

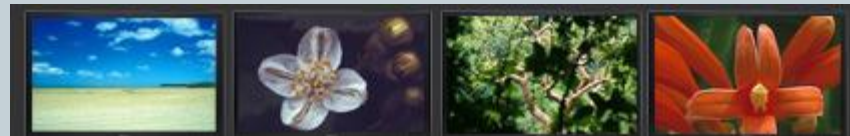


the  
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group



COLOMBIA'S COUNTRY REPORT  
CARBON

**Legal and Institutional Frameworks and  
their impact  
on Ecosystem Services Transactions**



# Contents



- Legal and institutional framework
- Property Rights
- Contracts Characteristics
- Securities and Risk Allocation
- Negotiation Process
- Monitoring Non-Compliance and Enforcement
- Public Participation

# Legal Framework



## **Constitutional Basis**

- Protection of the environment and natural resources as a constitutional goal
- Public nature of renewable natural resources
- Joint responsibility for the State and the people to preserve the environment and the natural resources.

## **Specific Legislation**

- Certificate Incentive for Forest Conservation
  - Based on positive externalities of forests.
  - State recognition to the landowners of the cost of conservation of natural forests.
  - Include contracts scope, value of incentive, monitoring and guarantees.
  - Does not include public areas and areas that have a legal obligation to conserve the natural forest.

# Legal Framework



- National Development Plan
  - Commitment of the Ministry of Environment to create a system for Payment of Environmental Services.

**Forestry Legislation:** Applies constitutional principle to forest. Indirectly mentioned as a source of financing of Protected Areas System and National Forestry Plan.

**Indirect Legislation:** Promotion of economic instruments for natural resources conservation. PES financing opportunities in compensations related with licensed projects, ordering plans and forestry charges.

# Institutional Framework



- Decentralize environmental institution and financial autonomy could foster Carbon PES projects.
  - Reducing transaction costs (approvals)
  - Generating local information (GIS, maps, studies).
  - Financing preparation of projects
- Types of institutions participating in Carbon PES projects:
  - National and International NGOs
  - Environmental Authorities
  - Multilateral Agencies
  - Civil Society Organizations
  - Specialized Consultants
- CDM market has strengthening institutional capacity also for voluntary markets: Consultants, Brokers, Certification Institutions.
- Conclusion:
  - High institutional capacity but underdeveloped.
  - Environmental Authorities as responsible of management of natural forest will be involved in REDD initiatives depending on the modalities that are being negotiating.

# Property Rights



## Land Property Rights modalities

- Private
  - Tradition
  - Possession
- In general terms, property is not proper register to avoid payment of property taxes.
- Is a barrier for Carbon PES contracts.
- Collective property for indigenous people and afrocolombian communities. Legislation provides the means for entering into commitments but in practice its is difficult to reach agreements and enforce commitments.

# Property Rights



## Forestry use regulation:

- Natural Forest is owned by the Nation and managed by CARs.
- Decree 1791/74 establish modalities and procedures for the access to natural forest (permits, authorization and concessions).
- These modalities are relevant for Carbon PES transaction based on REDD depending on the activities to reduce deforestation. (e.g. sustainable natural forest management). CIPAV, Procuencia and San Nicolas registered the project in the corresponding CAR.

# Contracts for Carbon PES transactions



- Parties:  
Seller vs. intermediary (San Nicolas Procuencia)  
Intermediary vs. buyer (San Nicolas)  
Seller vs buyer (CIPAV)
- Legal standing: private legislation
- Purpose: Mainly referred to activities: reforestation, forest conservation etc.  
Indirect mention of environmental services.
- Obligations: Activities in a management plan, reporting and monitoring.



# Contracts for Carbon PES Transactions



- Time and duration: Defined long term duration: 10 – 20 years (except CIPAV 5 years).
- Payments:
- Fiscal implications of selling ES: VAT and Revenue Tax. For private entity could have fiscal benefits (deducted from revenue tax), for seller could be subject to upfront contribution. If seller is considered high income, shall include VAT tax.

# Securities and Risk Allocation



- CIFc requires an insurance for 10% of the incentive.
- Mortgage of land (not used), it preclude participation in the projects of low income landholders.
- Buyers requires entering into agreement only with landowner properly registered.
- Pledge of canopy cover (only for reforestation activities)
- Insurance for 100% of the contract value (San Nicolas).

# Negotiation Process



- Typical approach: Project proponent (buyer or intermediary) undertake extensive and open community workshops for explaining scope of the project. Only enter into agreements with interested landowners.
- Mediation and conflict resolution: Legislation includes:
  - A Referee or a Friendly Mediator
  - Arbitrator Tribunal
  - Conciliation
- The majority of the cases generally addressed the issue. Procuencia contracts establish the Conciliation of the Chamber of Commerce.

# Monitoring, Non-compliance and Enforcement



- **Monitoring is assigned to different types of parties (seller, intermediary or buyer).**
  - Most frequent, the buyer assumes the cost of monitoring.
  - Could be hired with a third.
  - Based mainly on site visits and aerial photographs.
- **Enforcement:**
  - Contract termination clause and possibility of compensation.
  - Pecuniary clauses (e.g. San Nicolas 10% of the contract value)

# Public Participation



- Community consultation is required if project is undertaken in collective lands. Legislation establishes procedures.
- Negotiation process often involves public participation and information disclosure.
- Project proponents have a local institution which is accountable for project development.

# Conclusions



- Legal framework allows for Carbon PES transactions. However the sector is highly regulated and projects should take into account all regulations.
- Institutional framework could facilitate Carbon PES projects, particularly REDD depending on the modalities that are being negotiating. It is not fully used.
- CDM have pave the way for Carbon PES transactions: ERPAs, contracts, institutional capacity.
- Informal land tenure is a major barrier for implementing Carbon PES projects which involve multiple landholders.
- Although legislation provides mechanisms to enter into agreements with indigenous and afrocolombian peoples, internal enforcement could be a barrier.