



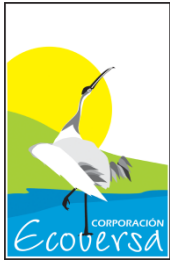
Legal and Institutional Frameworks and Their Impact on Water Related Ecosystem Services Transactions



Colombia Country Report
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Lima – Perú
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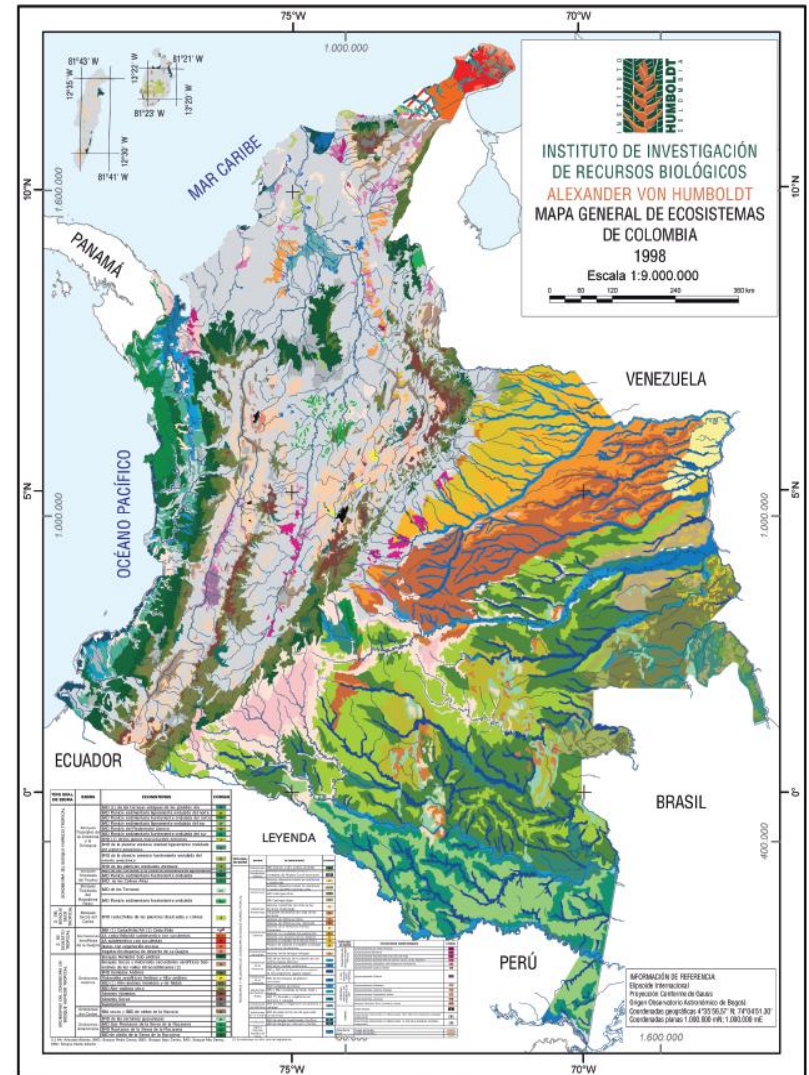
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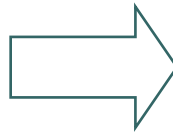
Contents

- National environmental context.
- Existing and future legal and institutional framework
- Property Rights.
- Contracts
- Securities and Risk allocation
- Negotiation Process
- Monitoring, non-compliance, enforcement.
- Public participation: access to information, transparency, accountability



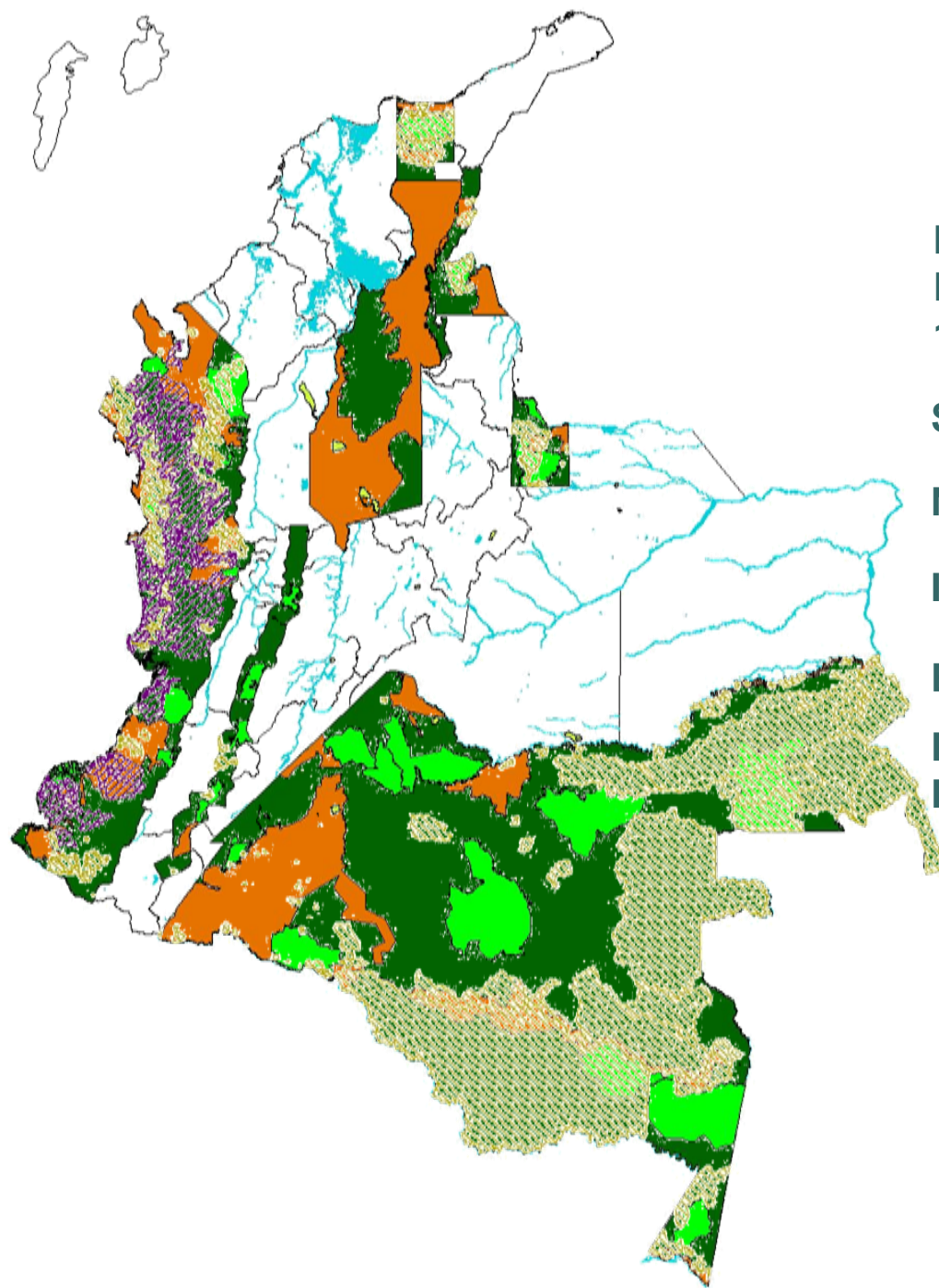
National environmental context: overview

- **Biodiversity:** between 10 - 14% of global biodiversity in 0,8% of planet
- **Natural Forest:** 55 million hectares of national territory
- **Water resources:** 2.1 billions of m³/per year and 57% Paramos ecosystems of planet.



- **Biodiversity:** 377 fauna species - 254 flora species in some threat category
- **Natural forest:** annual loss rate 0.18%, deforestation rate 118.000 ha/per year (national average)
- **Water resources:** 40% of watersheds with moderate or medium vulnerability scarcity index

- Demonstrate their contribution to global, national and local economies.
- Demonstrate that conservation and sustainable use benefits are more relevant than their costs.
- Identify environmental services users and beneficiaries for attracting investment and ensuring sustainable financial flows and incentives for their maintenance or restoration.



COLOMBIA

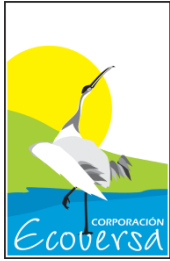
	Ha.
NATIONAL FOREST RESERVES- LAW 2ª of 1959	65.280.321
SUSTRACCIONES	13.903.591
NATIONAL PARKS	8.166.635
INDIGENOUS RESERVES	22.986.074
BLACK COMMUNITIES	3.939.351
PROTECTED NATIONAL FOREST RESERVES	123.499



Existing and future legal and institutional framework

○ *Political Constitution:*

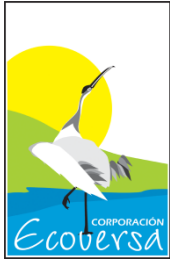
- **water resources** are property of Nation and consequently the environmental services provided by biodiversity are also property of nation.
- In many cases the legal framework is not sufficient to reach the environmental objectives, requiring also the will of people to realize complementary actions (to do or not to do).
- The payments are not for the natural resource or the ecosystem service generated by them ...due to the activities or land uses that have a direct impact on increase, maintenance or provision of an environmental service.



Existing and future legal and institutional framework

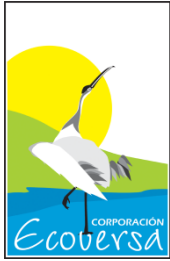
- **Specific legislation:**

- **Conservation – CIF:** is a subsidiary incentive based on the payment of positive externalities that natural forests have on water, carbon storage, soil and biodiversity...to the landowners with natural forest, for their conservation and not change land use.
- **Law 1151 of 2007:** establishes legal responsibility of the Ministry of the Environment, Housing and Territorial Development to design and develop economic and financial instruments to encourage knowledge, conservation and sustainable use of biodiversity, included the ***mechanisms needed to create a payment system for environmental services in Colombia*** = Draft National PES Strategy.
- **article 106,** establishes that territorial entities (Municipalities), have obligation to invest an amount no less than 1% of their ordinary income in the acquisition and maintenance of zones that are important to water supply for municipal or district aqueducts ***or to finance PES schemes.***



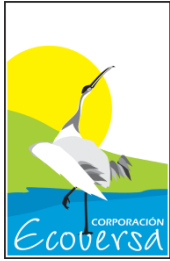
Existing and future legal and institutional framework

- ***Ecosystems legislation:*** natural forest, paramos, wetlands, mangroves, watersheds.
- ***Water Related legislation:*** compensations included in the environmental framework.
 - Compensatory measures Environmental Licenses.
 - Compensate taxes for water use
 - Obligatory investments of 1% of EMP total amount of projects that use water.
 - Energy Sector Transferences
 - Investment 3% of value of irrigation districts to acquire strategic areas for water resources conservation



Existing and future legal and institutional framework

- ***Institutional framework: National Environmental System:*** array of guidelines, norms, actions, resources, programs and institutions, constituted by:
 - Governmental institutions responsible for environmental policy and their implementation (not only the environmental entities).
 - Community-based and non-governmental organizations concerned with environmental issues.
 - Financial sources for the management and improvement of the environment.
 - Public and private entities responsible for the generation of information, scientific research and technological development in the environmental sector.
- ***Institutional conditions*** that facilitate the introduction of payments for environmental services:
 - A decentralized environmental management with administrative and financial autonomy that allow prioritizing the regional and local PES initiatives in correspondence with the environmental problems at this scale using appropriate regulations.
 - Inclusion of legal fees for use or degradation of natural resources such as co – financing resources in PES initiatives.
 - Existence of payments and transferences of particular sectors (specially the energy sector), aimed to protect the watershed should be used such co – financing funds in PES initiatives.



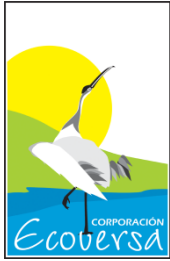
Existing and future legal and institutional framework

- ✎ Colombian general legal framework allows the participation of all types of organizations and stakeholders in PES initiatives.
- ✎ Execution and procedures are different considering parties involved (public, private, communitarian organizations, indigenous groups, financial sources) and nature of funds.
- ✎ One of the main factors that may affect the appropriate implementation of PES schemes, is lack of clarity that exists in the regulatory framework related with investments of public funds in private lands.
- ✎ Despite existence of a regulatory framework, it is important to clarify the legal institutional framework, considering that in PES initiatives natural or legal persons under public or private law can participate.
- ✎ It's important to have a legal framework for PES that besides clarifying the functions and responsibilities of the public entities also indicates the role of all the actors, the basic process and procedures to implement projects and the methodologies required to advance with an adequate scientific and technical support.
- ✎ Significant gaps in relation to technical aspects that are required for the adequate implementation of PES projects, particularly in methodological procedures associated with identification, valuation and availability estimation of water environmental services



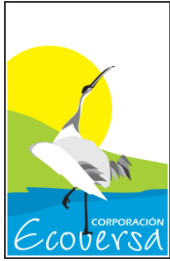
Property rights

- Owner of land does not have the ownership of the renewable natural resources that are within that land, neither of the environmental services that they produce.
- Economic retribution of a PES scheme focused on an action or inaction of the landholder that enhances or maintains an ecosystem service:
 - Cauca Valley Water User Associations: generate an additional fee over water use charge to invest in activities that protect the watershed through the Associations.
 - Chaina: willingness to pay study - Humboldt Institute – CIFOR calculated the payments.
 - Fúquene Lagoon: credits to change agricultural practices (eutrophization and sedimentation).



Property rights: collective property rights and PES

- Colombia recognizes the traditional rights, including land property rights to both indigenous and afro - colombian people.
- **AFRO:**
 - Communal Council has a legal representative can sign contracts and agreements, as well as administer the benefits derived from them, with prior authorization of the Directive Board.
 - Distribution of the benefits of contracts shall be directed by the Communal Council and not by the legal representative.
 - Legal representative can sign the PES contract, s/he cannot enforce conservation activities between the communities (Not examples in water cases).
- **Indigenous Reserves:**
 - Activities of a PES scheme in Indigenous Reserve shall comply with the land use conditions and restrictions of “Live” Development Plan.
 - Communal right of properties that do not permit to establish individual responsibilities where the contracts were sign.



Negotiation Process

- There is no specific regulation for the negotiation process of PES contracts in Colombia.
 - Water User Association: discount % of water use charge.
 - Chaina: payment is divided, 50% at the signed of contract, 25% after 6 months, and the other 25% at the end or the year.
 - Munchique –Pinche: workshops to define land use options (menu) with indigenous and farmers. Compensation was made in manpower provided through community work coordinated by local indigenous authorities (mingas), and different type of materials provided by the project.
- If the buyer of the environmental service is a public entity, public contracting procedures must be followed as established in Law 80 of 1993 (contractual).
- General previsions to conflict resolution (Referee or a Friendly Mediator, Arbitrator Tribunal, Conciliation, which includes Peace Judges).
- Water cases reviewed, none of the contracts contained specific provisions related with the mechanisms for the conflict resolution.
- Although PES contract can be enforced by judicial procedures, the long term nature of these procedures makes the parties to prefer resolve their problems with mechanisms for dispute resolution as conciliation or an arbitral procedure
- Instructive or material information, in which established what are the most relevant aspects to be consider in a negotiation phase.



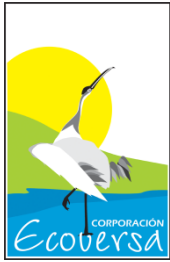
Contracts: water cases

- Payment of environmental services is effectively implemented by a contract.
- Contracts not have clearly defined values and mode of payment as well as commitments of the buyer of the service to make a payment (WUA, Fúquene, Munchique in design).
- Differences between cases are related with conditions imposed for payments and the period in which they are verified.
- Property rights is a key issue in contractual process.
- Absence of clarity until project beginning will be impossible to require compliance of the obligations included in the signed contract to anyone.
- One interesting findings is that based on the process for designing a contract, an intermediary institution is helping to clarify property rights by helping produce land titles for small farmers or landowners.



Securities and Risk allocation

- In water cases not exist specific clause related with this matter so it is applicable the general regulation contractual framework (commitments verification)

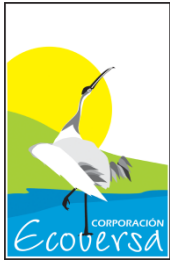


Monitoring – non compliance - enforcement

- Monitoring is more than a contractual obligation, is a key phase in implementing PES schemes, to verify compliance of the contract commitments and the treatment of failures to meet obligations.
- WUA – CV: monitoring in charge of Directive Board of Associations.
- In case studies, baseline is not included as a clause, but in CIPAV case as an annex that will be part of the agreement.



- 1. Bosque Ribereño 8,78 Ha
- 2. Bosque Secundario 29,59 Ha
- 3. Cultivo perenne (café) 2,03 Ha
- 4. Cultivo perenne (caña panelera) 0,39 Ha
- 5. Cultivo transitorio (maíz) 0,92 Ha
- 6. Cultivo transitorio (mixtos) 0,65 Ha
- 7. Lote para vivero 0,003 Ha
- 8. Pastura de buena cobertura 2,84 Ha
- 9. Pastura degradada 8,04 Ha
- 10. Sucesión vegetal menor a 10 años 12,61 Ha



Public participation

- Mechanisms include workshops, meetings with the community and site-visits.
- WUA: communities present projects or the Association propose them.
- Chaina: interviews
- CIPAV: publishes booklets and guidelines of the payment methodology

USOS DE SUELO	PUNTAJES	PRACTICAS QUE MEJORAN EL PUNTAJE					TOTAL
		ENRIQUECIMIENTO CON ARBOLES	CERCA VIVA	BARRERAS CONTROL DE EROSION	BARRERAS ROMPIEVIENTOS	COBERTURA VIVA O MUERTA	
BOSQUE RIBEREÑO	2	0,2	0,2				2,40
BOSQUE SECUNDARIO,	1,8	0,2	0,2				2,20
SUCESION VEGETAL MENOR	1,6	0,2	0,2				2,00
PARCELA DE SEGURIDAD ALIMENTARIA	1	0,2	0,2	0,2	0,2	0,2	2,00
CULTIVO PERENNE	0,8	0,2	0,2	0,2	0,2	0,2	1,80
PASTURA DE BUENA COBERTURA	0,6	0,2	0,2	0,2	0,2		1,40
CULTIVO TRANSITORIO	0	0,2	0,2	0,2	0,2	0,2	1,00
PASTURA DEGRADADA	0	0,2	0,2	0,2	0,2		0,80