

# Legal and Policy Frameworks for PES



## *International Experience*



# Essential Components for Ecosystem Services Market Growth

Public Payment Schemes

Open Trading

Self-Organized Private Deals



Forest Trends, 2005

# Barriers to PES



- Lack of enabling policy and legal framework – including clear property rights
- Lack of market information
- High transaction costs
- High investment costs

# Requirements for PES



- Environmental services clearly defined
- Rights to buy and sell environmental services clearly defined
- Buyers and sellers clearly defined
- Safeguards for buyers, sellers and investors
- Financial mechanisms clearly defined -- flexible frameworks for different types of payment options

# Property Rights



- Rights to land, water, forest and other resources
- Rights to access environmental services
- Rights to buy and sell environmental services
- Rights to control management of resources owned by others

# Direct Sales between a Buyer and a Seller



## Contracts

- Clear legal rights to sell environmental services
- Contract law
  - Simple and flexible
  - Detailed and binding
  - Clear liability in case one party does not honor the contract
- Adequate enforcement of contract law
- Contracts recorded in land registers

# Public Payments



## Require legislation

- Allocate budgets
- Establish administrative rules and responsibilities
  - Define what environmental services may be sold
  - Specify who may sell and who may buy
  - Specify terms of payment
  - Specify how the agreements will be monitored
  - Specify penalties if one party does not comply

# Other PES Arrangements



- **Community Arrangements**
  - Formal contracts
  - Informal agreements
  - Customary law may need to be considered
- **Markets**
  - Require legislation/regulations for environmental service credits
  - Legislation must specify what types of services may be traded and establish trading rules
- **Eco-certification of products**
  - Legislation helpful but not necessary
  - Guidelines, rules and procedures required



# China

## Public payment type



- 1998 – Forest Law amended to enable a Forest Eco-compensation System
- System pilot tested 2001-2004
- Forest Ecological Benefit Compensation Fund created in 2004

# Costa Rica

## Public payment type



- Forest Law 1996 enables PES through National Fund for Financing Forestry (FONAFIFO)
  - Contracts with land users are processed regionally according to guidelines established by the Ministry of Environment and Energy
  - National Protected Areas System and NGOs act as contracting agents
  - Participants must submit detailed management plans

# Ecuador

## Public payment type



- National Biodiversity Policy provides for markets for environmental services
- 1999 regulatory reform allowed the public sector to allocate resources to private sector financial mechanisms
- National Water Fund (FONAG) created in 1999 to manage PES for the watershed supplying Quito
- Public utilities that are water users allocate 1% of water utility revenues to FONAG
- Each contributor to FONAG is a member of the Board of Directors and has votes proportional to its contribution

# Mexico

## Public payment type



- Mexican Forest Fund established 2002, began operating in 2003
  - National Water Commission determines priority areas
  - People apply to be paid for the environmental services their land provides
  - National Forest Commission signs renewable contracts with land owners to manage land to maintain watershed services
  - Payment depends on the original land use

# Other Examples



- **Bolivia** – piloting a system similar to Ecuador
- **Colombia** – charges for forest watershed services. Electricity companies and hydropower plants allocate 3% of their revenues. Bogotá piloting a system similar to FONAG in Ecuador
- **El Salvador** – payments for watershed conservation financed by increase in rates for water use

# Evaluating the National Context for PES



- Is PES integrated in national and sectoral conservation & development strategies?
- Do national and sectoral policies facilitate PES?
- Is there a national framework for PES to ensure coordination and avoid conflicts?

# Evaluating the National Context for PES



- Do landowners have clear legal rights to sell environmental services?
- Do communities have legal rights to sell environmental services? To approve or reject PES agreements?
- Are there government agencies that can manage public payment-type PES?

# Evaluating the National Context for PES



Does national law:

- Recognize the ecosystems that provide environmental services?
- Recognize resource user groups?
- Enable municipal/local government to implement PES?



# Evaluating the National Context for PES



Does national law:

- List environmental services?
- Treat PES as taxes, fees, charges or market prices?
- Enable economic instruments related to PES?
- Enable multiple payment options?

# Evaluating the National Context for PES



Does national law:

- Enable re-investment mechanisms that support sustainable use of natural resources?
- Enable valuation of environmental services?
- Enable incentives for carbon sequestration?
- Facilitate approval of land use changes for the purposes of PES agreements?

# Last words...



- Public payment-type PES arrangements require law and/or regulations
- Contract law as legal basis for direct payment PES arrangements may not be sufficient
- Many direct payment PES arrangements are:
  - *ad hoc*
  - not monitored to ensure delivery
  - not structured to take into account the time required to deliver environmental services



**Thank you!**