

Structuring PES Agreements

TRAINING COMMUNITY STAKEHOLDERS ON PAYMENT FOR ECOSYSTEM SERVICES (PES) IN UGANDA

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Presentation Outline

- Defining a Contract
- Major components of a Contract
- Major Considerations by the community
- The communities' Obligations
- The potential legal obligations for land use changes
- Potential Risks with contract design



PART I:

FORMS OF AGREEMENTS

Defining a PES Agreement

PES Agreements are a form of business plans

- A formal statement of
 - a set of business goals
 - the reasons why they are believed attainable &
 - the plan for reaching those goals
- In this case, the business is to provide the ecosystem service that is the focus of the PES project

Defining an Agreement

- An Agreement:
 - An understanding between parties (*individuals/groups*) to follow a specific course of conduct/Actions
 - The process of reaching an agreement
 - Actors: Number, level of homogeneity/heterogeneity
 - Opinion/action under consideration
 - Knowledge level for the actors
 - Duration over which the agreement holds

Types of Agreements

- 'Handshake' /Gentleman's agreements
- Memorandum of Understanding (MoU) or Memorandum of Agreement (MoA)
- Legal contracts
- Customary law agreements

Types of Agreements

1. A Gentlemen's Agreement

- An informal arrangement between two or more parties
- It may be written, oral, or simply understood as part of an unspoken agreement by convention or through mutually beneficial etiquette
- The essence is that it relies upon the honor of the parties for its fulfillment, rather than being in any way enforceable

Types of Agreements

2. A Memorandum of Agreement (MOA)/ Memorandum of Understanding (MoU)

- Written understanding of the agreement between parties to cooperatively work together
 - On an agreed upon project or meet an agreed objective
- It lays out the ground rules of a positive cooperative effort
- It is often used in cases where parties
 - either do not imply a legal commitment or
 - in situations where the parties cannot create a legally enforceable agreement

Types of Agreements

3. Legal Contracts

- Engaging by written agreement/ Signing
- A **contract** is a legally enforceable agreement between two or more parties with mutual obligations
 - enforceable in a court of law or
 - by binding arbitration

How does a contract look like?

- A few pages (5-15)document
 - Depending on the extent of description of the different sections
- Commonly in a language well understood by the buyer and seller
 - Preferably translated in the local language for the benefit of the local communities

KEY CONTENTS OF A CONTRACT

- Date of Agreement
- Buyer details
- Seller details
- What the seller agrees to do
- What the buyer agrees to do
- Agreed upon definition of key terms
- Seller obligations
- Buyer obligations
- Payment conditions
- Verifications
- Seller's Warranties
- Dispute Resolution
- Termination
- Variation
- Novation
- Risk & Uncertainty
- Signatories
- Schedules/Appendices
 - List of activities to undertake by the seller
 - Monitoring Requirements
 - Payment layouts
 - Declarations by the seller
 - Boundaries of the resource under consideration e.g. Land map
 - Monitoring requirements

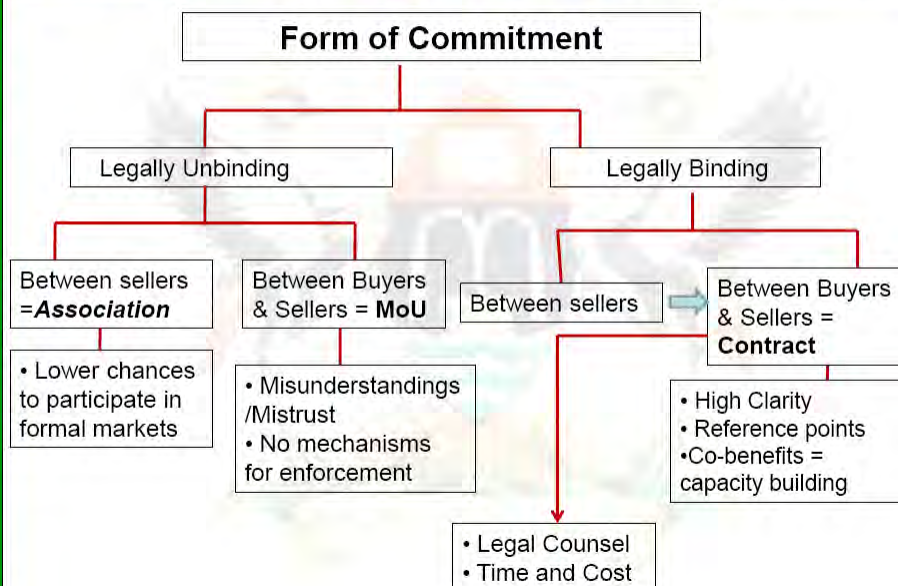
PART II:

WHAT TO LOOK FOR IN A CONTRACT

What to look out for in Contract Design

- Document(s) for commitment
- Clarity of working terms/definitions
- The good/service to be traded
- The operational structure
- The Payment Structure = Fairness and Equity
- Monitoring, Reporting and Verification procedures
- Dispute resolution mechanisms
- Other Cross cutting considerations
 - Fairness
 - Flexibility
 - Equity
 - Pro-poor

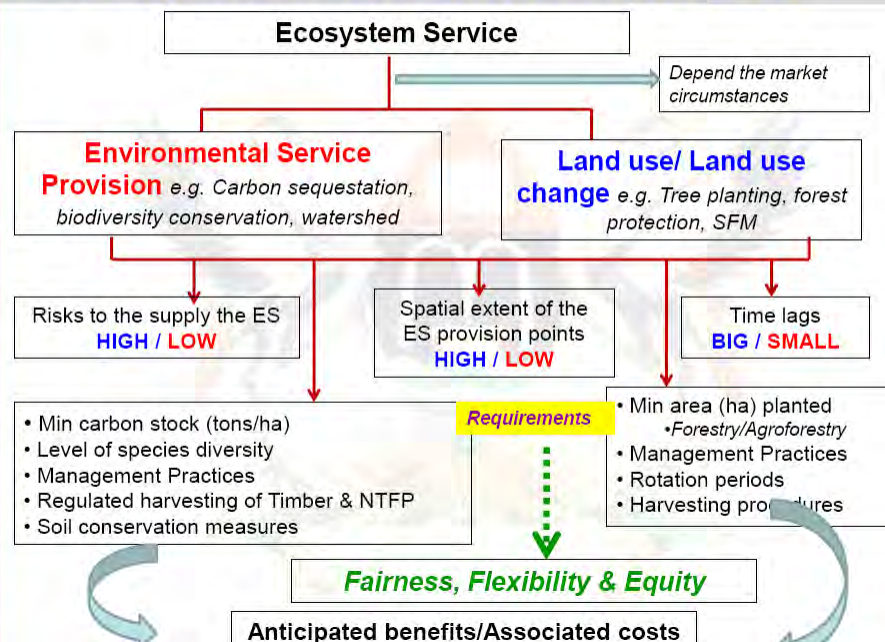
Consideration 1: Type of Commitment

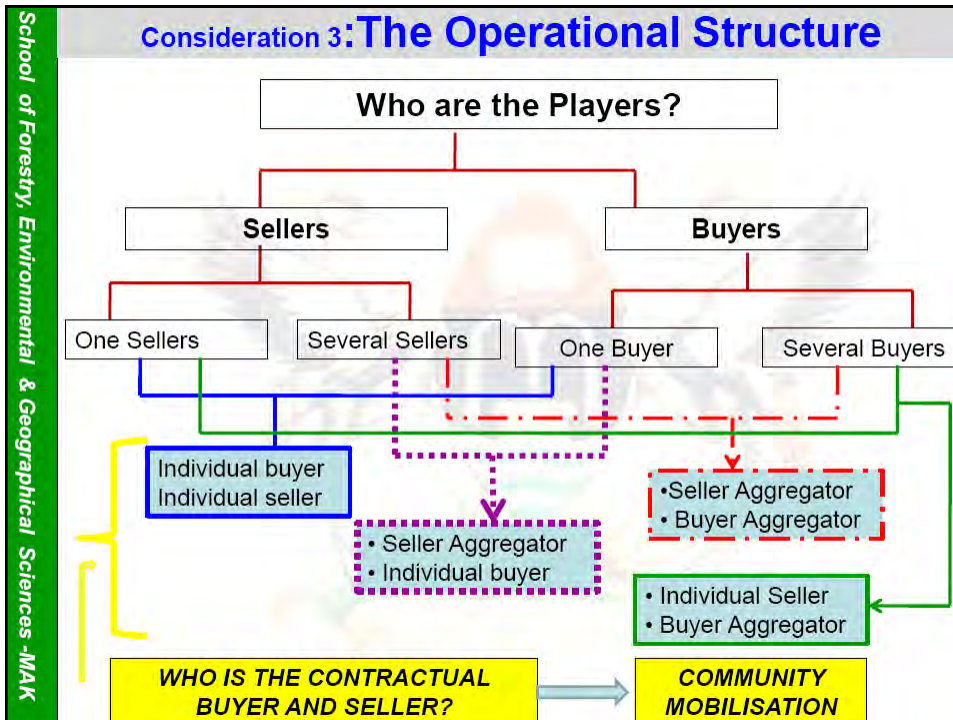


Clarity of Key Terms Used

- Clarity on the terms used in the contract
 - Conservation measures
 - Carbon sequestration
 - Management practices
 - Monitoring requirements
 - Usually elaborated in appended lists = Schedules

Consideration 2: What is Traded?





Consid. 3: The Operational Structure

For Aggregated sellers

- E.g. Private forest owners
- Different community forest owners' associations

It will be of interest to clarify:

- Roles & Responsibilities of the individuals
- Management Structure
- Enforcement mechanisms
- Participation in monitoring
- Punitive measures for non-compliance within the seller category

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Land-use Change Related Responsibilities & Obligations

1. Carbon Sequestration

- Afforestation/reforestation on private land/degraded forest
 - Indigenous/ Exotic spp
 - Land clearance
 - Planting
 - Re-planting /beating up
- Afforestation /reforestation with trees that will have multiple benefits
 - Woodlots, agro-forestry & boundary planting
- Appropriate management /silvicultural practices



Land-use Change Related Responsibilities & Obligations

1. Carbon Sequestration

- Sustainable Management of Natural forests
 - Zoning/Management Plans
 - Avoided Deforestation/Degradation
 - Minimize activities



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Land-use Change Related Responsibilities & Obligations

1. Carbon Sequestration

- **Forest Management**
 - Participate in monitoring of tree performance
 - Protect trees from fire, pests, disease, theft, sabotage, etc.



Land-use Change Related Responsibilities & Obligations

2. Biodiversity Conservation

- Protect the animals
 - Living
 - Feeding
 - Reproduction
- Protect the habitat



Land-use Change Related Responsibilities & Obligations

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Consideration 4: The Payment Structure

- Level of Payments/Contract price
 - Fixed vs Auctioned prices
 - For Aggregated sellers
 - Payment related to the levels of ES provision
 - Zoning/categorisation/stratification procedure
 - Who is negotiating the price (*Market intermediary*)
 - *Ensure Openness, transparency and participation*
 - *Some individuals may consider the contract price as too low*
 - *Avail information of the market prices in the different markets e.g. Voluntary markets*
 - *Community members may attend some of the meetings of the buyers (if locally represented)*
 - » *Better management of community expectations*

Consideration 4: The Payment Structure

Form of Payment

- Cash/Direct financial payments (*currency?*)
 - Individual payments
- In-Kind Payments
 - Community infrastructural development
 - Recognition of rights
- Timing of Payments
 - After verification of monitoring targets at specified time periods
 - Milestone Payments



Consideration 4: The Payment Structure

- Management of payments for Aggregated sellers = *CFOs, PFOs*
 - Participatory benefit sharing arrangements
 - Cash benefits directed through microfinance schemes/Institutions
 - Decision criteria on who to pay how much
 - Incentives which are performance-linked
 - *Reward for significant progress*
 - Accounting Systems
 - Open accounts to manage funds
 - Preparing accounting, management & tracking systems for the project
 - Ensure clarity, transparency and accountability

Consideration 5: Monitoring, Reporting and Verification Procedures

- The set indicators
- Period of monitoring
- Consider:
 - Role players for enforcement, monitoring and reporting
 - Required skills = *capacity building required*
 - *Tools and Equipment*
 - Who does the verification
 - Associated costs
- Provision for adaptive



Consid. 6: Re-negotiation of Contracts

- Supply Side: Natural systems are dynamic
 - Uncertainties in forecasts *(associated costs and benefits)*
 - Quantities of the service to be provided
 - Response of the ES provision to the management activities undertaken
 - Community dynamics and other social/political factors
- Demand Side:
 - Price changes = economies/diseconomies of scale
 - Increases/decreases in market information assymetry

Consid. 6: Re-negotiation of Contracts

- It is important to clarify the time and frequency
 - Realistically:**
 - Contracts should be for the first year's commitment
 - Renegotiated at the end of YR 1 = multiple year contract
 - Pre-define renegotiation time points

Consideration 7: HOW TO HANDLE RISKS AND UNCERTAINTIES

- Outcomes due to e.g. fires, insect infestations, bad weather, land slides
- Strategies in place
 - Risk to be borne by a party better placed to manage it i.e.
 - A risk sharing format between sellers and buyers so that not all risk is borne by sellers & buyers
 - What are the Penalty provisions?
 - Where failure to deliver is due to acts of nature, war, Neither Buyer nor Seller shall be liable for any failure to perform its obligations

Consideration 8: Dispute Resolution & Termination fo contract

- What happens at breach of contract *(part of it)?*
 - Dispute Resolution Committee
 - National legal system
 - Contractual disputes dealt with fairly and speedily
- What to do in case you want to end your contract before time = *Termination*
- What to do in case you want to re-do the contract = *Novation*



PART III:

POTENTIAL RISKS AND CO-BENEFITS OF CONTRACT DESIGNS

PES Contracts: Potential Risks

1. **Confusion about what is being bought and sold**
 - Marketing abstract ecosystem services
 - Asymmetric market information
 - Contrast cultural conceptions and economic models operating within traditional communities
 - Commoditization/Marketing of services that should not have a price tag attached
 - God (s) Given and Controlled = *Spiritual attachments*
 - Free for All
 - It is important to identify and consider these potential issues and “friction” points prior

PES Contracts: Potential Risks

2. Communities being tied into long and inflexible contracts

- Hence, Restricting their favoured land management practices
 - Need to speculate the potential future Options that the sellers may wish to keep open

3. High Expectations

- Confusion over resource and ecosystem service rights
 - PES projects DO NOT necessarily transfer resource rights

PES Contracts: Potential Risks

4. The Risk of Natural or Manmade hazards

- *E.g. fires, insect infestations, bad weather*
- Employ some type of insurance strategy
 - formal insurance
 - Informal procedures:

5. Levels of Participation

- Participation in programmes /projects evolved to ensure that clients have a voice
 - and the information generated from activities is of use,
 - not only to managers/researchers, but also to clients/beneficiaries

PES Contracts: Potential Risks

9. Levels of Participation

- Passive participation
- Illicitive participation
- Participation by consultation
- Participation for material incentives
- Functional Participation
- Interactive Participation
- Self mobilisation



Participation is concerned with:

- *Contribution*
- *Involvement*
- *Organization*
- *Empowerment*



Potential Co-benefits

1. Capacity building within the community
 - Training
 - Sharing of experiences in different fora
2. Increased group cohesion and collective decision making
 - Collective responsibility
3. Collective responsibility
 - Increased ownership and sustainability
4. Strengthening the rural peoples' position in other resource-based negotiations

**AGGREGATION AND
PARTICIPATORY ARE THE
KEY TO SUCCESS**

THANK YOU