

Equity in the Costa Rican PES scheme: Lessons for distributional and procedural justice in REDD+



INTRODUCTION

In the Costa Rican R-PP it is clearly stated that the PES scheme will be adopted as the fundamental tool to stop deforestation and forest degradation. Beyond the critical stance taken by some scientists especially regarding its environmental effectiveness, this mechanism provides an opportunity to use existing institutions and organizations to distribute the incentives needed by land users to conserve and restore forest cover under REDD+. The fact that the PES scheme in Costa Rica is an innovative mechanism for a developing country and has been running for more than 10 years gives us an interesting opportunity to learn important lessons on its social performance from its past history, as well as from its on-going process of transformation through the FCPF into a REDD+ mechanism.

Indeed, the social performance of REDD+ is getting increasing attention in both international and national REDD+ processes and implementation.

Aspects of equity: procedural and distributional issues for good REDD+ governance

On-going international debates on REDD+ have increasingly considered the need for good governance benchmarks in the design and implementation of actions in developing countries. Good governance is characterized by procedural mechanisms in policy-making that are transparent and inclusive, an accountable bureaucracy and a strong civil society (World Bank, 2000 in Larson and Petkova, 2010). The concept of good governance is strongly related to that of justice/fairness in the distribution of costs and benefits and to procedural aspects that determine who participates in the definition of rules and norms and how sound scientific information is used to make a reasonably informed decisions on the functioning of the mechanism (Corbera and Schroeder, 2011).

Distributional justice has figured in both mitigation (Ringius, 2002) and adaptation (Adger et al., 2006) literature especially in relation to the equitable distribution of economic benefits derived from carbon markets and adaptation funding respectively. The concept of distributional justice in the case of REDD+ thus focuses on who receives the pay-offs generated by a given national REDD+ regime. Procedural justice, however, emphasizes justice/fairness in relation to participation, legitimacy and transparency in decision-making processes. Thus, a procedural justice approach focuses on how decisions are made (and who participates) about who gets paid, who holds carbon rights and who holds authority

DISCLAIMER

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to audit local performance relevant for REDD+. The concepts of distributional and procedural justice are closely interlinked. For example, as a result of unfair distribution of information some groups might remain ignorant or have a lower ability to proactively participate in a process and in the definition of its outcomes, thus raising questions of unfair procedural and distributional justice at the same time.

In our analysis, following some guidance from the recent work of Sen (2009) on the idea of justice, we do not define whether the distributional or procedural aspects of PES design and implementation are fair or unfair, a task that would require us drawing universally-applicable principles from one of the many transcendent theories of justice. We rather describe to what extent have PES design and implementation taken into account the key elements of distributional and procedural justice as a means to guide future negotiations towards better processes and outcomes. In this paper, we analyse these aspects as related to the case of PES in Costa Rica to highlight important governance lessons useful for the design of REDD+ schemes. Here, we use the lens of "good governance" to describe how the design process has been shaped and how it is being managed to be adopted under the future REDD+ regime in the country. As a case study, the PES experience in Costa Rica provides interesting inputs into this discussion since it is assumed as a fundamental policy tool to implement REDD+ in the country.

Indeed, the case of PES as a REDD+ tool is especially relevant for the analysis of justice not only for its distributional outcomes of who gets paid and how much, but also who participates and with what decision making power is relevant to the very foundation, monitoring and adaptive management of REDD+ regimes (Corbera and Schroeder, 2011).

METHOD

We use mixed methods (Seymour and Angelsen, 2009) including the analysis of policy documents, scientific articles and complementary open-ended interviews with actors involved in the design and implementation of PES in Costa Rica. In this respect, we maintain interviewees' anonymity although we indicate with "pers.comm." in the text where we use their statements/perspectives. We so identify some key concerns that might be relevant for other national contexts where REDD+ is in the design phase and/or where PES is being considered as a way to reduce pressure on forest ecosystems. Of special relevance to our analysis is the recently published document of the consultation process on The Environmental and Social Assessment of the National REDD+ strategy (SESA; MINAET and FONAFIFO, 2011). The elaboration of this document was based on recent consultations and discussions in the country among different Government, NGOs, private sector and academia to analyse the key points identified in a previous meeting in the framework of the FCPF consultation

process. Key points highlighted by these sectors provide insight on the perceptions, priorities and bottlenecks of a variety of actors regarding not only REDD+ design in Costa Rica but also how on-going PES scheme might be involved in its implementation.

FROM PES TO REDD+ IN COSTA RICA

Costa Rican PES has been largely analysed by recent literature being a relatively long experience among developing countries (Jack et al., 2007). Most of the analysis have focused on its innovative approach (Engel et al., 2008; Pagiola, 2008), its weaknesses in effective provision of Ecosystem Services (ES) (Wunscher et al., 2008), additionality (Sanchez-Azofeifa et al., 2007) and access (Zbinden and Lee, 2005). However, little attention has been placed on the analysis of how its design and implementation has considered aspects of good governance. Costa Rican conservation policies based on incentives have been evolving from the 1970s (Pagiola, 2008). In general, the PES scheme has been adapting and improving to changing conditions and actors' interests and involvement so that a brief summary of its evolution to date is useful for our discussion on how it has considered good governance and justice in distributional as well as procedural aspects.

Given the high deforestation rates of the 50s and 60s, the Law 4465 of 1969 put forward a first concept of fiscal transfer to enterprises to finance reforestation efforts (DeCamino et al., 1999). During the beginning of the 1970s the National System for Parks was created along with new protected areas. To strengthen its forest protection policies, the Forest Certificate Bonus (in its different forms for upfront financing as the CAFA and management financing CAFMA) was created in 1986 (then evolved to the CAFMA-2000) as a way to provide subsidies to forest owners for protection (Pagiola, 2008). After the Rio Convention the Environment Law of 1995 set the stage for the economic valuation of ecosystem services (ES) which then resulted in the Forestry Law 7575 which created FONAFIFO and officially started the PES scheme. According to one of our interviewees the change from CAF to PES has been motivated by two forces. The first of these came from pressure posed by International Monetary Fund to stop providing subsidies to the forest sector which was seen as inefficient under the dominant liberal paradigm of minimum State intervention. The second force driving this change also came from international arena in coincidence of the Rio Convention where the concept of ecosystem services and economic-incentives mechanisms was promoted and, in fact, adopted by most of the International Environmental Conventions such as UNCBD and UNFCCC and (Garrity et al., 2006). The PES scheme includes a regulation and standards to guide its implementation and assign incentives to small and medium land owners to implement specific tree-based measures (reforestation, AFs, protection and regeneration). The Comptroller General of the Republic supervises and ensures

that all implementation and new rules follow the National rule-of-law standards. As stated above, PES is actually under consideration in National REDD+ policy debates to be the most important component of the REDD+ regime in the country. The following analysis of the PES scheme and its relevance for the design of the National REDD+ regime briefly highlights the results of our research. We structure their presentation along the main components of good governance for REDD+, namely: distributional and procedural justice.

DISTRIBUTIONAL JUSTICE

Access to information

In many cases, consultations and documents in our analysis confirm that promotion of access and distribution of information among PES beneficiaries and much less among other potential applicants has been limited. As a possibly related result, beneficiaries of the PES incentives do not share the same understanding that academics and technical government agencies do so that, as suggested by one of the interviewee and by Miranda and colleagues (2004), the PES is perceived as a subsidy to conserve forest. In general, our consultation points out that although there has been an effort to decentralize management of the program to local offices these are given mainly administrative tasks and limited decision power and responsibilities to promote information sharing (Pers. comm.).

Access to and distribution of PES benefits

In general, distribution of PES incentives is strictly associated to those areas where tree cover can be protected or enhanced (e.g. through regeneration). This de-facto excludes all those land users that can contribute to provision of ES in complex landscapes where measures other than strictly tree-based can be implemented (e.g. soil conservation practices enhancing carbon storage in agricultural systems). According to research by Pagiola and colleagues (2005) a significant part of current PES is assigned to low opportunity cost of land whose landowners in many cases live in cities and do not depend strictly on land-based activities (Pagiola et al., 2005). An innovation in this sense has been the provision of incentives to agroforestry systems potentially characterized by higher opportunity cost of land. A similar case might be that of small horticultural producers in the steep sloping areas of the Irazu volcano where the high opportunity cost of land cannot be compensated by the actual payment amount of the PES excluding them de facto from incentives but also from contributing to soil erosion control-related ES beneficial to the objectives of downstream hydropower dams (i.e. by reducing operation costs to clean their dams) and to mitigation targets (i.e. by potentially enhancing soil carbon budgets in highly eroding slopes; Harden et al., 1999) (Pers. comm.).

However, besides additional issues of the PES scheme,

the effective and fair participation in the scheme might also be dependent on the level of socioeconomic welfare and the associated capacities of actual and potential eligible land users to access and manage relevant information on the PES scheme. In this respect, one of the interviewees noted that especially at the beginning of the PES scheme assignment of incentives was based on the first-come-first-served principle. In this case, individual capacities to access and manage information as well as available contacts with PES intermediaries might have benefitted better-off landowners and reduced the opportunities for more marginal land users for whom higher transaction costs (also related to information-search costs) might present a definite barrier (Zbinden and Lee, 2007; Pagiola et al., 2005). An additional issue concerning the targeting of beneficiaries (and the exclusion of potential participants) is related to the broad selection criteria used by the scheme. Important criteria (not based on the actual provision of ES) mentioned in the PES scheme regulation Law 7575 to distribute the incentives include the targeting of small and medium land users, the zoning of priority by the Human Development Index, and the use of biodiversity hotspot criteria (some of these correspond to criteria set by a specific donor to the FONAFIFO fund (MINAET, 2010). In the current scheme additional criteria can be considered following specific activities/targets set in the framework of partnerships with other actors such as private companies or other National policies (Pers. Comm; cited also by Engel et al., 2008). For example, The National Biodiversity Strategy acknowledges the need to target non-forestry ecosystems for PES incentives to increase biodiversity gains (e.g. enhancing the connectivity of biological corridors) but still barriers exist also because the institutional mandate of FONAFIFO is strictly focused on financing forest land uses.

From the perspective of one interviewee, the most important criteria for identification of priority areas is defined by the technical criteria of the National System for Protected Areas that are mainly related to target high biodiversity-conservation areas (i.e. not necessarily the criteria of the private forestry sector or of the participants from other sectors). Recent literature confirms this statement showing that the majority of funding (87%) is provided to conservation areas (Barton et al., 2009). Distribution of PES incentives is based on voluntary application and screening of contracts by FONAFIFO technical staff that responds to the criteria set by the organization. Several factors can actually hinder the participation of the poorest such as not being located in a priority area (i.e. criteria defined without negotiation with potential users and/or beneficiaries), facing high transaction costs, receiving inadequate incentives compared to opportunity cost of land, unclear or unstable tenure, inability to face start-up costs, and perceptions of convenience and ability to join the program (Pagiola et al., 2005; Arriagada et al., 2009). However, the PES scheme has proven flexible to ensure a more equitable distribution of incentives. For example, in

high ES value areas of indigenous groups, PES has modified its procedure to assign incentives at group level as a way to provide indigenous population with access to PES though they do not possess individual property rights on land (pers. comm.).

On the other side, in the recent SESA meeting (MINAET-FONAFIFO, 2011) the Agricultural Producers Associations mentioned that few efforts have been made to define and target small and medium producers who are by the 7575 law the true intended beneficiaries of the PES. According to our consultation with a person involved in the design and implementation of the PES scheme, the public administrative characteristics of the scheme (i.e. posing it under the Comptroller General of the Republic) increases significantly the administrative tasks and thus the transaction costs associated with participation as well as creating misinformation and uncertainties due to repeated changes in the regulation of payment procedures. The flexibility of the PES scheme has been improving along with national effort to increase the social legitimacy of forest policies. Indeed, starting back in the 80s, and then in the late 90s with the introduction of PES, the institutional spaces for the definition of forest policies in Costa Rica have opened-up to include larger variety of actors (e.g. small and medium land users, private companies and indigenous communities) in national negotiations. By opening to this variety of actors, the objectives and operational functioning of FONAFIFO have also been pressured to increase flexibility in the distribution and access to incentives (Camacho et al., 2003).

PROCEDURAL JUSTICE

Legitimacy and participation in PES design

The national Accounting System and regulation for public administration provide the legal framework of the PES and the authority of its involved organizations such as MINAET and its technical and operative branch FONAFIFO. Representation at the Board of Trustee level is guaranteed for the private sector by two members (one from small forest producers' association and one from forest industry) and three from the Public Agencies such as Ministry of Environment, National Bank and Ministry of Agriculture. Identification of members of this high-level decision making body has been based on the need to represent and provide a mediation space among the Government and the forest private sector but has essentially excluded the participation of other sectors in the most important decision-making body (Pers.comm.).

In general, the forestry sector has been prominent in the discussions regarding the creation, design and implementation of the PES scheme and this is still reflected in the recent discussions on REDD+ in the country (Rodriguez, 2011). According to our interviewees there is space for improvement to open participation in the current decision-making structure of the PES scheme as could be provided by the implementation of REDD+ (Pers.comm.) Since it started the PES scheme has

undergone several modifications as a result of policy interaction processes among actors interested in influencing the type of activities (e.g. to exclude sustainable forest management from activities funded by PES) or land uses (e.g. to include the agroforestry systems) included in the PES scheme (Pers. Comm.). Interestingly, REDD+ design in the framework of the FCPF process has required further opening of the debate on PES as suggested by the analysis of the recent national debate SESA. The design and the content of the SESA provide interesting highlights on procedural and distributional aspects regarding the use of PES as a REDD+ tool.

DEVELOPMENT OF REDD+ IN COSTA RICA

The R-PP meeting held in 2008 was the initial step under the FCPF process to design REDD+ regimes at national level in Costa Rica (FONAFIFO, 2010). The number and diversity of invitees from the initial step to the SESA has increased significantly (from 26 in the first RRP meeting to 116 participants in the second SESA meeting) indicating a significant effort to promote information and build consensus on the definition of REDD+ in Costa Rica. Debates in SESA were structured around the eight points of the R-PP strategy (based on the PES scheme; SESA, 2011) which resulted from previous (and more limited) consultations. Each sector was called to provide their perspective on key issues and legal and policy gaps concerning these points and others matters of importance to them (MINAET-FONAFIFO, 2011). A variety of interesting points have been raised by participant sectors. Many of which indicate relevant actors' procedural and distributional concerns (FONAFIFO, 2010). For example, the small agricultural producer association expressed concerns on exclusion of their members from on-going PES scheme asking for i) greater flexibility of the land property registry, ii) an adequate payment for every tree planted (i.e. recognizing its multiple ES provided) and especially for native species and increased flexibility in the authorization of use of dead wood and iii) inclusion of community lands provided by the Agrarian Development Institute (IDA for the acronym in Spanish) that are not provided with tenure title.

On the other side, the indigenous group (recently formally joining the REDD+ debate in the country) has expressed distributional but also significant procedural concerns in respect to the current and future REDD+/PES regime. More specifically, they indicated, among many other points, that there is a need to i) consider customary and cultural rights to define rules on protected areas as carbon sinks, re-design the PES scheme to comply with the cosmogony of indigenous populations (i.e. recognizing their cultural value of forests and its added value to forest resources), ii) make sure that all the key points raised by indigenous groups are an integral part of the REDD+ regime, iii) establish community-owned monitoring systems, iv) definition of forest management

based on indigenous cultural stance , v) provide indigenous groups more power to define use rights on forest resources in their territories while negotiating a revision of the actual role of the State agencies, and finally vi) strengthen the ability of indigenous associations to administer resources destined to their territory. On distributional aspects an important weight (possibly reflecting on-going land disputes) has been given to the need to clarify tenure rights and avoid provision of incentives to non-indigenous landowners within their community-land. Apparently, there is an opening-up process allowing the indigenous groups to work closer to the FONAFIFO Board to establish a working group to coordinate with all indigenous areas of the country (Pers. comm.)

Finally, organizations involved in the implementation, monitoring and adaptation action of the PES scheme have increased in number and taken important actions to improve distributional and procedural justice aspects. Some points raised in consultations and policy documents in the discussion above already indicate that significant improvements have been introduced in the PES scheme during its 15 years of implementation. In this respect, the report of the SESA meeting builds on the experiences and knowledge to improve the PES system accumulated through scientific research and on-going debates among actors (i.e. making it more suitable as an effective REDD+ strategy).

More specifically, the Annex 1 of the SESA document provides some relevant points on how the actual PES scheme should be improved for REDD+. In several points, scientific assessments are mentioned to increase the accuracy of ES targeting also under future changing conditions imposed by climate change by strengthening and enlarging the National permanent forest-plots network feeding the database for monitoring mitigation and adaptation behaviour of ecosystems and the services they provide. Additionally, scientific studies are also needed to improve targeting mechanism and increase environmental effectiveness. However, given the complexity and uncertainties characterizing such analysis the REDD+ regime would need to include explicit mention of important aspect of procedural justice as legitimacy of organizations involved in the design, implementation, distribution and consideration of scientific studies in potential disputes that might emerge from land-use policy planning related to REDD+. In this respect, the persons consulted in this research indicated the same institutional factors that ensure the stability of the mechanism (by its embeddedness in the formal institutional structure) limit its flexibility and openness to new actors that are needed to cope with complex and changing reality.

Important points are also raised to improve the distributional achievements of the program. For example, explicit mention is made of the need to ensure fair distribution of direct and co-benefits to ensure socially acceptable outcomes. Similarly, explicit mention is made of the need to be more flexible in the definition of tenure and access criteria

to ensure inclusion of previously-excluded landowners (e.g. eliminating barriers to participation of agricultural communities with undefined land titles, and small and medium producers). In term of procedural justice, important points indicate the need to ensure information disclosure and communication strategies to disseminate knowledge on the PES scheme. Important space is also given to the need for coordination among actors and sectors. For example, IDA is mentioned to mediate disputes and eliminate barriers to access of small producers while the IMN and the academic organizations are mentioned to provide scientific backstopping to land use targeting policies.

LESSONS FOR REDD+

Increasing literature discusses the relevance of good governance and justice consideration in the definition of REDD+ regimes. In this paper the case study of Costa Rican PES and its adoption as a REDD+ tool for the country provides interesting highlights for on-going policy processes to define REDD+ regimes. As an innovative mechanism the Costa Rican PES has inspired many other developing countries to adopt this concept. Beyond its achievements and limitations an important aspect of its evolution towards the REDD+ regime is its flexible and adaptive approach that has benefitted from increasing number of studies and actors' interests to improve its performance and functioning. This adaptive approach has important distributional and procedural justice consequences. In this respect, promoting active participation and access to information (in implementing, monitoring and readjusting the mechanism), devolving decision legitimacy through consultations and negotiations on distributional as well as procedural aspects are essential to promote good governance and ensure more stable outcomes in the long run.

The inclusive process undertaken under the current debate on the REDD+ regime in Costa Rica can improve procedural justice aspects of the PES scheme and can potentially achieve both land-use based carbon emission targets while also promoting improved distributional outcomes. Indeed, in the framework of REDD+ in Costa Rica, the innovation in the FONAFIFO institutional mandate (i.e. expanding beyond the current focus on forest ecosystems) and/or the consideration of a mix of complementary policies to provide incentives to include also agricultural land uses might expand the ability of the national REDD+ regime to promote landscape level activities with lower carbon-emissions while also helping include historically-excluded actors such as small farmers.

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About REDD-net

REDD-net is an international knowledge forum for southern civil society organizations through which they can access information about efforts to Reduce Emissions from Deforestation and forest Degradation, share their own experiences and help to build pro-poor REDD projects and policies. REDD-net is a partnership between Centro Agronómico Tropical de Investigación y Enseñanza (CATIE), the Overseas Development Institute, RECOFTC – The Center for People and Forests and Uganda Coalition for Sustainable Development. REDD-net is funded by Norad.



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