

PES, law compliance and poverty: trade-offs and potential for policy mixes.

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PES initiatives or programmes are more and more considered for fostering conservation, both in developed and in developing countries. Their interactions with other instruments and policies need to be assessed both theoretically and empirically. In this paper, the interactions between PES, incentives instruments, and legal regulations prohibiting specific environmental destructions, will be analysed. In principle, the two instruments cannot be used simultaneously on the same territories. Doing so would lead to pay people to comply with the law, and could undermine legal regulations: people could become reluctant to “comply with regulations for free”, meaning adopting utilitarian (cost-benefits calculus) relationships with law compliance. In practice, law prohibiting, for instance, forest clearing is not removed in territories where PES initiatives for protecting forests are developed, since changes in the legislative framework convey other stakes and obstacles difficult to overcome.

The issue cannot be discussed only from a theoretical standpoint, disregarding the social conditions of stakeholders. In developing countries, when the law prohibits forest access to a growing population of very poor farmers who manage soil fertility through shifting cultivation practices (slash-and-burn) and cannot access the assets allowing for alternative, legal restrictions as such are ineffective and, possibly, illegitimate, as it is the case in Madagascar. On the other hand, for the wealthiest farmers, paying for simply complying with the law raises economic and ethical issues (windfall profits offered). Social policies reserving the benefit of PES for the poorest fringe of the population for giving them the capacity to comply with restrictive environmental laws might be considered in public policy mixes.

Beyond the issue of poverty, there is also an issue about whether payments should be conceived as a compensation (of an opportunity cost) or a reward for past practices. In Mexico, the initial idea was to use PES in complement to protected areas, which were already effective. The NGOs speaking in the name of the “civil society” defended the viewpoint that PES should reward local populations for past efforts of conservation of protected areas and natural forests. From an economic standpoint, this could be interpreted as a payment for “business-as-usual” practices, against the principle of efficiency expected from economic instruments. But, once implemented as a reward, the impact of the PES seems going beyond the individual costs-benefit calculus based on the opportunity cost: social pressures on individuals for law compliance in order to secure the collective payments, extension of forest protection to non-PES-contracted forests as a consequence of uncertain information about the area concerned by the PES contracts.

Such considerations invite revisiting the traditional doctrinal standpoints related either to the policy principle of not paying someone merely for law compliance, or to the efficiency principle (additionality) associated with economic instruments, and to determine whether there are social and environmental benefits at managing exceptions to these principles.

The paper will be based on first hand surveys in Madagascar, where conservation objectives are pursued through the setting of REDD+ projects with PES-like initiatives, and in Mexico, where a national PES program focusing on water quality and availability is on-going.