

## **Policy amendments notes for PES in Kenya**

**By**

**Gibson Mwangi Kiragu, Deputy Director Policy, Strategies and Reforms,  
Ministry of Water and irrigation**

The ICRAF project **Pro-poor rewards for environmental services in Africa (PRESA)** sought to investigate, using scientific evidence, the extent to which Payment for Environmental Services (PES) can be used to reduce the unfair burden (often embedded in policy) placed on resource-poor farmers living within important ecosystems.

Although PES seems to be supported in the Water Act 2002, which envisages the creation of funds for the protection of water resources, in trying to structure watershed PES through action research in Sasumua, PRESA encountered policy-related obstacles, especially in identifying buyers and attracting sustainable financing.

For example, although the Nairobi Water Company benefits from improved landuse practices in the watershed, it could not finance PES as a buyer for two reasons.

1. Firstly, the Company pays abstraction fees to WRMA and levies to Kenya Forest Service and Athi Water Services Board.
2. Secondly, the Company can only implement PES if it is clearly stipulated as a policy requirement.
3. An alternative way of financing PES in areas where there is no private sector buyer is through the Water Services Trust Fund (WSTF), but being a public fund meant for capacity building, getting into PES and paying farmers would take WSTF into the private realm, which is outside its mandate.
4. A third way of financing PES for catchment management is if the policy allowed Water Resource Management Authorities (WRUAs) to collect and retain revenue for PES from small-scale abstractors.

These can only be addressed through formal recognition (inclusion of a statutory provision) and explicit mention of PES in natural resource management policies.

These policy recommendations have been generated through participation and consultations with citizens affected including the Sasumua Water Resources Users' Association, Water Resource Management Authority, Water Services Trust Funds, Ministry of Water and Irrigation, Water Service providers e.g., Nairobi Water Company, Nairobi

water consumers, Jomo Kenyatta University of Agriculture and Technology, and other relevant bodies e.g., UNEP.

**Attached please find proposed policy amendments for operationalizing PES in watershed management in Kenya.**

## **RECOMMENDATION FOR INCLUSION OF PAYMENT/REWARDS FOR ENVIRONMENTAL SERVICES IN GOVERNMENT POLICY**

### **1. Situation Analysis**

Catchment management is regulated in Kenya under a multiplicity of overlapping laws and by a significant number of institutions with statutory mandate over watershed protection and management. Whilst enactment of the Water Act 2002 purposely did much to streamline and harmonise catchment management and provided legal and institutional framework for a new operational environment, there still remains a diversity of legislation and institutional actors with an interest in water resources management.

The National Water Resources Management Strategy (NRWMS, 2006-2008) has been effective, but only to a limited extent, due to the government's inadequate human and economic resources to enforce natural resources rules and maintain necessary systems for hydrometric data collection, monitoring and reporting. The existing framework is also weak on management of agricultural lands, which constitute a large proportion of watersheds in Kenya and which are privately owned. It does not provide incentives for landowners in agricultural watersheds to adopt sustainable farming practices that increase hydrological services (i.e., reduced soil erosion and surface runoff, increased infiltration and reduced pollution).

### **2. Specific Policy Objectives for Payments/Rewards for Environmental Services**

Payment for Environmental Services (PES) is an incentive-based conservation approach where beneficiaries of an environmental service provide incentives to land users for sustained or improved provision of that environmental service. Environmental services are non-material, non-extractive benefits that human beings derive from natural resources, such as watershed protection and carbon sequestration. PES can achieve the governments' development objectives in three major ways:

1. PES can achieve sustainable watershed management by tapping into new, private-sector-led financial streams through partnerships between water users and watershed stewards. It enables landowners to find it individually beneficial to make land use decisions that are also socially demanded.

2. Because PES involves transfer of funds and other incentives to grass-root communities for natural resource management, it has a potential to engender public-private partnership that enable diversification of livelihood strategies.
3. PES schemes also seek to create new and secure sources of income for poor communities and individuals.

### **3. Proposed Enhancement of the Compensation and Benefit Sharing Policy**

#### **Rationale:**

Recognizing and rewarding the role of rural communities as Environmental Services providers by the new Constitution, 2010, requires an institutional framework that goes well beyond the scope of traditional policies in both agriculture and conservation.

#### **Proposed Policy Statements**

The Government will facilitate:

1. PES to enhance Kenya's conservation of its water towers (including the Mau complex, Mt. Elgon, Mt. Kenya, the Cherang'any, and the Aberdares) demonstrating practically and politically the country's transition to a Green Economy.
2. Human Rights Based Approach in Implementation of the Land use, Water and Environmental policies. PES can create a sustainable financing system for water resources management especially in agricultural lands and enhance partnerships with private landowners. The Principle of PES should be formalized early as a conditionality of EIA approvals (Article 69, GoK, 2010) and the agreements deposited with the relevant authorities.
3. The Principle that adversely affected people are entitled to share project benefits which can be *payments in cash or in kind or access to resources and markets* as agreed in the negotiations
4. Development of additional evidence-based strategies on PES that is dependent on a precise understanding of catchment hydrology and water resources in view of climate change. Rules on management of information generated through PES will be made by the body responsible for Water Resources Management and availed to project planners and implementation agencies at no extra cost.

### **4. Proposed Legislative Amendments for Operationalizing PES in Watershed Management**

#### **1. *The Water Act, 2002 should:***

- Explicitly stipulate PES as a mechanism for financing water resources by private-sector water users and make PES contributions a regulatory requirement.
- Empower the body regulating Water Resources to earmark a proportion of abstraction fees for water to be retained in the watershed area where it is generated, to finance local WRUA to implement watershed management actions including PES.
- Expand the current mandates of Water Sector Funds to sub-contract WRUAs to implement PES via a subsidy scheme

#### **2. *The Forestry Act, 2005:***

The Forestry Act (2005) mandates the Kenya Forest Service (KFS) to charge an annual land rent and way leave fee to beneficiaries of forest services including water abstractors. One way of encouraging the beneficiaries of watershed services to participate in PES would be to waive these charges to participants of PES schemes.

The government should seek to harmonize Water and the Forestry Legislation:

- For one-stop levies so that the Forest Management and Conservation Fund will not exercise its prerogative to seek payments for Dams and other water infrastructure within forest boundaries.
- To avoid second tier payments above the Water Resources Management Authority levy which currently makes it difficult to raise funds for PES from the private sector who consider it double payment.

### *3. The Agricultural Act, Cap 318, Irrigation Act, Cap 347, Regional Development Authorities Acts*

Despite the far-reaching and punitive implications within the corpus of Agriculture and Livestock related Acts, it is generally conceded that they have not been successful in slowing land degradation, owing in part to:

- Lack of resources to monitor and sanction land use,
- Failure by the law to involve communities in decision making in the management of agricultural resources.

New laws being made in Land, Agriculture, Irrigation and Water Sectors should therefore give greater recognition to local watershed managers and involve them in the management of agricultural watersheds especially via PES. Land Reclamation Legislation, in particular, should require that the money raised could then be used to pay local landowners for improved land management.