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Policy Forums

The challenges of implementing a legal framework for Payment for Ecosystem Services in Santa Catarina, Brazil

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In the last two decades, the Payment for Ecosystem Services (PES) tool has largely spread across the globe as an approach to address biodiversity loss and ecosystem services degradation (Wunder, 2015). The role of the State in PES programs varies from active buyer of ES, on behalf of ES beneficiaries, to regulator. A well-structured legal framework is defined as crucial for scaling positive results up of PES initiatives (Greiber, 2009; Stanton, 2014). However, little attention has been given to the political aspects behind the development of PES regulations, an important piece to guarantee PES functioning. In developing countries, political interests may play an important role in PES legislation establishment compromising its final goals. In this essay, we briefly discuss the status of PES legislation

in Brazil and address the challenges faced by Santa Catarina state to get off the ground its PES policy.

Around eight publications discussing PES concepts have been presented by Matzdorf et al. (2013) and at least two other recent ones might be added (Noordwijk and Leimona, 2010; Wunder, 2015). Here, the concept followed defines PES as a “transfer of resources between social actors, which aims to create incentives to align individual and/or collective land use decisions with the social interest in the management of natural resources” (Muradian et al., 2010).

Within this framework, Governments can assume the role of ecosystem service (ES) “buyer” and/or of a legal actor. In the first case, Governments are responsible for financing or co-financing PES programs, what is generally observed for non-rival and non-excludable services, such as habitat for biodiversity and climate regulation (Jack et al., 2008; Kemkes et al., 2010). In the second, Governments can establish regulation for compensation payments within the environment impact

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assessment framework (EIA) and others, and define proper regulations for PES programs in local, regional and national levels (Matzdorf et al., 2013).

The role of the State and the development of an appropriate legal framework are considered critical for PES to properly function (Balvanera et al., 2012; Farley and Costanza, 2010; Greiber, 2009; Richards et al., 2015). However, it is known that some of the legislation supporting PES are poorly designed due to the lack of technical capacity and their susceptibility to political pressures (Pattanayak et al., 2010; Pirard, 2012; Wunder et al., 2008). Political interest can play a major role in the design and implementation of PES programs, pushing ecosystem service provision and/or improvement into second place (Engel et al., 2008; Greiber, 2009; Pattanayak et al., 2010). Examples of political influence in PES design and implementation have been observed in Mexico (Alix-garcia et al., 2005; Corbera et al., 2009), Costa Rica (Pagiola, 2008), Indonesia (Pirard, 2012) and Brazil (Tejeiro and Stanton, 2014).

Within Brazil, PES policies emerged in the last decade inspired by other pioneer experiences across Latin America. The first PES program was launched in 2001 in the municipality of Extrema, Minas Gerais state. The legal framework used was the National Water Resources Policy from 1997, which established the granting of water usage rights and pricing mechanisms (Santos et al., 2013). From 2001 until 2015 there were nine states with laws and decrees specifically regulating PES, another six states with other legislation regulating PES and eight states with draft bills regulating the topic. A study held in 2012 by the Brazilian Institute of Geography and Statistics (IBGE) pointed out that 418 municipalities across the country paid for ecosystem services conservation/provision (IBGE, 2013). Of these programs 47% were established by municipal law and 8% by decree.

In general, most of the PES programs and projects in Brazil are supported by other environmental legislation, often regulating specific funds for water and climate change mitigation or adaptation (Santos et al., 2012; Tejeiro and Stanton, 2014). Moreover, several initiatives are just pilot projects developed with the support of non-governmental organizations and do not count with a proper regulation (Guedes and Seehusen, 2011; Souza, 2011; Richards et al., 2015; Santos and Vivan, 2012).

Most of the Brazilian state and municipal laws were promulgated after PES pilot projects. Yet, pilot projects that aimed to support the legal framework have experienced discontinuity in payments, change in scope in disregard of previous contracts and change in payment criteria and document requirements, what have caused loss of confidence within the communities involved (Lavratsi et al., 2014; Tejeiro and Stanton, 2014; Richards et al., 2015). In Paraná state, for example, environmental restrictions established by the PES law prevented payments for conservation and restoration of Permanent Preservation Areas (PPA) and Legal Reserve (LR), resulting in the repeal of some articles of the original law (Paraná, 2014, 2012). In Espírito Santo, the partial repeal of law no. 8.995/2008 substantially changed the focus and structure of the PES in the state, causing mistrust between project practitioners and local stakeholders (Tejeiro and Stanton, 2014).

The first proposal for a National PES Policy was drafted in 2007 (federal draft bill no. 792/2007). However, in recent years

this bill has received numerous appended draft bills dealing with similar proposals, all of them very focused on income transfer actions. In 2013 and 2015 emerged two independent proposals (federal draft bills no. 276/2013 and no. 312/2015) more aligned with the 2007 draft bill emerged. Both prioritized results for improvement and maintenance of ecosystem services. None of the bills has been approved.

Specifically the draft no. 792/2007 tried to balance environmental and social aspects and is more socially driven (Godecke et al., 2014; Santos and Vivan, 2012; Santos et al., 2012). In terms of equity and distribution for a national PES policy, such balance could add important improvements (Corbera et al., 2009; Muradian et al., 2010), but could also limit the efficiency of conserving the biodiversity in large private properties (Engel et al., 2008). Another important aspect is related to the restriction of payments for conservation and restoration of Permanent Preservation Areas (PPA). PPA were established by the National Forest Act (Brasil, 2012), that states the conservation of native vegetation covering hilltops, areas over 45°, in strips along rivers and around springs, and of areas above 1800 m height. In most of the Brazilian states, PES legislation allows payments for conservation and restoration of PPA, and most of the PES projects under development comprise mainly these areas. If the original text of the law is maintained, a significant number of the PES projects will be in disagreement with the mandates of the law.

The constraints observed in the federal PES proposal, and in the examples briefly mentioned, can also be seen in Santa Catarina's PES policy. A PES law enacted in 2010 was not implemented in the following years and in 2014 an alternative version of the law was prepared for the State Congress. Challenges faced since the law promulgation and recent strategies developed for the PES policy implementation in Santa Catarina state are presented next.

Santa Catarina PES Policy Framework: constraints to get off the ground

In 2010 Santa Catarina promulgated law no. 15.133 establishing the State PES Policy and Program. The policy implementation is based on three sub-programs: water, forests and protected areas. The reference value for PES payments is equivalent to the value of 30 sacks of corn per hectare per year, according to the Minimum Price Guarantee Policy (PGPM) established by the Federal Government.¹ Further, the payments are made according to three classes, Class I (100% of the value), Class II (50%) or Class III (20%), depending on three criteria: site location, farmers' socioeconomic characteristics and ecosystem service relevance within the landscape. Small-scale farmers are to be prioritized for the payments under the classes I and II. PES projects evaluation, payments classification, priority areas definition and PES projects monitoring is overseen by a committee, formed just by five representatives,

¹ Current value of a sack of corn, according to the PGPM, is R\$ 17.67 (US \$ 4.64). Therefore, the referenced value of 30 sacks of corn corresponds to R\$ 530.10 (US \$ 139.28).

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