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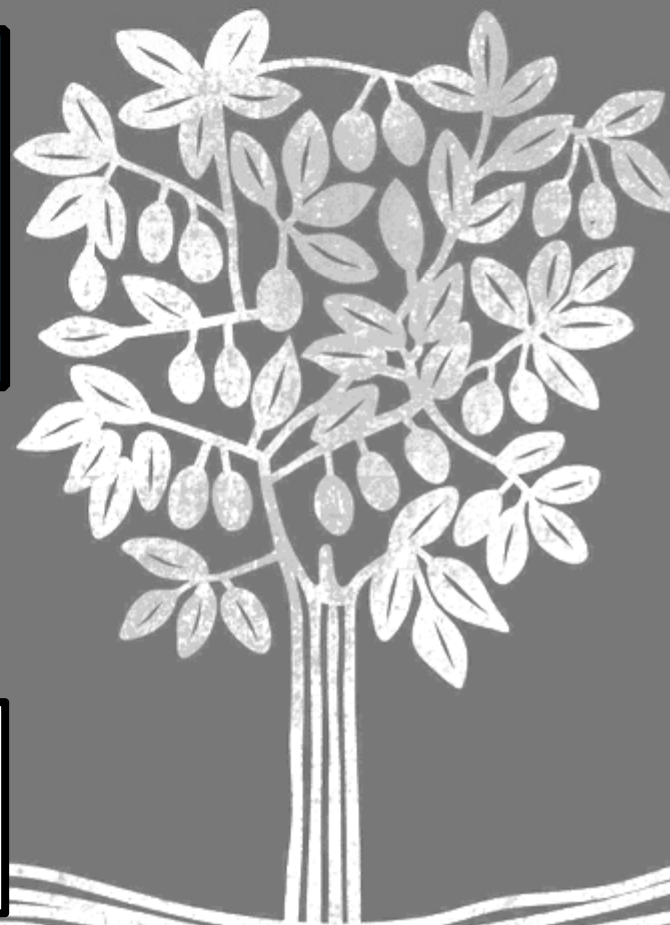


Training Workshop on Payments for Ecosystem Services (PES) and Reducing Emissions from Deforestation and Degradation (REDD+)

Nairobi, Kenya - August 9th, 2011

Payments for Ecosystem Services: Policy Issues

Slayde Hawkins
Forest Trends/Katoomba Group



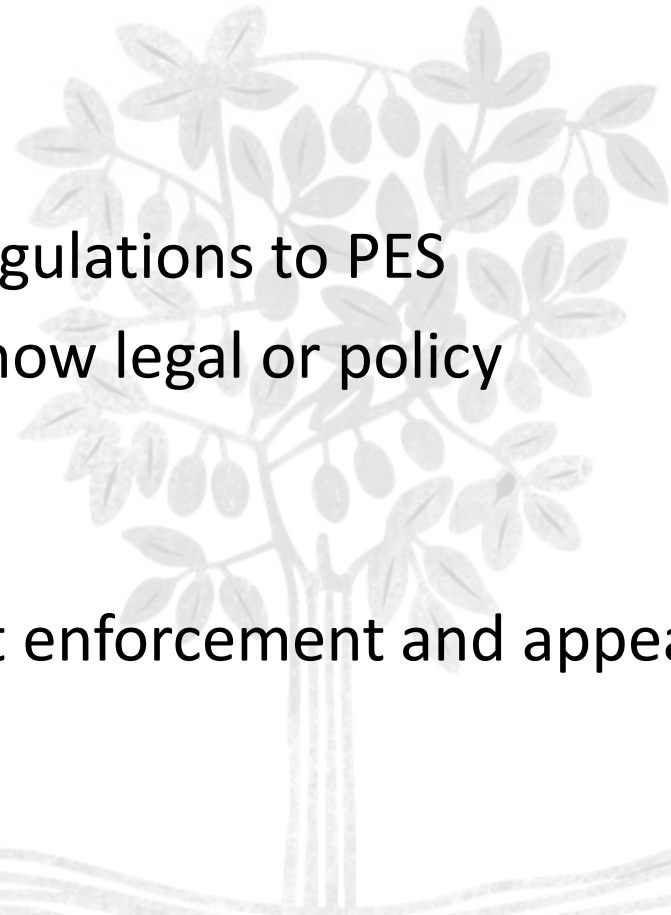

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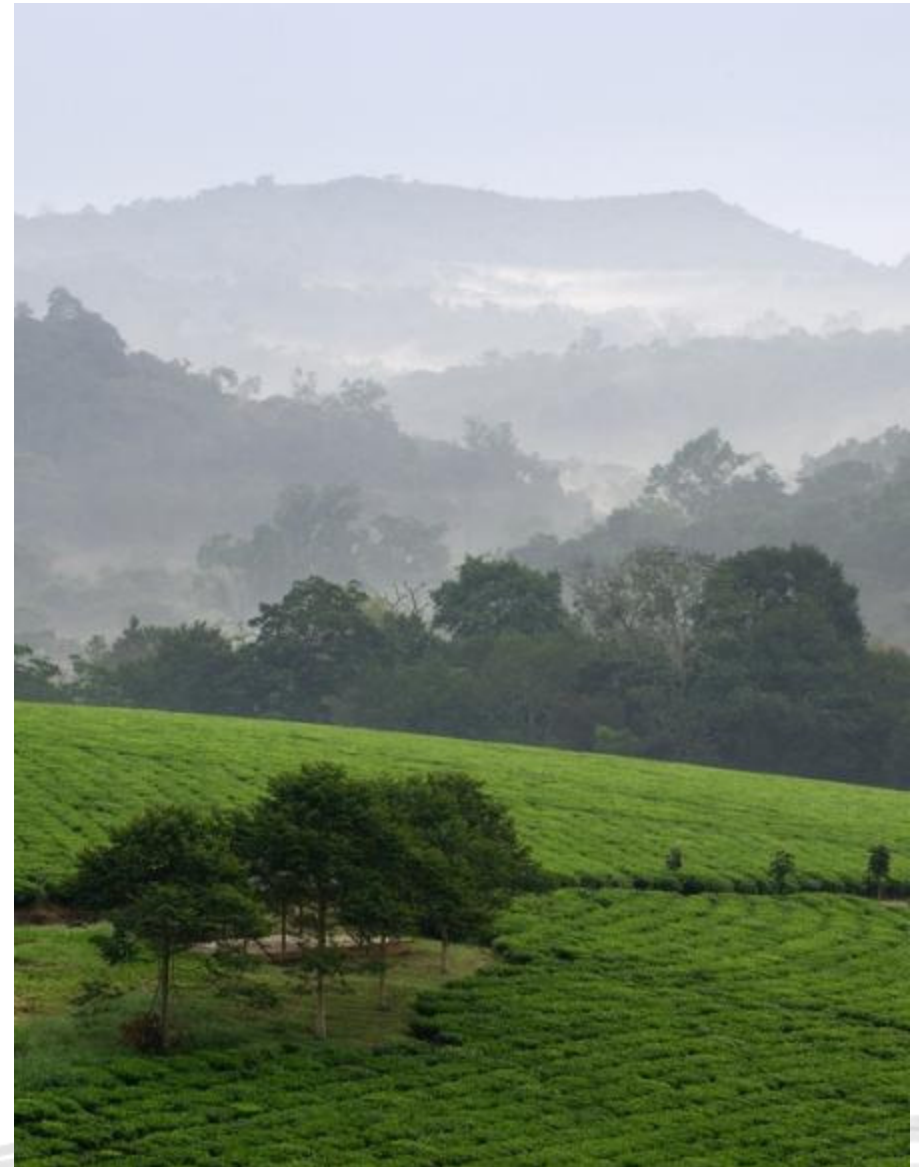
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- Clarity on whether PES are permitted under existing law
- Ownership and use rights over:
 - Land
 - Natural resources
 - Credits for ecosystem services
- Application of existing laws and regulations to PES
- Clarity on who has authority and how legal or policy conflicts will be handled
- Stability and rule of law
- Available mechanisms for contract enforcement and appeal



- PES may be prohibited by Constitution or law
 - May be bar on selling ecosystem services, as a public good that is held on behalf of all
- If *sale* of ES credits prohibited, may nevertheless be legal to contract to provide *services* that restore or conserve ecosystem services

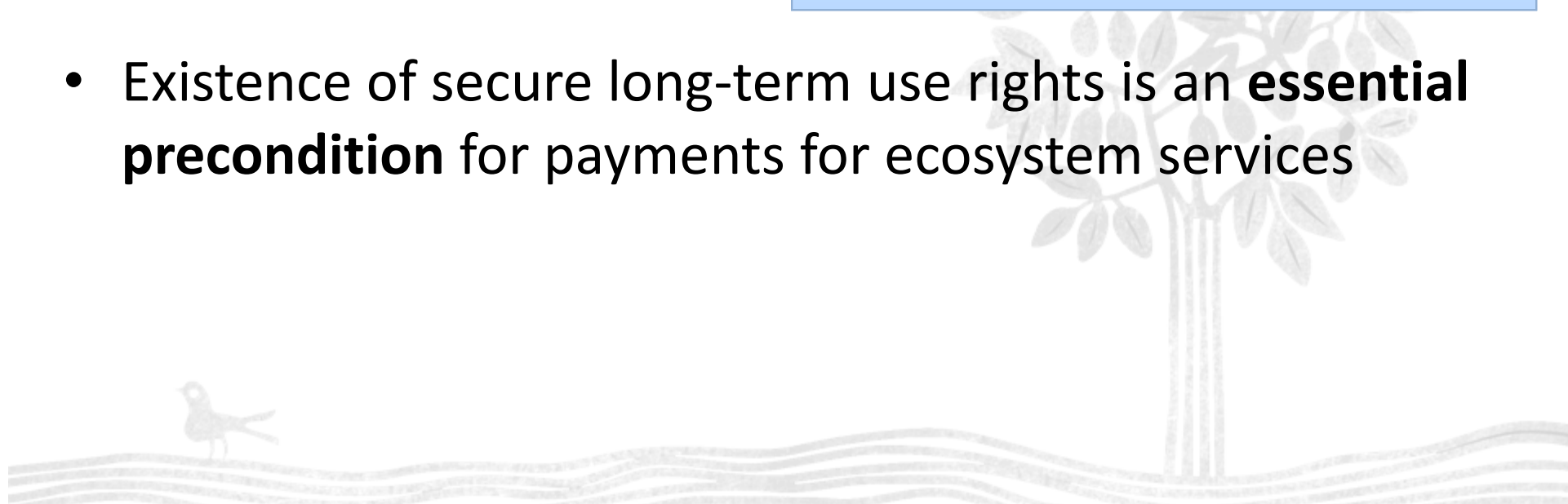


- Tenure rules determine:
 - WHO can use
 - WHAT resources
 - For HOW LONG
 - Under what CONDITIONS

LAND TENURE

Legal or customary relationship of an individual or group with respect to land and other natural resources.

- Existence of secure long-term use rights is an **essential precondition** for payments for ecosystem services



Rights in Project Area

Minimum:

- *Use rights* to support project activities
- *Right to exclude* incompatible uses
- For the *duration of project activities*

Customary rights may be sufficient if secure, recognized by law

Ecosystem Services Rights

Minimum:

- *Right to ecosystem benefits* from project activities
- *Right to transfer* credits

Often no ecosystem services law so rights must be implied from other laws

- May be tied to rights in land or natural resources



- Land title not validly vested in local users
- Land use arrangements poorly defined or recorded
- Unclear who has rights to ecosystem services revenue or whether transfer is permitted

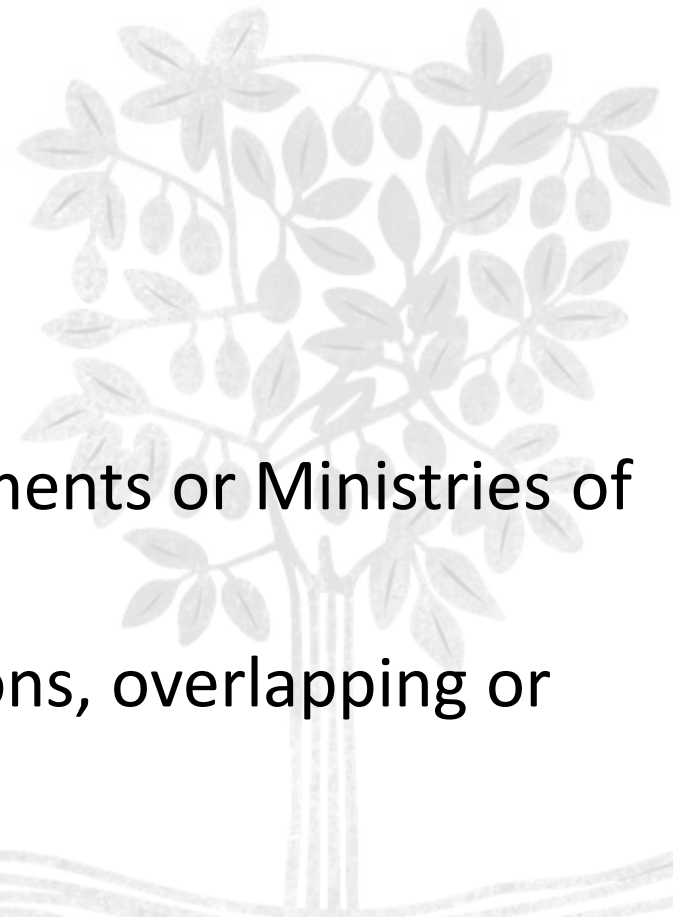


Sources of applicable law

- Framework environmental, water, forestry laws
- Laws on:
 - Land & natural resources
 - Agriculture
 - Planning and infrastructure
 - Indigenous peoples

Key regulatory authorities: Departments or Ministries of Environment & Agriculture

Pitfalls: conflicting laws or regulations, overlapping or conflicting authorities



May apply to transaction in ecosystem services credits or to underlying project activities

- E.g. timber harvests, sales generally taxable

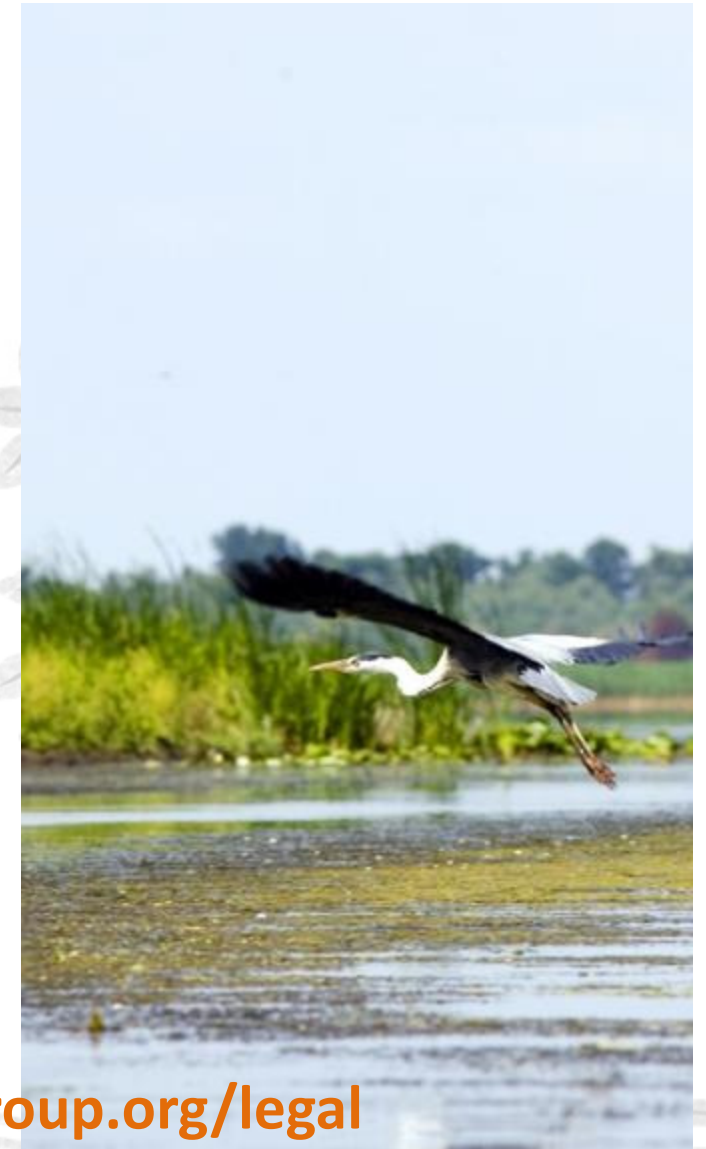
Types of taxes that may apply:

- Sales Tax & VAT – On value of transferred good, service
- Income Tax – On personal or corporate carbon revenue
- Property Tax – On property value
- Duties/tariffs – On value of imported or exported goods
- Carbon Revenue Tax – On carbon credits or projects



Minimum Threshold Requirements

1. No prohibition on PES
2. Secure, long-term use rights in land, natural resources
3. Governmental bodies at national, local levels with authority over project
4. Discernable regulatory and tax implications for PES projects
5. Adequate levels of social, regulatory stability
6. Contract enforcement mechanisms



For more information: www.katoombagroup.org/legal

Beyond minimum threshold for enabling PES, buyers will prefer:

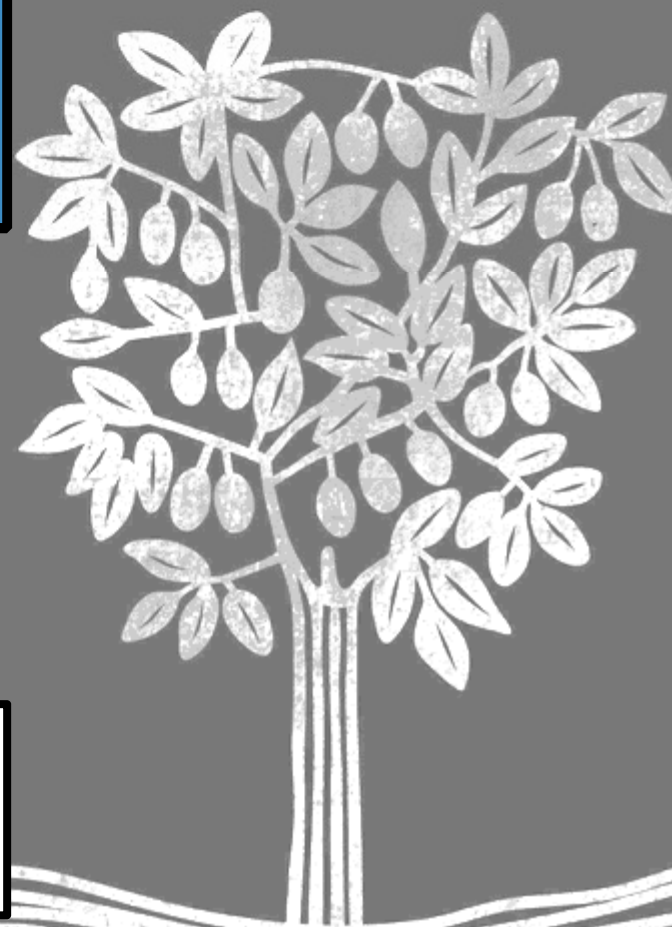
- More clarity and transparency – clarity in the regulatory framework means lower risks and costs
- Favorable investment climate in terms of business policies, stability, access to courts – “Ease of Doing Business”
- Low taxes and regulatory burdens for PES, minimal direct government involvement in projects





THANK YOU!

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