Analysis of Legal & institutional frameworks for Payment of Environmental Services (PES): approaches by 8 Latin American Countries

Adriana Casas

OAS Department of Sustainable Development
Washington DC November 2007

CONTENT

- **Scope of the study**
- **Countries included in the study**
- **Definitions used**
- **Environmental Services included**
- **Laws and regulations reviewed**
- **Major Findings**
- **Recommendations**

Scope

- Legal and institutional gaps in 8 LAC countries
- Key legal-institutional enabling conditions for PES systems in LAC
- Use of publicly available information

Countries included in the study

- Bolivia
- Chile
- Colombia
- Costa Rica
- Ecuador
- Panama
- Peru
- Republica Dominicana

Definitions & Criteria

- Emerging discussion about what regulatory instruments are consider PES. Therefore we used basic definitions to guide the legal analysis:

- **Ecosystem Services** –Benefits that people obtain from ecosystems. These include provisioning services such as food and water; regulating services such as floods, drought and disease; supporting services such as soil formation, photosynthesis and nutrient cycling; and cultural services such as recreational and spiritual. (MEA, 2003)

- **PES** -Environmental services providers are compensated and the beneficiaries of such services pay for them. (Pagiola&Platais)

- **MEA major findings**: Humans radically altered ecosystems in 50 years; Ecosystem change has brought some gains in human well being at a high cost to the "natural capital"; unsustainable practices threaten development goals; workable solutions require major governance changes (MEA, 2003)

Environmental Services considered

- Environmental Services that have a market and are more regulated:

- Water (ex. Panama Canal)
- Biodiversity landscapes & scenic view (Coffee region in Colombia)
- Climate Change & GHG emissions reductions (ex. CDM)

Laws and regulations reviewed

- OAS legal data base and publicly available information
- More than 40 laws of 8 countries including:
  - Political Constitutions
  - Forestry laws,
  - Tax laws,
  - Land tenure rights,
  - Water,
  - Biodiveristy,
  - climate change,
  - Multilateral environmental agreements ratified

Major Findings

- Challenges
- Specific PES laws and regulations are starting to develop -opportunities and challenges
- Need to refine concepts on property rights, legal nature of ecosystem/environmental services and parties to a PES agreement
- Lack of systematic information at a regional level
- Need to remove perverse incentives (ex. “mejoras”)

Major Findings

- Enabling conditions for PES
- Government role –mediator or regulator,
- Institutional framework,
- Property rights,
- Transaction costs,
- Information,
- Capacity building,
- Implementation –pragmatic and decentralized
- Umbrella PES laws

Major Findings

- Government role –mediator or regulator
  - Governments should provide policies that promote the use of the most appropriate and efficient economic and legal instruments for PES.
  - Governments should make an effort to eliminate perverse incentives that prevent the use of PES schemes.

Major Findings

- Institutional framework
  - Centralized or decentralized (ex. Fonafifo)
  - Manage ecosystem services across multiple levels and time frames promoting institutional cooperation across levels and increasing use of co management practices in order to take advantage of different strengths in ecosystem management (WRI, 2007)

Major Findings

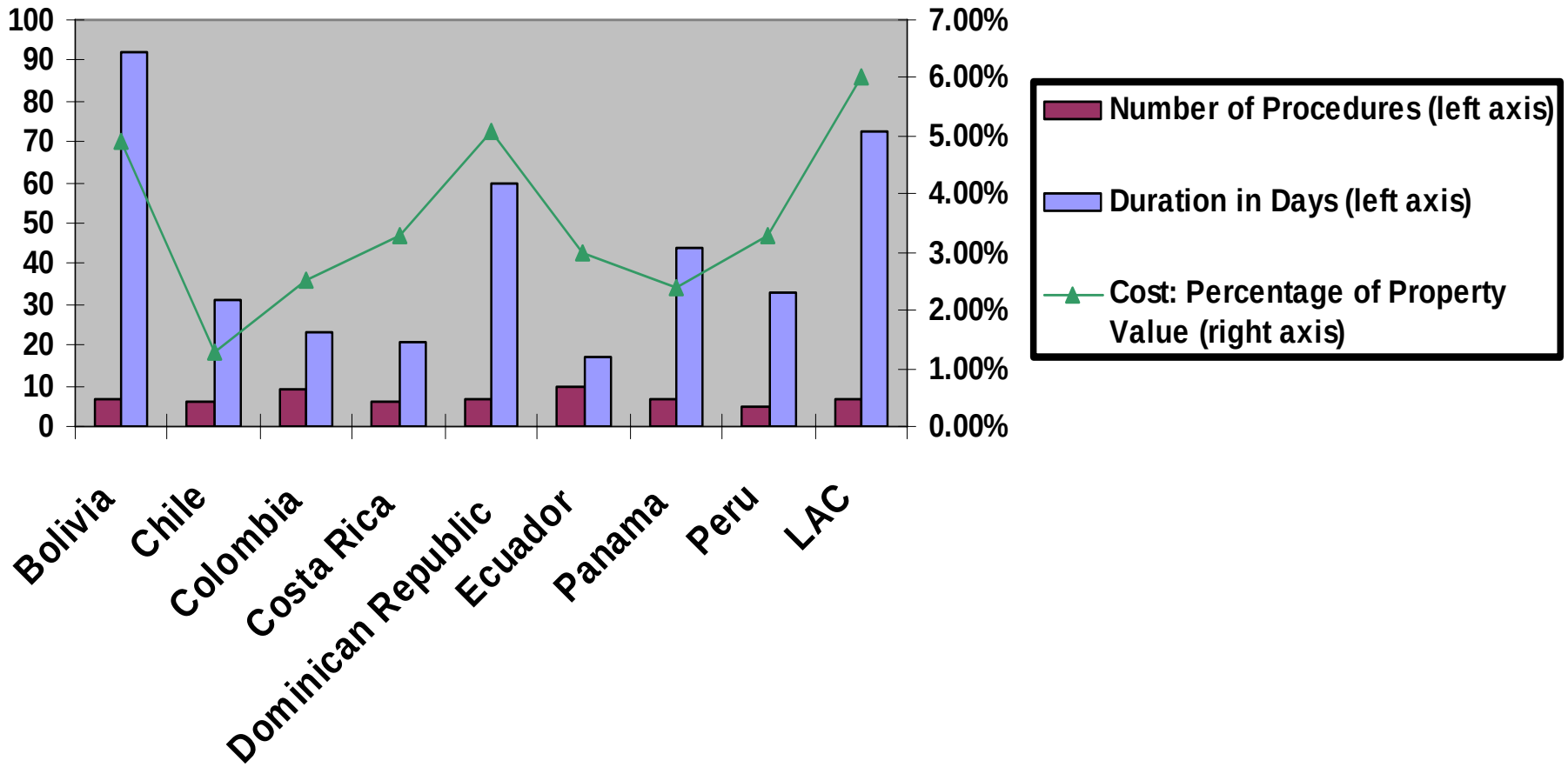
- Property rights
  - Clear land tenure rights are crucial for PES contract agreements and to address social exclusion.
  - Strengthen rights of local people to use and manage ecosystem services
  - Ensure that individuals and communities have secure rights to the ecosystem services they depend on (WRI, 2007)

Major Findings

- Transaction costs
  - These is part of the implementation costs of the PES legal tools and the costs of completing a PES agreement.
  - Transaction costs should be efficient and avoid duplication due to poor institutional framework
  - Costs of registering Property. The table below shows the main indicators, which include:
    - number of procedures legally required to register property,
    - time spent in completing the procedures, and
    - the costs, such as fees, transfer taxes, stamp duties, and any other payment to the property registry, notaries, public agencies or lawyers. The cost is expressed as a percentage of the property value, assuming a property value of 50 times income per capita.

Source: Doing Business Project , World Bank
http://www.doingbusiness.org/

Property Registration



Major Findings

- Information
  - Develop and use information about ecosystem services establishing regular monitoring systems to track their state.
  - Strengthen national systems of public access to information about ecosystem services.
  - Identify tradeoffs among services over time and in relation to who gets the benefits and who bears the costs to strengthen decisions that affect or depend on ecosystem services. (WRI, 2007)

Major Findings

- Capacity building
- Implementation –pragmatic and decentralized
- Umbrella PES laws that allow adaptation, flexibility and use of different legal instruments already in place such as incentives, environmentally friendly tax exemptions and tariffs.
- Align economic and financial incentives with ecosystem stewardship.

Recommendations

- Work in progress. OAS facilitate dialog to promote a deeper understanding with in and among LAC countries on key legal issues such as property rights, PES agreements and the role of stakeholders such as governments, development banks, private sector and civil society;
- Avoid over regulation
- Country by country approach-case by case
- Next step: peer reviewed by country experts