



LIFE AS COMMERCE: Biodiversity offsets in Paraguay



The full case study can be found at:
www.globalforestcoalition.org

Summary

In Paraguay, national and international private conservation entities have been increasingly active during the democratic period, which started with the fall of the dictatorship of Stroessner in February 1989.

However, the subsequent democratic regime (insofar as political rights and civic liberties go), which was led by Stroessner's party, has ignored the land tenure debacle caused by the dictatorship; it has neither addressed nor solved the many cases in which Indigenous and small farmers' lands were usurped by the dictator to hand out to his cronies.

Quite the opposite, in fact. The regime that ruled from 1989 until 15 August 2008 has been supporting the very landowners who benefited from this illegal wheeling and dealing and who are now seeking to reassert their ownership over these lands. Lawsuits being brought by Indigenous communities and small farmers, for example, are rarely settled in favor of the original inhabitants, even though the National Constitution formally recognizes the right of Indigenous Peoples to their ancestral territories.

The 1990s saw the emergence of conservation institutions as a new player in the land privatization process in Paraguay. These organizations have been involved, for example, in the appropriation of the last vestiges of the Mbaracayú forest, part of the ancestral territory of the Ache Guayakí and Ava Guaraní peoples. In the last ten years, these institutions have consolidated their land holdings and there is now a proliferation of conservation organizations active in the country. This has, in turn, unleashed a race to privatize vast tracts of the ancestral territories of the 17 first peoples of Paraguay. Furthermore, these parcels and farms are often simply declared to be private reserves under Act 352, which stipulates that private protected

areas may not be expropriated or confiscated, thus denying any Indigenous claims to the land.

Analysis of Act 3001/06 on valuation and remuneration for environmental services

The Act on the Valuation and Remuneration of Environmental Services (Act 3001/06, also referred to as Payment for Environmental Services or PES) was intended to promote forest conservation – yet it is likely to have adverse impacts on Indigenous People and other poor sectors of society, such as small farmers, and on biodiversity. The Act, which promotes the sale of environmental services by establishing a market for those services, was adopted without adequate consultation with the social movements, Indigenous Peoples or small farmers' organizations.

When it was passed, the Act did not include specific rules or financing mechanisms. It simply stipulated that all the owners of land and the natural components that generate 'environmental services' will have the right to corresponding compensation for those services. No estimate was made of the total budget that this would require.

It transpires that the PES system will be funded with 'offset' payments, which are financed by businesses whose activities have negative environmental impacts elsewhere in the country. An offset margin of up to 10% of the budget of a project is required if an infrastructure project causes significant environmental impacts (according to the Environmental Impact Value Calculation). This means that businesses can now offset their environmental impacts by paying to protect biodiversity elsewhere. In other words, the Paraguayan PES scheme legalizes a broad range of environmental sins.



Water contaminated with agrotoxics near the Arroyo Claro community. Photo: Miguel Lovera

The Act also absolves landowners that have broken the forestry law (Forestry Act No 422/73), which stipulates that at least 25% of a landowner's holdings must conserve its original forest cover. Landowners can now compensate for illegal forest clearings by buying biodiversity offset certificates. At the same time, those landowners who *have* complied with the deforestation ban and conserved more than 25% of their land under forest cover are compensated and could receive payment for the forest area in excess of the legal area (25%) and for what were supposed to be obligatory actions to maintain 'environmental services.'

It is also important to analyze how apparently innocent theoretical proposals like PES impact on government, especially in countries like Paraguay, where corruption is a well-recognized problem. While Geographic Information Systems (GIS) have had a very important positive impact on forests in general (since they allow the

government to verify forest cover relatively easily), the road from detecting an environmental violation to actually getting the perpetrator to pay a fine can be an exceptionally long and rocky one.

The reality is that it is very difficult for small landowners to actually get paid for an environmental service if they do not have family members or other connections high up in government. There are many examples in Paraguay of other public subsidies that have not been allocated to the intended beneficiaries (and still others that have ended up in illegitimate hands).

Furthermore, a full analysis of the offsetting process needs to consider how effective it is, or can be, within the broader national context. Considering rates of deforestation alone is not sufficient. The expansion of soy, especially, is considered by many to be one of the most challenging environmental and social problems in

Paraguay. Yet soy growers plan to sow 2.8 million ha of soy in Paraguay in 2008 and hope to reach 4 million ha by 2010. This soy explosion threatens the country's remaining forests. The offsetting system fails to address this dilemma.

Will the poor benefit?

It was always thought that PES systems would benefit the poor, since many of the most valuable ecosystems of the planet are inhabited by Indigenous Peoples and other local communities with little financial resources. However, an often insuperable legal obstacle for many of the world's poorest people is that they do not have the legal deeds or land titles to their lands.

Although some PES systems, including the Paraguayan one, do officially recognize the rights of Indigenous Peoples, including their land rights and, implicitly, their right to receive compensation under PES, this only applies to officially recognized territories. It does not acknowledge the rights that the majority of Indigenous Peoples in the American Continent have to their original territories.

The Act also raises other tricky questions. For example, what happens to the Indigenous Peoples, small farmers and even small and medium property owners, that sign contracts to enter into environmental services schemes if they fail to deliver as specified in the contracts, or if they have to bear the risk of the project failing for external reasons (forest fires, for example)?

The current competition to own and use land, unleashed by the conservationists, is also developing into an insuperable obstacle for Indigenous communities, whose land claims have been stymied, since the current owners are keen to speculate with their land, selling to the highest bidder.

According to legal experts, the PES law is also inequitable because it requires that environmental impact assessments be conducted right at the outset. The prohibitive cost of such assessments immediately excludes many small and medium property owners, who are thereby denied any of the benefits that the PES scheme might otherwise bring them.

Paying for Environmental Services in the Chaco

In the Chaco, in the Western Region of Paraguay, Indigenous Peoples have suffered from the pressure of cattle ranching in their territories from the very beginning of European colonization. Until recently, almost all Indigenous populations were evicted from their lands. Currently, the Indigenous Peoples of the Chaco suffer pressures from expanding cattle ranching, compounded by the relocation of ranching from the Eastern Region. These lands, in turn, are declared 'apt' for soy cultivation by those driving the expansion of the soy frontier, to meet international demand for grain.

The Nivaclé People of the Mistolar community in the 29,876 ha Pozo Hondo Priority Conservation Site have explored the possibility of increasing



Soy plantations in Paraguay. Photo: Simone Lovera

their income by selling 'environmental services', within the framework of the PES Act. For this purpose, in 2007, the community had the Yvy Pora Foundation¹ do the necessary viability studies for decision-making (Management Plan of Environmental Services of the Lands of the Indigenous Mistolar Community). But the practicalities of conforming to PES requirements – which include presenting proposals and projects; determining the baseline; compliance with the norms on environmental impact assessments and calculating the value of socio-economic convenience of the PES mechanisms for the community - are far too costly for communities. Thus they still cannot compete with private sector or conservation group's initiatives and are unlikely to qualify for PES.

The situation of the other Indigenous Peoples of the Chaco is much like that of the Nivacé People with regard to access to land, natural and economic resources and the lack of community infrastructure. In a series of consultation workshops, the peoples of



Arroyo Moroti community. Photo: Simone Lovera

¹ Yvy Pora Foundation works on sustainable development issues within their 'Productive Communities' concept and raised the funding for the Mistolar research.

the Chaco identified the following challenges: geographic isolation, discrimination and social marginalization, expropriation of their ancestral territories and the lack of land and natural resources.

The principal cause of poverty is the loss of ancestral territory, according to the Indigenous workshops' participants. This results not only in the lack of land and natural resources but also disrupts the continuity of traditional lifestyles. These lifestyles, based on knowledge systems developed and passed down for thousands of years while living in the territory, allows the Indigenous Peoples of the Chaco to enjoy a healthy and fulfilling life in harmony with nature. Ensuring the minimum area needed per inhabitant is crucial for maintaining the environmental balance and staying within the thresholds of acceptable change for each ecosystem and the carrying capacity of natural systems. With the expansion of the agricultural and livestock frontier in the Chaco, fueled by the migration of cattle ranching from the Eastern Region to the Boreal Chaco which is in turn caused by the expansion of soy production – the opportunities for re-accessing these peoples' traditional territories is significantly diminished.

In addition, private conservation areas are being established on the last remnants of natural areas, where there is biodiversity of tremendous cultural value for these peoples.

According to leaders of the Angaité, Ayoreo and Guarani Ñandeva Peoples, several nature reserves have been established in their ancestral territories without informing them, let alone obtaining their free, prior, informed consent (as mandated in ILO Convention 169, which has been ratified by Paraguay). The leaders reported that these reserves are established almost secretly and once again the Indigenous Peoples of the Chaco are in a disadvantaged position

when it comes to fighting for their territory.

Paying for environmental services in the Mby'a Territory

The ancestral territory of the Mby'a People makes up approximately one third of the Eastern Region of Paraguay, about 50,000 km². Currently, the majority of this territory has been converted into large-scale mechanized agriculture, mostly of soy monocultures in rotation with corn, wheat, sunflower and other crops. Recent skyrocketing grain prices on the international market mean that demand for land suitable for grain production has at least doubled. This is mainly because of the global strategy to replace fossil fuels with agrofuels. The expansion of these crops means that they now border the last remaining lands where the Mby'a People live.

As a result there are now only 70,000 ha of forests left, dispersed in tiny parcels in the Itapua and Caazapa Departments. These remaining forests, within the ancestral Mby'a territory, are disputed by conservation organizations (who are treated as allies by the State) and the Mby'a People, whose claim is based on their constitutional and ancestral rights. The area is totally privately owned, however, except for a little over 10,000 ha that formally belong to Indigenous Mby'a communities.

The land claim of the Indigenous People includes all the remaining forest, with the hope of maintaining it intact by practicing their traditional lifestyle, which, as in the case of the peoples of the Chaco, requires complete adaptation to the ecological dynamic of the forest.

The conservationists' strategy for the area, however, consists of The land claim of the Indigenous People includes all the remaining forest, with the hope of maintaining it

intact by practicing their traditional lifestyle, which, as in the case of the peoples of the Chaco, requires complete adaptation to the ecological dynamic of the forest.

The conservationists' strategy for the area, however, consists of consolidating a system of private protected areas, which would control and limit Indigenous Peoples' access and rights to hunt and gather. This strategy violates the Indigenous Peoples' constitutional and ancestral rights, including the right to self-determination, and is in contravention of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIPs) and Convention 169 of the International Labor Organization on Indigenous and Tribal Peoples.

According to Indigenous leaders of the Mby'a People, the conservationists, in their eagerness to implement their strategy, have resorted to buying lands in Mby'a territory with funds mostly derived from foreign donors. These institutions are prepared to exploit the market created by the PES Act.

The land in question mainly covers some 6,000 ha, according to the community leaders from Arroyo Morotí. This process of privatization of the Mby'a lands, has also given rise to a number of abuses including the violation of sacred areas and unauthorized bio-prospecting. The relationship between the Mby'a People and the conservationists is further complicated by the role of the State and multilateral aid agencies, who are all aggressively promoting the establishment of a protected area that restricts the ancestral rights of the Mby'a People.

The previously cited impacts on Indigenous Peoples are also found in the offset area that traditionally belongs to the communities of the Mby'a Guaraní in the San Rafael Hills in southern Paraguay. The San Rafael Hills have been slated to be

demarcated as a National Park, a proposal firmly opposed by the Mby'a Guaraní, who consider these mountains their ancestral motherland (*tekoha guazú*) and fear that their land claims will be undermined if the area is officially declared a nature reserve.

However, the majority of the lands in the San Rafael Hills are also officially considered to be 'private property', and the whole zone is under intense pressure from the vast soy monocultures that stretch to the East and the South and are now encroaching into the remaining forests as well. It is foreseen that both the soy growers currently operating in the zone, and the landowners that still own considerable areas of the forests in the proposed reserve will benefit enormously from the proposal to use offsets to compensate for the damage caused by soy expansion: soy can still be grown; and the 'owners' of the forested land will be handsomely compensated for conserving forests elsewhere.

The Mby'a Guaraní People in communities like Arroyo Morotí and Arroyo Claro, on the other hand, may have to pay a high price, even if not in monetary terms. They already suffer from the persistent expansion of the soy monocultures. Their water resources are dangerously polluted from the runoff of the agrochemicals used in the surrounding soy plantations and the use of these chemicals in the pastures.

In particular, the Arroyo Morotí community has expressed their profound concern about the plummeting quality of drinking water in the stream they depend on, which has been seriously polluted by the agrochemicals used by the nearby soy producer. Furthermore, due to the increasing demand for land there are frequent incursions into the forest. For example, the forest of the Arroyo Claro community was devastated by the invasion of farmers ten years ago. After

eight years pursuing legal remedies, the community was successful in getting the invaders to leave the land two years ago. Unfortunately, the invading farmers returned in September 2007 and threatened to continue deforesting the area. Because of these socio-environmental problems, many members of the Mby'a Guaraní People have ended up in the outskirts of Caaguazú and even in the streets of Asunción, the capital of Paraguay, where they are extremely marginalized. The Mby'a Guaraní communities are also adversely affected by the expansion of the private reserves, which are supposed to offset the soy expansion. In some hunting areas their access has been severely restricted, which has resulted, in turn, in overuse of the remaining areas, and malnutrition due to a lack of protein. Furthermore,



Arroyo Moroti community. Photo: Simone Lovera

their land claim processes, intended to recover their territories, are frustrated by the fact that the current owners of the private reserves may receive income under the PES plan. The landowners' rights, both within and outside the designated private area are disputed by the Mby'a, who consider the entire area part of their *tekoha guazú*, soil which they have always managed sustainably.

The communities are angry, because the landowners acquired huge tracts of land illegally, or were given them in questionable circumstances during the dictatorship, and now are hoping to cash in on the 'environmental services'

the forests provide. Yet these are the same forests the Mby'a Guarani have conserved for centuries.

Could the Mby'a Communities benefit from PES?

Of course, an assessment of the impacts of PES on Indigenous Peoples must also include an evaluation of potential positive impacts. From the legal point of view, communities like the Mby'a Guarani People of San Rafael in the South of Paraguay could themselves request PES for the areas that are legally theirs. To do so, however, there are several obstacles that have to be overcome, including the issue of language.

Another is that the vast majority of these Peoples of the forests are not familiar with the marketing skills required to sell 'environmental services' such as CO₂ sequestration, especially in a complex and turbulent market. The hurdles that have to be jumped in order

to acquire an Environmental Impact Value Calculation, a prerequisite to selling 'environmental services', also impedes the participation of poor landowners since this is an expensive undertaking. The large tracts of land that individual landowners hold also have a considerable competitive advantage over collective territory controlled by (sometimes loosely defined) communities, since decision-making is, by definition, a much simpler and swifter process for individual owners.

For Indigenous Peoples, the sale of 'environmental services' could in fact result in grave governance problems, since it is not always clear if the chief of a community has the mandate to be a legal representative for such contractual arrangements. In general, it is worth noting that transforming the current non-monetary economy of the Indigenous communities into a monetary one could have profound impacts on cultural and environmental values and traditions.



Deserted house near the San Rafael hills. Photo: Simone Lovera

Women are likely to suffer most, as their interests are more likely to be over-looked in commercial transactions, which are normally closed by men. Women also have a disadvantageous position in monetary economies in general, as they spend a significant part of their time on activities, such as childcare and household management, that are not rewarded in monetary terms. Moreover, they are generally underpaid in the formal labor market, as well as being responsible for providing potable water and other vital non-monetary goods for the family. Also, clean and healthy drinking water

The PES Act and Environmental Governance

In summary, the Paraguayan PES Act will probably have several adverse impacts on Indigenous Peoples and other poor sectors of society such as landless small farmers and women because:

- The distribution of land in Paraguay is extremely unfair and the lion's share of any PES funding will undoubtedly end up in the pockets of the large landowners as a result.
- The act undermines the ongoing



*Manifestation against large-scale soy production and the Roundtable on Responsible Soy, August 2006.
Photo: Sobrevivencia*

cannot be obtained from another source, regardless of whether money can be earned by selling 'environmental services'. There simply is no formal public service that provides water near the communities. Buying water is also impossible because of the distances involved (especially considering the fact that the community does not even have transportation).

agrarian reform and Indigenous Peoples' land claims to their territory, since it increases the value of unfarmed land.

- The PES system will be impacted by the grave problems of governance that plague the country. In particular, it is likely that politically influential groups will enjoy greater access to the funding than politically marginalized groups such as Indigenous Peoples and small farmers. A bad government plagued by corruption and market-based conservation mechanisms are a dangerous combination. The

experience of implementing the Promotion of Reforestation Act is illuminating in this regard.

Conclusion

In the case studies from Paraguay, it is clear that market-based conservation mechanisms create or exacerbate a series of key obstacles, both in relation to nature conservation and the full exercise of the rights of Indigenous Peoples. These problems, including competition for land that is vital for these peoples, the creation of financial burdens for the State, and the erosion of Indigenous lifestyles, are all caused by a style of conservation based on the buying and selling of the environmental functioning of natural systems, also known as 'environmental services'.

Funding for the PES program is supposed to come from the National Environmental Fund, created in 2000 (with strong support from environmentalists) and intended to finance the implementation of the National Environmental Policy. However, the monies that environmentalists thought would be part of the endowment of the National Environmental Fund are severely diminished, because of the allocations that the State has to make under the PES Act.

In summary, the public is going to pick up the bill for environmental services, even though this will mostly benefit those who have not complied with conserving 25% of the forest cover on their lands, as stipulated by Act 422/73. In this fashion, an unfair situation is created, with grave consequences for Indigenous Peoples, while at the same time giving a legal escape route for those who unabashedly break the environmental laws of the country.



Ache family. Photo: Miguel Lovera

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GFC project coordinators:

Ronnie Hall and Simone Lovera
Global Forest Coalition, Bruselas 2273
Asunción, Paraguay
e-mail: simone.lovera@globalforestcoalition.org

Editorial team: Ronnie Hall, Sarah Finch, Simone Lovera, Yolanda Sikking

Translation team: Dan Rubin, Elena Demunno, Paula Derregibus

Photo cover: community gathering of Mby'a guarani to talk about the impacts of PES on their community" by Miguel Lovera

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Manifestation against large-scale soy production and the Roundtable on Responsible Soy, August 2006. Photo: Sobrevivencia



AlterVida: "Founded in 1985, the organization works on environmental and socioeconomic issues at the national level. The main areas of action are agroecology, pesticide use avoidance, biodiversity conservation and sustainable use, Indigenous Peoples' rights and urban environment. AlterVida is a necessary reference on issues referring to environment and development issues in Paraguay."

Alter Vida,
Itapúa 1372 e/Primer Presidente y Río Monday - Barrio Trinidad, Paraguay
Tel: (595 21) 298 842/3 - 281 271 Fax: (595 21) 298 845
e-mail: info@altervida.org.py www.altervida.org.py