recognises the right to property and provides for fair and prior compensation. Moreover, the International Covenant on Economic, Social and Cultural Rights (ICESCR) places the responsibility on the State to protect the rights of local communities². It is thus in charge of regulating the activities of private, national, and multinational companies: their activities must respect the rights of farmers, including their right to food and work. The State must monitor compliance by these private actors and protect the rights of those affected. It must also ensure that compensation measures are fair, accessible, and appropriate: “Access to land and security of tenure are essential to ensure the enjoyment of not only the right to food, but also other human rights, including the right to work (for landless peasants) and the right to housing³.”

Other expropriated landowners say the obligation to hand over their land to the Congolese State has placed them in a complex situation in relation to the rest of the population. While access to land represents a major challenge for the productive aspects of land use, it also holds additional significance. Land is part of cultural heritage and serves as a bridge between generations within family units and local communities. Some landowners interviewed during our mission stressed that this is the first time ever that the Batéké people have ceded their land, as land sales are typically uncommon.

“The land belongs to God and it hurts us when we hear rumours circulating that we've sold our land,” *“Within Ngo [locality closest to the project], some think that we have sold our land and this is frowned upon.”* **Landowner, Ngo, 19 March 2023.**

1 Mickaël Correia, Olivia Acland, “Derrière le “greenwashing” de TotalEnergies, l'expropriation des paysans au Congo”, op. cit.

2 International Covenant on Economic, Social and Cultural Rights, www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights.

3 *Ibid.*

“ The BaCaSi project has disrupted our harmony [...], land pressure is starting in Ngo because of projects like the BaCaSi one. ” Landowner, Ngo, 19 March 2023.

TotalEnergies could not have overlooked the fact that they were investing in an environment marked by “conflicts” related to local land practices. Therefore, this situation raises doubts about the accountability of the French company, which, in implementing a project in Congo, appears to decline any responsibility for the well-being of those who were expropriated⁴. Had there been a genuine consultation process with the communities, would the project have been carried out?

TOTALENERGIES' DUTIES TO PREVENT HUMAN RIGHTS VIOLATIONS

Throughout our conversations, TotalEnergies systematically insisted that the Congolese State bore the responsibility for displacements and compensation for landowners who lost their land. According to the UN Guiding Principles on Business and Human Rights⁵, corporations must prevent and be accountable for the impacts of their activities on these rights⁶. In order to assess the risks in this area, they must identify any actual or potential negative impacts, which could be caused directly by their operations. This would involve consultations with potentially affected groups, as well as other relevant stakeholders.

In France, the law on the duty of vigilance of parent companies and ordering companies (Law No. 2017-399), adopted in 2017, requires some large multinational companies to identify and prevent serious human rights and environmental violations resulting from their activity, through the establishment and implementation of a vigilance plan.

In its vigilance plan⁷, TotalEnergies stresses the importance of identifying human rights risks in its operations, “according to criteria defined in [...] the United Nations Guiding Principles Reporting Framework⁸”. TotalEnergies thus recognises the importance of identifying “all human rights” that may be “at risk of being negatively impacted by a company's activities or business relations, by taking into account all

Law No. 2017-399 dating 27 March 2017 on the duty of vigilance of parent companies and ordering companies. A vigilance plan includes reasonable vigilance measures to identify risks and prevent serious violations of human rights and fundamental freedoms, health and safety of persons and environment resulting from the activities of the company and of the companies it controls, either directly or indirectly, as well as the activities of subcontractors or suppliers with whom an established business relationship is maintained.

relevant business activities and entities in the company⁹. Since 2019, the company has collaborated with a service provider to identify potential human rights risks and offer “support to Subsidiaries located in geographic areas at higher risk of impacts on human rights¹⁰”. More specifically, the plan prioritises human rights in the workplace and the rights of local communities (with a particular focus on land access).

FREE AND INFORMED CONSENT: AN ESSENTIAL PREREQUISITE FOR ANY PROJECT

With regard to indigenous communities, it is imperative to establish robust safeguards to uphold their rights. Specifically, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples¹¹, States must engage with indigenous peoples to obtain their free, prior, and informed consent (FPIC) in various situations, including the approval of projects affecting the land where they live or from which they derive their livelihood (Articles 19 and 32). Moreover, Article 5 of Congolese Law No. 33-2020 of 8 July 2020 on the Forest Code stipulates that local authorities, local communities, and indigenous peoples express their FPIC when developing, implementing, and overseeing actions and decisions related to their involvement in the exploitation and sustainable management of forest resources. FPIC implies, *inter alia*, that the information provided is adequate about the project's objectives, nature, scale, and timing and that it is provided in a language understood by the communities. Despite this recommendation, neither the Congolese government nor TotalEnergies appears to

4 *Ibid.*

5 UN Guiding Principles on Business and Human Rights, www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.

6 *Ibid.*

7 TotalEnergies, Universal Registration Document, 2022, https://totalenergies.com/sites/g/files/nytnzq121/files/documents/2023-03/TotalEnergies_URD_2022_EN.pdf.

8 *Ibid.*

9 TotalEnergies, *Ibid.* [Préciser la référence, à moins que ce ne soit *Ibid.* ?]

10 *Ibid.*

11 United Nations Declaration on the Rights of Indigenous Peoples, www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf.

have taken the necessary steps to obtain the FPIC from indigenous communities before launching the project. In its vigilance plan, TotalEnergies nevertheless ensures that it “engages in dialogue” with its stakeholders: “In accordance

THE AFFECTED COMMUNITIES CLAIM THAT THEY WERE INFORMED ABOUT THE BACASI PROJECT AFTER ITS IMPLEMENTATION

with the Company’s framework documents on societal matters, stakeholders are identified, mapped out and organized by level of priority according to their expectations and degree of involvement. This includes the following steps: list the main

stakeholders for each Subsidiary and site (depots, refineries, etc.), categorize them and schedule consultation meetings to better understand expectations, concerns and opinions. The outcome of this process is the definition of action plans to manage the impacts of activities and consider local development needs, in order to build a long-term relationship based on trust. This process allows the Company to explain its activities to communities and other stakeholders, and to single out potentially vulnerable local populations¹².”

Our discussions with local communities in Ngo suggest that the company has not followed the steps outlined in its vigilance plan to establish dialogue and build trust with stakeholders. Conversely, the affected communities claim that they were informed about the BaCaSi project after its implementation, and lacked information about the project’s objectives and activities.

12 TotalEnergies, *Ibid.*

A photograph of a woman sitting on the ground in a makeshift shelter, holding a baby. In the foreground, a young child is sitting on the ground, looking towards the camera. The shelter is made of wood and fabric, and the ground is dirt. The text "LATE AND INSUFFICIENT REMEDIAL ACTIONS" is overlaid on the image in a blue and orange box.

**LATE AND
INSUFFICIENT
REMEDIAL ACTIONS**

LACK OF EQUITY IN THE WORKING CONDITIONS OFFERED TO AGROFORESTERS

Within the framework of the BaCaSi project, the allocation of 2,000 hectares for agroforestry has been proposed as an economic alternative for the local population. This initiative aims to combine acacia tree planting with cassava cultivation. Despite the lack of social acceptability of this agricultural model, observed during on-site visits, agroforestry was the only alternative offered to farmers in March 2023, over two years since the project's initiation. Only 60 farmers had agreed to take part in this process out of the 250 places provided by the operator.

Our discussions with both farmers and project operators align on the fact that 1 hectare of agricultural area was offered to each farmer, regardless of the size of their original landholding. Consequently, a farmer who previously owned 300 hectares of exploitable land could end up with only 1 hectare for agroforestry. As this allocation system is not proportionate to the damage caused by the loss of their farmland or the income it previously generated, the farmers interviewed felt dissatisfied with the proposal.

A FARMER WHO PREVIOUSLY OWNED 300 HECTARES OF EXPLOITABLE LAND COULD END UP WITH ONLY 1 HECTARE FOR AGROFORESTRY

Furthermore, unlike cassava cultivation which entails no land fees or land preparation, farmers are required to maintain the acacia trees planted between cassava crops. Some of them say they tried to take part in the agroforestry project, but quickly gave up because of the difficulty of weeding needed to maintain the acacia trees.

Another contributing factor to the project's shortcomings is the absence of community consultations aimed at understanding the farmers' needs. The farmers interviewed indicated that they had not been asked to participate in consultations regarding compensation for the damage caused by the loss of agricultural activities. Additionally, there has been no comprehensive assessment of the land initially held by farmers. The lack of training and awareness regarding agroforestry, which is very different from the local farming practices, may explain the scepticism among farmers concerning the productivity of this model for cassava cultivation. Displaced farmers question the feasibility of growing cassava under trees, expressing concerns that it will not grow because of moisture and shade.

“Cassava does not grow under trees, in shaded and humid conditions, there will be no cassava,” “Our ancestors have never cultivated under trees,” “There will not be enough tubers, not enough yield, ancestors have never seen this.” **Testimonies of farmers interviewed about the agroforestry project. Ngo, 18 March 2023.**

“WORK HAS COME FOR YOU”: A BROKEN PROMISE AND TENSIONS WITH EMPLOYEES

During a visit to the indigenous communities with whom we spoke, the FNC reportedly stressed the opportunities that the BaCaSi project could offer in terms of jobs, without providing a clear explanation of the project's objectives, or how it would impact them. The FNC employee in charge of the visit allegedly simply asked indigenous communities to compile a file and register on a list in order to be hired, without taking into account that these communities often do not have access to identity or birth documents, which are required for employment contracts. According to the interviewees, they have made significant efforts to obtain birth certificates, but have yet to be called to work on the planting site. To acquire the necessary supporting documents (clean criminal record and birth certificate), they need to travel to the town of Djambala (125 kilometres from Ngo), at their own expense.

Furthermore, TotalEnergies highlights the “significant” social co-benefits¹ of the BaCaSi project, especially in terms of creating new jobs, specifying that “hiring of team leaders, seasonal workers, engineers and technicians” would take place with a “strong involvement of women and indigenous populations in operations²”. However, these promises do not reflect the reality of jobs created in Ngo. This disillusionment is illustrated by the words of a representative from the indigenous Socofran community:

“We thought they were going to give us work, but they didn't.” **Ngo, 16 March 2023.**

Indeed, based on our conversations with the populations, only seventeen indigenous individuals were hired in March 2023. The lack of employment opportunities was a source of disappointment, especially among young people from indigenous communities, who had hoped to secure jobs with FNC. Only one member of the Ngo 2 community is currently employed at the acacia planting site, leading to frustration within the community. However, during our exchanges, TotalEnergies representatives insisted that hiring indigenous people was one of their priorities.

1 TotalEnergies, “The BaCaSi project: a pioneering partnership for a sustainable development in the Republic of the Congo”, op. cit.

2 *Ibid.*

Furthermore, the majority of indigenous women hired on the planting site told us that they do not have an employment contract, despite having worked on the BaCaSi project for around one year. They all said they were forced to remain on-site six days a week during the planting period.

While they would prefer to live at home and care for their children, some indigenous women told us they do not dare to ask to stop living on-site for fear of losing their jobs. A man who came to work from another part of the country confirmed these concerns. During our interview, this FNC employee explained that he had been threatened with losing his job when he asked his superior to stop staying on the site because he needed to be close to his family. He explained that he did not feel respected by the FNC company, or by those in charge of team management:

“ The social aspect, we do not see it. Once, to pay someone, they [FNC] tossed money on the ground, it was humiliating. ” FRM employee, Ngo, 19 March 2023.

Regarding salary payments, the dates vary from one person to another, and some employees interviewed reported significant delays (10-15 days), without any explanation given regarding the causes. Additionally, there is no provision for salary coverage in case of illness, and those we spoke with were unsure about the nature of their employment (whether it is on a daily wage or under contract). On 6 June 2022, workers organised a strike due to what they considered low wages and *per diem* amounts.

THEY WERE EMPLOYED WITHOUT FORMAL EMPLOYMENT CONTRACTS, LEAVING THEM VULNERABLE TO POTENTIAL EXPLOITATION.

Moreover, an employee lost her life after being struck by lightning while working on the planting site. Since this incident, her family claims they have not received compensation from TotalEnergies, FRM, or FNC, whereas the Minister of Forest Economy, Rosalie Matondo, would have provided financial assistance to the employee's family, the exact amount remains undisclosed.

TotalEnergies' goal to build a job-generating project is facing a number of obstacles. Firstly, the specificities of the administrative situation of indigenous communities have not been sufficiently taken into account by the project operators. These communities lack identity documents and were employed without formal employment contracts, leaving them vulnerable to potential exploitation. Furthermore, the requirement to reside on-site, even when employees do not desire it, violates their right to a regular private and family life and is not in the best interests of their children.

ALMOST TWO YEARS INTO THE PROJECT, EFFORTS ARE STILL ONGOING TO IDENTIFY “POTENTIAL NEGATIVE IMPACTS”

Despite the project launch announced in March 2021³, the process to identify its impacts was only announced in March 2022⁴, over a year after the initial tree plantings. Following a media investigation⁵ that highlighted the project's negative impacts, TotalEnergies released a statement on 15 December 2022, which reads: “In March 2022, TENBS and FNC launched an assessment to identify the Project's potential impacts and to mitigate negative impacts that could not be reduced”. The objective of this identification work would be to “establish a complete picture of those who are affected by the project in the overall project area (55,000 hectares) and will identify a remediation action plan, including livelihood restoration measures that comply with international standards. Results will be complete and made public in 2023⁶”. The project operators informed us that they had engaged a research firm to carry out this work in July 2023.

However, according to the UN Guiding Principles on Business and Human Rights⁷, these consultations should have taken place when the project was launched, not two years after. Regrettably, it appears that no comprehensive risk assessment for project-induced impacts or compensation plans for displaced individuals was developed and implemented before the launch of the media investigation.

In July 2023 a community agreement on the validation of the land use plan and the modalities for restoring the livelihoods of communities affected by the project was submitted to the populations impacted by the BaCaSi project for signature. This agreement stresses that compensation required for livelihood restoration will be provided exclusively in kind and not in monetary form. The relevance of

3 TotalEnergies, “Total and Forêt Ressources Management to Plant a 40,000-Hectare Forest in the Republic of the Congo”, op. cit.

4 TotalEnergies, “The BaCaSi project : a pioneering partnership for a sustainable development in the Republic of the Congo”, op. cit.

5 Mickaël Correia, Olivia Acland, “Derrière le “greenwashing” de TotalEnergies, l'expropriation des paysans au Congo”, op. cit.

6 TotalEnergies, *Ibid.*

7 UN Guiding Principles on Business and Human Rights, www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.

such an approach is questionable, given that a significant number of those affected, who were engaged in activities within the project area, have lost income due to the loss of their cultivable land. How could they be able to exploit the areas that will be made available to them without a financial contribution? For instance, how will farmers pay people who support them in the fields? According to information collected on-site by the DCJP, the signing of the memorandum of understanding, initially scheduled for mid-July, has been postponed twice.

The World Bank Environmental and Social Standard (ESS) No. 5 states that “when land acquisition or restrictions on land use (whether permanent or temporary) cannot be avoided, the Borrower will offer affected persons compensation at replacement cost, and other assistance as may be necessary to help them improve or at least restore their standards of living or livelihoods.”

In addition, there are gaps in the project's implementation timeline. The agreement highlights that among the activities included in the Livelihood Rehabilitation Plan (LRP), the realisation of social surveys of people affected by the project is scheduled for 2023. These elements reveal that insufficient consideration was given to the social dimension during the planning of the BaCaSi project, despite the company's stated priority in this regard. The mapping of the individuals who might be impacted by the project should have been a crucial preliminary step in the project implementation, rather than initiated over a year after the project started. Even more concerning is the fact that the company indirectly acknowledged, the negative impacts of the BaCaSi project on the livelihoods of local communities only after the revelations of the media investigation⁹, and not as a result of its own monitoring of the project's on-the-ground impacts.

In addition, the LRP (Article 7) agreement, which was shared with those impacted by the project in July 2023 by FNC, has established a complaint management mechanism. It serves as a conflict resolution tool concerning the validation of the land use plan and the modalities of restoring the livelihoods of the communities affected by the project. It outlines a three-tiered dispute resolution process. The **first level** is the direct settlement of the dispute between the parties (FNC and community members). The referral procedures provided for this initial level are the deposit

of a letter in a “physical” letterbox at the FNC social office or in suggestion boxes distributed within the communities. Alternatively, individuals may choose to send a letter or text message to an FNC representative. **The choice of these different channels, and the implication of an FNC officer, raises concerns about the confidentiality that is expected within complaint management mechanisms. To prevent any conflict of interest and risk of intimidation, it would seem preferable for disputes to be directed to an impartial external third party.**

THESE CONSULTATIONS SHOULD HAVE TAKEN PLACE WHEN THE PROJECT WAS LAUNCHED, NOT TWO YEARS AFTER.

The agreement provided by the FNC to those affected by the project also specifies that the settlement of a complaint typically takes around 67 days starting from the complaint's submission date: 7 days to receive the acknowledgement of receipt; 15 days for the initial processing of the claim upon registration; 45 days for the dispute resolution. **These excessive timelines could potentially dissuade communities from pursuing the complaint mechanism.**

The second level of the FNC's complaint management mechanism is “**facilitated negotiation**”. It only intervenes after 60 days, if neither party has reached an amicable solution. This mediation is facilitated by a third party chosen by both parties. However, the agreement does not give any details regarding the profile or qualities of this third party. Similarly, **it does not specify the duration or location of the negotiations.**

The implementation of a complaint management mechanism is essential for people impacted by the project to assert their rights regarding access to agricultural land and compensation for the negative effects stemming from the BaCaSi project. However, several points need to be clarified by project operators to ensure the full functionality of this tool and encourage people to use it without fear of retaliation.

At the time of completion of this report, no **impact study on the environmental and social risks of the project has yet been published.** Moreover, the attainment of

8 World Bank, Environmental and Social Framework, <https://thedocs.worldbank.org/en/doc/837721522762050108-0290022018/original/ESF-Framework.pdf#page=67&zoom=80>

9 Mickaël Correia, Olivia Acland, “Derrière le “greenwashing” de TotalEnergies, l'expropriation des paysans au Congo”, op. cit.

the FPIC, **mandatory under Congolese legislation for projects with potential impacts on indigenous peoples, remains pending.** According to the latest information from the field, a stakeholder awareness campaign took place at the end of June 2023. (The FPIC final report is expected in October 2023.) Throughout our discussions with TotalEnergies, we repeatedly inquired

about the absence of this process, which is crucial when developing carbon offset projects, to mitigate any potential adverse impacts on human rights. While operating within an “incomplete” legal framework, TotalEnergies has not sought to proactively develop its rights compliance vigilance measures.

RECOMMENDATIONS



The evidence outlined in this report confirms the risks that carbon offset projects pose to the rights of local communities and indigenous peoples. In view of the shortcomings highlighted by the individuals met, remedial measures for those affected by the BaCaSi project must be undertaken by the project leaders and the Congolese State. Moreover, extending these safeguards to the regulatory framework of carbon markets appears to be of utmost importance to prevent the recurrence of human rights violations.

In this regard, we propose a set of recommendations to address the damage caused by the BaCaSi project and, more generally, mitigate the risks to the rights of communities affected by carbon offset projects.

Nevertheless, it is essential that all corporate climate policies and strategies, including those of TotalEnergies, prioritise the immediate reduction of emissions at source. Achieving the Paris Agreement target of limiting global warming to 1.5°C is vital for humanity's survival. This requires ambitious policy measures aimed at effectively reducing greenhouse gas emissions and making structural, systemic changes. Given the scientific uncertainties surrounding carbon sequestration in natural ecosystems, companies, including TotalEnergies, must refrain from including carbon sequestration in their climate objectives as a means of mitigation.

TO THE CONGOLESE STATE

Regarding any carbon offset project

- ▶ Approved carbon offset projects should **identify in advance** the **potential impacts on the residents of the affected territories**, particularly through a **comprehensive mapping of individuals and communities potentially at risk** of experiencing a violation of their human rights and possible violations of their right to reside in a clean, healthy, and sustainable environment.
- ▶ **Thorough consultations** should be conducted **with all stakeholders, before initiating any carbon offset project**. These consultations must include **comprehensive, publicly available information** about the **project's goals, progress, and potential impacts**, as well as **measures to mitigate potential adverse effects, with the consent of the stakeholders**.
- ▶ **The Free, Prior and Informed Consent (FPIC) of indigenous peoples** should be granted before the implementation of any projects, in **accordance with the United Nations Declaration** on the Rights of Indigenous Peoples.
- ▶ **Transparency** should be ensured **at every stage of the project value chain**, along with the **freedom of civil society organisations to independently monitor the project**.

More specifically on the BaCaSi project

- ▶ **All forms of eviction of people within the BaCaSi project area should cease**, and **permanent protection measures** against such evictions should be put in place.
- ▶ The **amounts of financial compensation need to be reevaluated** to ensure they **proportionately reflect the direct and indirect damage** suffered due to the loss of ownership, access, enjoyment, and use of the land affected by the project. This assessment should also include individuals who do not hold ownership rights, particularly those who worked there.
- ▶ **The rights of indigenous communities should be safeguarded and upheld** in accordance with the United Nations Declaration on the Rights of Indigenous Peoples.
- ▶ **A monitoring framework and effective control measures should be implemented to oversee the various entities involved in the BaCaSi project**, ensuring that all actions carried out are in full compliance with international human rights protection standards.
- ▶ **Effective access to justice** should be guaranteed for everyone whose rights have been violated as a result of the BaCaSi project.

RECOMMENDATIONS FOR TOTALENERGIES AND THE PROJECT LEADERS

- ▶ The Livelihood Rehabilitation Plan should **include financial compensation (not just in kind) for those affected by the project**, addressing the extent of the damage caused by the loss of their property, economic activities, and livelihoods.
- ▶ **Information** regarding any changes made under the BaCaSi project should be made freely accessible to **affected communities, their representatives, and relevant stakeholders.**
- ▶ **Working conditions** for everyone employed in the BaCaSi project should **align with international standards.**
- ▶ Regarding the complaint mechanism outlined in the Community agreement proposed by the project operators¹:
 - in the context of “amicable management”, **the duration required to process complaints should be reduced;**
 - the agreement should explicitly state that the neutral third party chosen by both FNC and members of communities should be able to **communicate in a language understood by all parties engaged in the dispute;**
 - **the expected duration and the location of the negotiations** should be **specified.**

RECOMMENDATIONS FOR PARTIES TO THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (UNFCCC)

- ▶ Article 6 of the Paris Agreement outlines international carbon offset mechanisms. The implementing rules should include robust social and environmental standards (based on protections under the International Covenant on Economic, Social and Cultural Rights² and the International Covenant on Civil and Political Rights³), including **prior consultation with stakeholders before the initiation of any carbon offset projects.**
- ▶ They should also **include an independently-managed, rights-based complaints mechanism that is accessible, fair, transparent, legitimate, and effective.** These safeguards must guarantee adherence to and enforcement of the **do-no-harm principle, the right to free, prior and informed consent (FPIC) of indigenous peoples, and the right of local people and communities to participate in environmental decisions that impact their lives.**

1 Community agreement on the validation of the land use plan and the modalities for restoring the livelihoods of communities affected by the project.

2 International Covenant on Economic, Social and Cultural Rights, www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights.

3 International Covenant on Civil and Political Rights, www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights.



