

Recognition and Potential Incorporation of Payment for Ecosystem Services in Sri Lankan Legislation

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3rd September 2025

Acknowledgment

This report stems from the core of my Master's dissertation in Environmental and Climatic Change Law at the University of Colombo. It represents not only an academic endeavor but a passionate pursuit toward advancing the concept of Payment for Ecosystem Services (PES) in Sri Lanka.

I extend my deepest gratitude to Ms. Pramoda Vithanage, my supervisor at the university, whose unwavering guidance and intellectual mentorship shaped the foundation of this work. Her scholarly insight was pivotal in transforming research into a meaningful contribution to environmental policy.

I am also sincerely thankful to Dr. Leimona Beria, the lead scientist in the Climate Change, Energy, and Low-Carbon Development Group at the International Centre for Research in Agroforestry (ICRAF). Her support and facilitation were instrumental in navigating the complexities of this study.

A special note of appreciation goes to Mr. Jagath Gunawardana and Mr. Ravindranath Dabare, two of Sri Lanka's most respected environmental legal experts. Their professional wisdom and technical acumen enriched the practical dimensions of this research, especially in areas of institutional architecture, policy execution, and legal frameworks.

Foreword

The strategic actions proposed in this study for establishing a robust Payment for Ecosystem Services (PES) system in Sri Lanka are intended as a springboard for future accomplishment. As environmental challenges grow more urgent, the need for innovative and inclusive policy mechanisms becomes increasingly vital.

The success of this framework depends on the collective commitment of policymakers, government officials, environmental professionals, and passionate advocates for nature. I humbly place this work in their hands—with the hope that it will inspire meaningful policy development and drive sustainable environmental governance across the country.

May this research serve not only as a reference, but as a catalyst for transformative change—toward a future where ecological stewardship and economic sustainability go hand in hand.

Summary

This study examines the legal and institutional frameworks required for implementing Payment for Ecosystem Services (PES) in Sri Lanka, addressing the critical gap between environmental conservation needs and economic incentive mechanisms. Through comprehensive analysis of eight key environmental and land management legislations [National Environmental Act No. 47 of 1980 (amended), Forest Ordinance No. 16 of 1907 (amended), Fauna and Flora Protection Ordinance No. 2 of 1937 (amended), Sustainable Development Act No. 19 of 2017, Agrarian Development Act No. 46 of 2000, Irrigation Ordinance No. 32 of 1946 (amended), Land Development Ordinance of No.19 of 1935 and Mahaweli Authority Act No. 23 of 1979], the research reveals that no existing Sri Lankan law explicitly provides for PES implementation. To systematically evaluate the potential for PES incorporation within existing legal frameworks, this study developed and applied a novel Legal Potential Assessment Matrix (LPAM), which converts complex qualitative factors into quantifiable binary scores across six critical dimensions: Legal Recognition of Ecosystem Services, Institutional Framework, Financial Mechanisms, Stakeholder Participation, Environmental Safeguards, and Social Safeguards. The LPAM analysis identified the National Environmental Act as the one having the highest potential for PES incorporation (17/24 points), with the Central Environmental Authority emerging as the most viable national-level implementing institution, despite constitutional constraints outlined in Articles 143, 149, and 150 that govern taxation and public fund management. Based on this comprehensive legal analysis, the study presents three strategic recommendations for PES implementation: first, the development of a new comprehensive PES Act that would provide legal clarity and purpose-built institutions but requires significant investment and lengthy legislative processes; second, the establishment of a PES system through taxation mechanisms that leverages existing infrastructure but faces constitutional complexity and political sensitivity; and third, the expansion of environmental licensing frameworks under the National Environmental Act that offers immediate implementation potential but requires addressing current enforcement gaps and revenue fragmentation issues. The research concludes that a phased implementation approach would be most effective, utilizing the environmental licensing mechanism for short-term PES establishment while developing a comprehensive PES Act for long-term sustainability, though this strategic pathway requires validation through extensive stakeholder consultations that consider political feasibility, institutional readiness, and stakeholder preferences to ensure successful implementation of transparent, efficient, and effective mechanisms for protecting and valuing ecosystem services in Sri Lanka.

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1. Introduction

Payment for Ecosystem Services (PES) is an innovative approach aimed at harnessing economic incentives to conserve environmental resources and promote sustainable development. PES mechanisms compensate landowners or resource stewards for managing ecosystems in ways that sustain or enhance ecological services such as water cycle management, carbon sequestration, biodiversity conservation land scape beauty and soil fertility.

In Sri Lanka, PES is an emerging concept with growing policy interest. However, its operationalization depends on the presence of enabling legal frameworks capable of recognizing, regulating, and incentivizing ecosystem service payments. This study examined the recognition and potential incorporation of PES within the key environmental and land management legislations of Sri Lanka, focusing on the:

- National Environmental Act No. 47 of 1980 (amended)
- Forest Ordinance No. 16 of 1907 (amended)
- Fauna and Flora Protection Ordinance No. 2 of 1937 (amended)
- Sustainable Development Act No. 19 of 2017
- Agrarian Development Act No. 46 of 2000
- Irrigation Ordinance No. 32 of 1946 (amended)
- Land Development Ordinance of No.19 of 1935
- Mahaweli Authority Act No. 23 of 1979

A careful legal and institutional analysis is presented, including a critical evaluation of the strengths and gaps in these legislations and then suggestions for PES implementation.

2. Defining Payment for Ecosystem Services (PES)

Before delving into legislative analysis, it is vital to understand PES as a tool. PES schemes typically involve:

- Providers: Landowners or custodians who manage ecosystems.
- Beneficiaries/buyers: Beneficiaries who receive ecosystem services, often downstream water users, tourism operators, governments.
- Payments: Direct or indirect economic incentives to encourage conservation or sustainable use.
- Intermediary: This is connecting all above effectively and transparently.

The effective legalization of PES requires recognition of ecosystem services, frameworks for valuation, institutional roles for enforcement, financial mechanisms for payment

collection and distribution, monitoring & evaluation, stakeholder participation, and safeguards for environmental and social equity.

3. General overview of Sri Lankan legal context for PES

Sri Lanka's legal framework comprises legislation covering environment, forests, agriculture, irrigation, and land use which offer a foundation for environmental governance but do not uniformly or explicitly address PES.

A comprehensive evaluation of these laws shows:

- Limited explicit recognition of ecosystem services.
- Existing institutional authorities with overlapping responsibilities.
- Partial financial mechanisms related to resource use charges.
- Inadequate stakeholder participation mechanisms specifically linked to PES.
- Insufficient social safeguards for equitable benefit-sharing.

The absence of explicit PES provisions indicates a need for legislative reform or amendment of existing law.

4. Current Sri Lankan laws related to PES

In establishing a public PES system, the government intervenes and creates a compliance based system. As one of the primary goals of establishing a PES system is to encourage sustainable development through environmental conservation, the main legislations in Sri Lanka on environmental conservation and sustainable development, which cover the National Environmental Act No. 47 of 1980, amended in 1988 and 2000, Forest Ordinance No.16 of 1907, Fauna and Flora Protection Ordinance of No.2 of 1937, amended in 1993, and the Sustainable Development Act No.19 of 2017 were studied to observe how PES is incorporated in those legislations. Further the legislations related to land development was studied in order to identify the provisions related to PES. Through the study it was cleared that those legislations do not provide specific provisions on PES. However, some provisions could be used for the adoption of PES.

4.1 Environmental protection and sustainable development Acts.

4.1.1 National Environmental Act No. 47 of 1980, amended in 1988 and 2000. (National Environmental Act/ NEA)

The umbrella act of Sri Lanka's environmental legislations is the National Environmental Act No. 47 of 1980, amended in 1988 and 2000. The objective of adopting the National

Environmental Act is to promote environmental conservation through the establishment of the Central Environment Authority which has the jurisdiction to the whole country over state lands as well as private lands. This Act regulates environmental conservation, however there is no clear provision for encouraging individuals to conserve the environment. This statute gives the Central Environment Authority to manage a fund¹, which can be funded through penalties and grants. However, the Act is silent on the authority to collect taxes for such fund. The CEA has the power to use the fund on the expenditures incurred by the authority in the exercise of the duties outlined in the Act²The accounts of the fund are subject to audit by the Auditor-General, ensuring transparency and accountability in its management.³ Also the Central Environmental Authority has the power to promote and coordinate and carry out long range planning environmental protection and management.⁴ It reflects that the Central Environmental Authority may have the power to incorporate a PES project in Sri Lanka. Also, this Act supersedes all other laws.⁵

4.1.2 The Forest Ordinance No.16 of 1907 (Forest Ordinance)

The Forest Ordinance No.16 of 1907 of Sri Lanka is a crucial piece of legislation for forest management and conservation in the state lands of the country. This Act establishes reserved forests⁶ and makes required safeguards for ecosystem conservation by forbidding actions that destroy forest resources, such as trespassing and tree cutting.⁷ In addition, this Act designates a portion of the forest as village forest, allowing rural people to use the forest without causing damage to it.⁸ Amidst not mentioning of PES, this Act provides eco system services to closed by community and the society in large while securing the eco system through the finance generated from national coppers. Moreover, this ordinance also establishes the Forest Department as the governing body and outlines its powers and responsibilities in managing state forests and the ordinance has given the provisions for the minister to establish and regulate the Forest Department Fund.⁹

¹ Central Environmental Authority Act No.47 of 1980, Sec. 5

² National Environmental Act No. 47 of 1980, Sec.5(2)

³ National Environmental Act No. 47 of 1980, Sec. 6

⁴ Central Environmental Authority Act No.47 of 1980. Sec. 10 (1) (i)

⁵ National Environmental (Amendment) Act, No.56 of 1988, Sec 24 D (1)

⁶ The Forest Ordinance No.16 of 1907, Sec.3

⁷ The Forest Ordinance No.16 of 1907, Sec.6

⁸ The Forest Ordinance No.16 of 1907, Sec.12

⁹ Forest Ordinance No.16 of 1907, Sec.64 (b)

4.1.3 Fauna and Flora Protection Ordinance No.2 of 1937 (Fauna and Flora Protection Ordinance, FFPO)

The objective of the Flora and Fauna Ordinance is to provide protection, conservation and preservation of the Fauna and Flora of Sri Lanka and to preserve them from commercial exploitation¹⁰ by primarily focusing on state lands.¹¹ It establishes and defines different categories of protected areas: National Reserves (strict natural reserves, national parks, nature reserves, jungle corridors, intermediate zone).¹² The ordinance includes restrictions to safeguard specific plant and animal species, including prohibitions on hunting, killing, or gathering protected species. To carry out the Act's duties, the Department of Wildlife was founded by the Act. The police and the authorized representatives designated under this Act have been tasked with ensuring the safety of the ecosystems and carrying out ecological monitoring within the parameters of their authority.¹³ Furthermore, any fines incurred by violating any of the Act's specified offences will be credited to the Wildlife Conservation Fund, which has been established by the legislation.¹⁴ Although there are some sections in the Forest Ordinance and Flora and Fauna Ordinance that might be helpful in incorporating PES, there isn't much opportunity for PES creation because the Forest Act lacks the authority to impose orders on private land.

4.1.4 Sustainable Development Act No.19 of 2017 (Sustainable Development Act, SDA)

The sustainable development Act in Sri Lanka was enacted to ensure that the National Policy and Strategy on Sustainable Development is prepared in accordance with sustainable development goals and targets and provide the legal framework for developing and implementing such National Policy and Strategy on Sustainable Development and to ensure an ecologically efficient use of natural, social and economic resources, and further to promote the integration and maintain the equipoise of environmental, economic and social factors in the making of all decisions by government.¹⁵ The Act has established the sustainable development council¹⁶ with many duties including facilitating the achievement of national and regional and international

¹⁰ Fauna and Flora Protection Ordinance No.2 of 1937, Sec. preamble

¹¹ Fauna and Flora Protection Ordinance No.2 of 193, Sec.2

¹² Fauna and Flora Protection Ordinance No.2 of 1937, Sec. 2 (1)

¹³ Fauna and Flora Protection Ordinance No.2 of 193, Sec 67

¹⁴ Fauna and Flora Protection Ordinance No.2 of 193, Sec 65

¹⁵ Sustainable development Act No 19 of 2017, Sec. 2

¹⁶ Sustainable development Act No 19 of 2017, Sec.3

commitments relating to sustainable development¹⁷, monitoring the mechanisms and progress review process of implementation of national policies and strategies on sustainable development¹⁸ and to accept grants, gifts and donations.¹⁹

4.2 Land use Acts

4.2.1 The Land Development Ordinance of No.19 of 1935 (Land Development Ordinance/LDO)

The Land Development Ordinance of 1935 is a significant piece of legislation in Sri Lanka that governs the management and distribution of state lands. The purpose of the Act is to provide for the systematic development and alienation of state lands in Sri Lanka.²⁰ This Act mainly focusses on the administration and transfer of ownership of lands rather than considering sustainable land use which should be connected to other environmental services (ES) or PES.

4.2.2 The Agrarian Development Act No. 46 of 2000 (The Agrarian Development Act/ADA)

The Agrarian Development Act No. 46 of 2000 is an important piece of legislation in Sri Lanka that focuses on agricultural land use and management. The purpose of the Act is to assure the utilization of agricultural lands in accordance with agricultural policies and to establish Agrarian Development Councils and Agrarian Tribunals.²¹ The Act is applicable for all agricultural lands including paddy. The Act establishes the position of Commissioner General of Agrarian Development and creates Agrarian Development Councils at various administrative levels.²² This Act includes provisions for efficient water use and management in agricultural areas, including the maintenance of irrigation systems²³ and soil conservation measures to prevent erosion and maintain soil fertility.²⁴ This legislation creates the Agrarian Development Council to facilitate the agricultural development.²⁵ The Agrarian Development Fund was formed by the Act and

¹⁷ Sustainable development Act No 19 of 2017, Sec.10 (a)

¹⁸ Sustainable development Act No 19 of 2017, Sec.10 (e)

¹⁹ Sustainable development Act No 19 of 2017, Sec.10 (l)

²⁰ The Land Development Ordinance of No.19 of 1935, Preamble

²¹ The Agrarian Development Act No. 46 of 2000, Preamble

²² The Agrarian Development Act No. 46 of 2000, Sec 51 & 25

²³ The Agrarian Development Act No. 46 of 2000, Part VII

²⁴ The Agrarian Development Act No. 46 of 2000, Sec.86

²⁵ Agrarian Development Act No 46 of 2000, Sec 51&52

is financed by acreage tax, funds, and fines.²⁶ Since the scope of this Act is limited to agricultural land, it appears be no room for PES installation.

4.2.3 Mahaweli Authority of Sri Lanka Act No. 23 of 1979 (Mahaweli Authority Act/MAA)

The Mahaweli Authority of Sri Lanka Act No. 23 of 1979 established the Mahaweli Authority to oversee the comprehensive development of the Mahaweli River basin and adjacent areas.²⁷ This legislation includes several provisions that directly or indirectly promote sustainable land use practices within its jurisdiction. Section 3(f) of the Act permits the Authority to "promote and safeguard the full and integrated development of any special area." This section has been interpreted as requiring the creation and implementation of comprehensive land use plans that support sustainable practices. The legislation establishes the Mahaweli Authority, vested with the powers on, environmental protection and the ability to take such actions as may be necessary for water-shed management and soil erosion control²⁸. Hence this section could be interpreted as the Mahaweli Authority is having a power to establish a PES scheme related to ES of water and soil. Furthermore, the Mahaweli Authority, has fiscal powers, to maintain a fund that could acquire revenues through taxes, penalties, and fines.²⁹ Although this statute does not have direct provisions addressing PES, the above-mentioned elements appear to be appropriate with constructing a water and soil based PES system in Sri Lanka. However, because the Mahaweli Act is only applicable to the Mahaweli project, it is doubtful whether it may be applied in the PES plan that will apply to the entire country.

4.2.4 Irrigation Ordinance No 32 of 1946 (Amended)

While the Sri Lankan Irrigation Ordinance No 32 of 1946 (Amended) establishes a comprehensive legal framework for managing irrigation water supply, infrastructure maintenance, and collection of irrigation rates, its primary purpose fundamentally differs from that of Payment for Ecosystem Services (PES). The Irrigation Ordinance is designed to regulate water distribution as a state-managed service, primarily focusing on ensuring the operational efficiency of irrigation schemes and equitable allocation of water resources to land users. Its charges, such as irrigation rates and levies, are

²⁶ Agrarian Development Act No 46 of 2000, Sec. 97

²⁷ Mahaweli Authority of Sri Lanka Act No. 23 of 1979, Sec.2

²⁸ Mahaweli Authority of Sri Lanka Act No. 23 of 1979, 13 (7)

²⁹ Mahaweli Authority of Sri Lanka Act No. 23 of 1979, 26

imposed as fees for water supplied and infrastructure costs rather than as incentives to conserve or enhance ecosystem services. Consequently, the legal intent of the Ordinance centers on resource management and cost recovery rather than environmental stewardship or incentivizing broader ecosystem functions.

5.Potential for incorporation of PES within the laws of Sri Lanka

The implementation of PES is not directly regulated by any legislation in Sri Lanka. As a result, a new act is required to implement the PES system in Sri Lanka. When installing a PES system, a governance structure is required for its operation. However, establishing a new governance structure in the country is extremely costly and time-consuming. As a result, it is critical to determine if PES can be implemented through the authorities established under existing legislation.

5.1 Evaluation of Sri Lankan legislations for potential for incorporation of PES

The evaluation of legislative effectiveness in Sri Lanka has traditionally relied on qualitative assessments and retrospective analysis. However, the complexity of the legal framework in Sri Lanka needs a more systematic and quantifiable approach to assess the potential impact and feasibility of proposed legislation before implementation. In doing so, a Legal Potential Assessment Matrix (LPAM), a novel multi-criteria binary scoring system specifically designed for the Sri Lankan legislative context was used to measure the potential for incorporation of PES within the laws in Sri Lanka.

The LPAM system revolutionizes legislative assessment by converting complex qualitative factors into a simplified binary scoring framework, while maintaining sensitivity to Sri Lanka's unique legal, environmental, institutional, social and administrative landscape. This innovative approach examines legislation through multiple critical dimensions, including Legal Recognition of Ecosystem Services, Institutional Framework, financial mechanisms, stakeholder participation, environmental safeguards and social safeguards (Table 1). Each dimension consists of four evaluation criteria and at coring, the system assigns binary scores (1 or 0), eliminating the subjectivity often associated with scaled ratings and generate a scale 0-4 within each dimension.

Aggregation of the total score under each dimension is defined as,

0 = No support/ provisions; 1=Limited /indirect support; 2= Moderate support with gaps;

3= Strong support; 4= Comprehensive support

Table 1. Categorization of evaluation criteria for Sri Lankan laws under four dimensions

Legal Recognition of ES	Institutional Framework	Financial Mechanisms	Stakeholder Participation	Environmental Safeguards	Social Safeguards
Recognition of ecosystem services in legal text	Designated authority	Fund management framework	Consultation requirements	Environmental impact assessment	Benefit-sharing provisions
Legal basis for economic valuation	Monitoring	Fund collection mechanisms	Public participation mechanisms	Ecosystem protection measures	Social impact assessment
Protection status of ecosystem services	Enforcement capacity	Financial monitoring and auditing	Information access provisions	Monitoring requirements	Poverty alleviation measures
Integration with international frameworks	Governance on both state and private lands	Revenue distribution framework	Rights of affected communities	Penalizing mechanisms	Cultural heritage protection

Table 2: Application of Legal Potential Assessment Matrix (LPAM) for Sri Lankan laws

Table 2a: LPAM for the National Environmental Act

Criteria	Score	Justification
Legal Recognition	2	<ul style="list-style-type: none"> • Recognition of ecosystem services in legal context-No • Legal basis for economic valuation-No • Protection status of ecosystem services-Yes • Integration with international frameworks-Yes
Institutional Framework	4	<ul style="list-style-type: none"> • Designated authority - Yes • Monitoring -Yes • Enforcement capacity-Yes • Governance over both state and private lands-Yes
Financial Mechanisms	3	<ul style="list-style-type: none"> • Fund management framework-Yes • Fund collection mechanisms-Yes • Financial monitoring and auditing-Yes • Revenue distribution framework-No

Stakeholder Participation	4	<ul style="list-style-type: none"> • Public and stakeholder participation mechanisms in environmental protection -Yes • Public participation mechanisms in monitoring- Yes • Information access provisions - Yes • Rights of affected communities - Yes
Environmental Safeguards	4	<ul style="list-style-type: none"> • Environmental impact assessment- Yes • Ecosystem protection measures-Yes • Monitoring requirements-Yes • Penalizing mechanisms-Yes
Social Safeguards	0	<ul style="list-style-type: none"> • Benefit-sharing provisions- No • Social impact assessment-No • Poverty alleviation measures-No • Cultural heritage protection-No
Total Score	17	

Table 2b: LPAM for the Forest Ordinance

Criteria	Score	Justification
Legal Recognition	2	<ul style="list-style-type: none"> • Recognition of ecosystem services in legal context-No • Legal basis for economic valuation-No • Protection status of ecosystem services-Yes (S. • Integration with international frameworks-Yes
Institutional Framework	3	<ul style="list-style-type: none"> • Designated authority - Yes • Monitoring -Yes • Enforcement capacity-Yes • Governance over both state and private lands-No
Financial Mechanisms	3	<ul style="list-style-type: none"> • Fund management framework-Yes • Fund collection mechanisms-Yes • Financial monitoring and auditing-Yes • Revenue distribution framework-No
Stakeholder Participation	1	<ul style="list-style-type: none"> • Public participation mechanisms in decision making - No • Public participation mechanisms in monitoring- No • Information access provisions - No • Rights of affected communities - Yes
Environmental Safeguards	3	<ul style="list-style-type: none"> • Environmental impact assessment- No • Ecosystem protection measures-Yes • Monitoring requirements-Yes

		<ul style="list-style-type: none"> • Penalizing mechanisms-Yes
Social Safeguards	1	<ul style="list-style-type: none"> • Benefit-sharing provisions- Yes • Social impact assessment-No • Poverty alleviation measures-No • Cultural heritage protection-No
Total Score	13	

Table 2c: LPAM for the Flora and Fauna Ordinance

Criteria	Score	Justification
Legal Recognition	2	<ul style="list-style-type: none"> • Recognition of ecosystem services in legal context-No • Legal basis for economic valuation-No • Protection status of ecosystem services-Yes • Integration with international frameworks-Yes
Institutional Framework	3	<ul style="list-style-type: none"> • Designated authority - Yes • Monitoring -Yes • Enforcement capacity-Yes • Governance over both state and private lands-No
Financial Mechanisms	2	<ul style="list-style-type: none"> • Fund management framework-Yes • Fund collection mechanisms-Yes • Financial monitoring and auditing-Yes • Revenue distribution framework-No
Stakeholder Participation	1	<ul style="list-style-type: none"> • Public participation mechanisms in decision making - No • Public participation mechanisms in monitoring- No • Information access provisions - No • Rights of affected communities - Yes
Environmental Safeguards	3	<ul style="list-style-type: none"> • Environmental impact assessment- No • Ecosystem protection measures-Yes • Monitoring requirements-Yes • Penalizing mechanisms-Yes
Social Safeguards	0	<ul style="list-style-type: none"> • Benefit-sharing provisions- No • Social impact assessment-No • Poverty alleviation measures-No • Cultural heritage protection-No
Total Score	11	

Table 2d: LPAM for Sustainable Development Act

Criteria	Score	Justification
Legal Recognition	2	<ul style="list-style-type: none"> • Recognition of ecosystem services in legal context-No • Legal basis for economic valuation-No • Protection status of ecosystem services-Yes • Integration with international frameworks-Yes
Institutional Framework	2	<ul style="list-style-type: none"> • Designated authority - Yes • Monitoring -No • Enforcement capacity-No • Governance over both state and private lands-No
Financial Mechanisms	1	<ul style="list-style-type: none"> • Fund management framework-No • Fund collection mechanisms-No • Financial monitoring and auditing-Yes • Revenue distribution framework-No
Stakeholder Participation	1	<ul style="list-style-type: none"> • Public participation mechanisms in decision making - No • Public participation mechanisms in monitoring- No • Information access provisions - No • Rights of affected communities - Yes
Environmental Safeguards	1	<ul style="list-style-type: none"> • Environmental impact assessment- No • Ecosystem protection measures-Yes • Monitoring requirements-No • Penalizing mechanisms-No
Social Safeguards	0	<ul style="list-style-type: none"> • Benefit-sharing provisions- No • Social impact assessment-No • Poverty alleviation measures-No • Cultural heritage protection-No
Total Score	7	

Table 2e: LPAM for Land Development Act

Criteria	Score	Justification
Legal Recognition	0	<ul style="list-style-type: none"> • Recognition of ecosystem services in legal context-No • Legal basis for economic valuation-No • Protection status of ecosystem services-No • Integration with international frameworks-No
Institutional Framework	1	<ul style="list-style-type: none"> • Designated authority - Yes • Monitoring -Yes

		<ul style="list-style-type: none"> • Enforcement capacity-Yes • Governance over both state and private lands-No
Financial Mechanisms	2	<ul style="list-style-type: none"> • Fund management framework-Yes • Fund collection mechanisms-Yes • Financial monitoring and auditing-Yes • Revenue distribution framework-No
Stakeholder Participation	1	<ul style="list-style-type: none"> • Public participation mechanisms in decision making - No • Public participation mechanisms in monitoring- No • Information access provisions - No • Rights of affected communities - Yes
Environmental Safeguards	0	<ul style="list-style-type: none"> • Environmental impact assessment- No • Ecosystem protection measures-No • Monitoring requirements-No • Penalizing mechanisms-No
Social Safeguards	0	<ul style="list-style-type: none"> • Benefit-sharing provisions- No • Social impact assessment-No • Poverty alleviation measures-No • Cultural heritage protection-No
Total Score	4	

Table 2f: LPAM for Agrarian Development Act

Criteria	Score	Justification
Legal Recognition	0	<ul style="list-style-type: none"> • Recognition of ecosystem services in legal context-No • Legal basis for economic valuation-No • Protection status of ecosystem services-Yes • Integration with international frameworks-No
Institutional Framework	2	<ul style="list-style-type: none"> • Designated authority - Yes • Monitoring -Yes • Enforcement capacity-Yes • Governance over both state and private lands-Yes
Financial Mechanisms	2	<ul style="list-style-type: none"> • Fund management framework-Yes • Fund collection mechanisms-Yes • Financial monitoring and auditing-Yes • Revenue distribution framework-No

Stakeholder Participation	1	<ul style="list-style-type: none"> Public participation mechanisms in decision making - No Public participation mechanisms in monitoring- No Information access provisions - No Rights of affected communities - Yes
Environmental Safeguards	1	<ul style="list-style-type: none"> Environmental impact assessment- No Ecosystem protection measures-Yes Monitoring requirements-No Penalizing mechanisms-No
Social Safeguards	0	<ul style="list-style-type: none"> Benefit-sharing provisions- No Social impact assessment-No Poverty alleviation measures-No Cultural heritage protection-No
Total Score	6	

Table 2g: LPAM for Mahaweli Authority Act

Criteria	Score	Justification
Legal Recognition	2	<ul style="list-style-type: none"> Recognition of ecosystem services in legal context-No Legal basis for economic valuation-No Protection status of ecosystem services-Yes Integration with international frameworks-Yes
Institutional Framework	2	<ul style="list-style-type: none"> Designated authority - Yes Monitoring -Yes Enforcement capacity-Yes Governance over both state and private lands-Yes
Financial Mechanisms	3	<ul style="list-style-type: none"> Fund management framework-Yes Fund collection mechanisms-Yes Financial monitoring and auditing-Yes Revenue distribution framework-No
Stakeholder Participation	1	<ul style="list-style-type: none"> Public participation mechanisms in decision making - No Public participation mechanisms in monitoring- No Information access provisions - No Rights of affected communities - Yes
Environmental Safeguards	4	<ul style="list-style-type: none"> Environmental impact assessment- No Ecosystem protection measures-Yes Monitoring requirements-Yes

		<ul style="list-style-type: none"> • Penalizing mechanisms-Yes
Social Safeguards	1	<ul style="list-style-type: none"> • Benefit-sharing provisions- No • Social impact assessment-No • Poverty alleviation measures-Yes • Cultural heritage protection-No
Total Score	15	

Table 2h: LPAM for Irrigation Act

Criteria	Score	Justification
Legal Recognition	0	<ul style="list-style-type: none"> • Recognition of ecosystem services in legal context-No • Legal basis for economic valuation-No • Protection status of ecosystem services-No • Integration with international frameworks-No
Institutional Framework	4	<ul style="list-style-type: none"> • Designated authority - Yes • Monitoring -Yes • Enforcement capacity-Yes • Governance over both state and private lands-Yes
Financial Mechanisms	3	<ul style="list-style-type: none"> • Fund management framework-Yes • Fund collection mechanisms-Yes • Financial monitoring and auditing-Yes • Revenue distribution framework-No
Stakeholder Participation	3	<ul style="list-style-type: none"> • Public and stakeholder participation mechanisms in environmental protection -no • Public participation mechanisms in monitoring- Yes • Information access provisions - Yes • Rights of affected communities - Yes
Environmental Safeguards	0	<ul style="list-style-type: none"> • Environmental impact assessment- No • Ecosystem protection measures-No • Monitoring requirements-No • Penalizing mechanisms-No
Social Safeguards	0	<ul style="list-style-type: none"> • Benefit-sharing provisions- No • Social impact assessment-No • Poverty alleviation measures-No • Cultural heritage protection-No
Total Score	10	

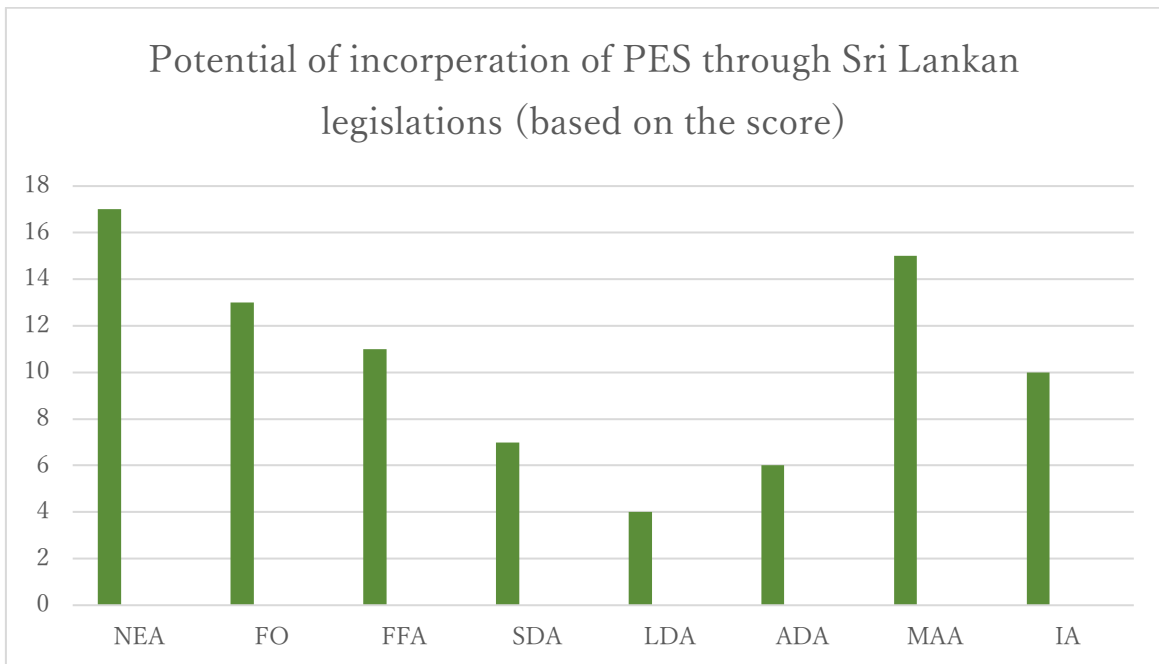


Figure 1: Potential of incorporation of PES through Sri Lankan legislations (Codes NEA,FO,FFA,SDA,LDA,ADA,MAA and IA refer to the National Environmental Act, Forest Ordinance, Flora and Fauna Act, Sustainable Development Act, Land Development Act, Agrarian Development Act, Mahaweli Authority Act and Irrigation Act, respectively)

The comparative analysis of potential governing bodies for the PES implementation reveals significant insights regarding institutional capacity and legal authority. According to the Potential Assessment Matrix (LPAM), the National Environmental Authority (NEA) emerged as the institution with the highest potential score, followed by the Mahaweli Authority, which secured the second-highest rating in terms of governing power (Table 2; Figure 1).

The Mahaweli Authority's high score in the assessment primarily stems from its robust existing administrative framework and established governance mechanisms. However, a critical limitation emerges from its geographically restricted jurisdiction, as its authority is legally confined to areas designated under the Mahaweli Development Project. This territorial constraint poses a fundamental challenge to its potential role as a national-level PES governing body.

This jurisdictional limitation has become particularly evident in recent legal proceedings, specifically in the case concerning the destruction of the Pollebadda area (CA Writ 70/2021). This ongoing litigation directly challenges the Mahaweli Authority's attempts to extend its jurisdiction beyond its statutorily defined boundaries. The case represents

a significant legal precedent that questions the constitutional and administrative validity of expanding the Authority's power beyond its designated zones.

Given these considerations, the NEA's higher score in the potential assessment appears to be better substantiated, as it already possesses:

1. National-level jurisdiction without geographical limitations
2. Strong institutional framework
3. Existing legal mandate for environmental protection
4. Clear authority to collect and manage a fund

5.2 Legislations related to fund collection mechanisms

Currently, Sri Lanka lacks particular regulations that constitute a compliance PES system. However, various current laws and policies provide a solid foundation for the implementation of PES procedures.

To constitute compliance PES, mechanisms must be articulated to establish deliberation to obtain funds from eco-service receivers and then provide it to land users who maintain the eco-system. Implementing a tax system could be viewed as one of the best technique for ensuring compliance. The current tax legislation of Sri Lanka, including the Inland Revenue Act No.24 of 2017 (Inland Revenue Act), Value Added Act No14 of 2002 (VAT Act) and Social Security Contribution Levy Act, No.25 of 2022(Social Security Tax Act), do not have a protocol for PES compliance. However, those Acts may serve as inspiration for the system of tax compliance and collection. Specially the social security tax established under the social security Act of 2022, which collects revenue on the turnover of several selected industries, serves as an example of how to collect funds from eco-system service beneficiaries. It also provides tax breaks and exemptions for several industries that should be encouraged for the sake of social and economic growth.³⁰ However, the fundamental flaw in this Act is that it lacks an objective clause stating why these taxes are collected, resulting in a lack of transparency and traceability in the revenues acquired through tax. As a result, a new Act is required with the objective of raising funding for PES to safeguard the environment by long-term financing from eco-system service recipients.

³⁰ Social Security Contribution Levy Act No.25 of 2022, Sec.4

In addition to taxes, license fees can be introduced as one of the ways to collect funds from ES users for implementing PES. The existing legal framework for environmental licensing in Sri Lanka presents a complex web of overlapping legislation that simultaneously enables and complicates the implementation of a comprehensive PES system.

The Sri Lanka Sustainable Energy Authority Act No. 35 of 2007, Section 16(1) establishes licensing requirements for grid-connected renewable energy projects, while Section 16(2) mandates fee collection. Similarly, the Food Act No 26 of 1980 governs water bottling companies, and The Tourism Act No 38 of 2005 regulates hotel licensing. Each of these acts creates its own funding mechanism, resulting in a siloed approach to environmental resource management. A critical weakness in this system emerges from the segregation of funds collected through various licensing schemes. The text correctly identifies that funds are credited to separate accounts established under their respective acts, creating significant administrative barriers to consolidating these resources for effective ecosystem service management. This fragmentation hampers the efficient allocation of resources to environmental service providers and complicates the implementation of a unified PES system.

The National Environmental Act No. 47 of 1980, particularly Section 23A, attempts to provide a unified framework through the Central Environmental Authority's licensing powers. However, the text reveals a significant limitation: the minister's authority to list industries requiring licenses is restricted to industries which involve or result in discharging, depositing or emitting waste into the environment causing pollution. Under this section time to time respective ministers has named the prescribe actives which are needed for environmental protection licensing. Those gazettes have mandated licenses for electrical manufacturing enterprises, water bottling industries, and large-scale hotels. The text indicates that the fees collected are directed to the Central Environmental Authority's Fund under Section 22 of the Amended Act of 1988.

5.3 Administrative laws related to implementation of PES system in Sri Lanka

The establishment of a Payment for Ecosystem Services (PES) system in Sri Lanka must be grounded in the country's constitutional framework. The 1978 Constitution of Sri Lanka, while not explicitly mentioning PES, contains several provisions that can support and facilitate the implementation of such a system. Article 27(14) of the Constitution establishes a fundamental state policy directive to "protect, preserve and improve the environment for the benefit of the community." This provision serves as the primary

constitutional foundation for environmental protection measures, including PES systems. While not directly enforceable in courts, it guides state policy and legislative action. The implementation of Payment for Ecosystem Services (PES) in Sri Lanka necessitates a thorough understanding and compliance with the constitutional financial provisions that govern public funds and financial management. The Article 143 of it states that any authority could collect taxes or levy only if an Act got passed by the parliament.³¹ The cornerstone of Sri Lanka's public financial management lies in Article 149 of the Constitution, which establishes the Consolidated Fund. This fundamental provision requires all government revenues, loans, and monies to be credited to this central fund. For PES implementation, this means that any public funds involved in ecosystem service payments must flow through the Consolidated Fund unless specifically exempted by law. Following from this, Article 150 provides crucial guidelines for withdrawing money from the Consolidated Fund. The Constitution stipulates that no withdrawals are permitted except under specific conditions: they must be authorized by a warrant signed by the Minister of Finance, be directly charged by the Constitution, or fall under Parliamentary appropriation. This provision has significant implications for PES implementation, as it requires careful planning and budgeting to ensure that payments can be legally processed through the governmental financial system.

The 13th amendment of the constitution has devolved the power of central government to the provincial councils regarding the subjects mentioned under the 9th annexure 1st list. The environmental protection is under the concurrent list which means both central government and the provincial council has the authority on enforcing laws on that subject.

6.Recommendations for implementing Payment for Ecosystem Services (PES) in Sri Lanka

The implementation of Payment for Ecosystem Services (PES) in Sri Lanka represents a crucial step toward sustainable environmental management and conservation. Based on comprehensive analysis of existing legal frameworks and institutional capacities, this study presents three integrated strategic approaches for establishing an effective PES system in Sri Lanka.

6.1 Implementation of a new PES Act

Approach overview

³¹ 1978 constitution of Sri Lanka, Article 143

As PES has not been implemented under the prevailing legislations in Sri Lanka, this approach proposes implementing a dedicated PES Act. The proposed new enactment should include provisions for both categories of PES: voluntary and compliance-based systems.

Advantages

- **Legal clarity:** Creates comprehensive codification that clarifies the scope of PES implementation in the country
- **Public awareness:** A dedicated Act would draw public attention to ecosystem services and their importance
- **Comprehensive framework:** Enables creation of a complete regulatory structure specifically designed for PES

Challenges

- **Implementation costs:** Requires significant government investment in developing new institutions and administrative systems
- **Potential legal conflicts:** May create jurisdictional disputes with existing environmental and sectoral laws
- **Legislative process:** Requires extensive parliamentary time and political consensus for enactment
- **Capacity building needs:** Demands substantial training and capacity development for new institutional structures

Key inclusions to the proposed Act

1. General regulations

- **Preamble and objectives:** Clear statement of intent to build PES systems in Sri Lanka, promote sustainable development through environmental conservation, and enhance quality of life
- **Terminology and definitions:** Simple, accessible language to minimize legal contradictions with existing legislation
- **Stakeholder participation framework:** Mandatory consultation mechanisms for transparency and fair-trade principles
- **Contract formation provisions:** Legal framework for agreements between ES providers and beneficiaries for voluntary PES.
- **Integration mechanisms:** Coordination protocols with existing environmental authorities to avoid jurisdictional conflicts

2. Provisions related to ES considered in PES system in Sri Lanka

- **Ecosystem service classification:** Legal recognition of water cycle management,

carbon sequestration, biodiversity conservation, landscape beauty, and soil fertility

- **Additionality requirements:** ES must exceed business-as-usual baselines
- **Service quantification Standards:** Technical criteria for measuring and valuing ecosystem services
- **Eligibility criteria:** Clear parameters for determining which ecosystem services qualify for payments
- **Geographic scope:** Coverage extending to both state and private lands
- **Exemptions for compliance-based PES**

3. Provisions related to recognition of industries benefited from ES

- **Beneficiary categories:** Legal identification of ecosystem service beneficiaries including hydropower generating companies, water bottling companies, tourism industry, agricultural sector, and manufacturing industries
- **Rights and obligations:** Specific rights to receive services and obligations to contribute to PES funding
- **Assessment mechanisms:** Regular evaluation of benefit flows and contribution requirements

4. Provisions related to recognition of ES providers

- **Provider categories:** Legal recognition including private landowners, long-term leaseholders, community-based organizations, and indigenous communities
- **Rights and responsibilities:** Rights to receive payments and responsibilities for service delivery
- **Certification requirements:** Standards for qualifying as a recognized ES provider
- **Performance standards:** Minimum requirements for ecosystem service delivery

5. Provisions related to PES levy

- **Levy structure:** Graduated payment system based on volume of services utilized, environmental impact, and economic capacity
- **Collection mechanisms:** Direct levy collection through CEA or integration with existing tax systems
- **Rate setting authority:** Delegation of rate-setting power to CEA with ministerial approval
- **Review mechanisms:** Periodic review of levy rates based on environmental and economic indicators

6. Provisions related to management of funds collected by PES

- PES fund establishment: Creation of dedicated fund structure with multi-stakeholder oversight
- Distribution criteria: Transparent allocation prioritizing environmental effectiveness, social equity, and economic efficiency
- Financial transparency: Mandatory annual reporting and independent auditing requirements
- Intermediary body: Establishment of PES intermediary unit within CEA with stakeholder representation

7. Provisions related to monitor continuous supply of ES

- Monitoring framework: Comprehensive tracking system with technical standards, reporting requirements, and third-party verification
- Performance indicators: Quantifiable metrics for each ecosystem service category
- Compliance enforcement: Graduated response system for non-compliance
- Technology integration: Use of remote sensing and digital platforms for monitoring

8. Provisions related to legal remedies in violation of rights of parties involved in PES

- Dispute resolution framework: Multi-tiered system including mediation, arbitration, and judicial review
- Rights protection: Specific provisions protecting both provider and beneficiary rights
- Remedy mechanisms: Compensation frameworks for breach of PES agreements
- Appeal procedures: Clear appellate pathways within and to higher courts

6.2 Development of compliance-based PES through taxation

Approach overview

This approach involves establishing a PES system through taxation mechanisms, building upon existing tax legislation including the Inland Revenue Act and Social Security Contribution Levy Act, while creating new environmental service taxes by amending the section 5 of the NEA as taxation has not recognized as a fund collection mechanism under the NEA.

Sri Lanka's constitution establishes strict controls over taxation and public funds through several key provisions. Article 143 mandates that only Parliament can impose taxes

through properly enacted legislation. Furthermore, Article 149 requires all government revenue to be credited to the Consolidated Fund, while Article 150 establishes specific requirements for withdrawing money from this fund, including the need for ministerial warrants and parliamentary approval.

To establish an effective PES system within these constitutional constraints, a new PES Levy Act must be enacted by Parliament. This Act should clearly define its environmental protection objectives and establish specific provisions for tax collection. The Act must identify which activities or entities will be taxed and establish clear connections between the tax and ecosystem services. Most importantly, it must create transparent mechanisms for fund distribution that comply with constitutional requirements.

The practical implementation of this system would require a coordinated effort between multiple government agencies. The Inland Revenue Department would need to establish a dedicated division for collecting PES-related taxes. These funds would then flow into the Consolidated Fund as constitutionally required. To ensure these funds reach ecosystem service providers, the annual budget would need to include specific allocations for PES payments, approved through the regular parliamentary budget process.

A crucial aspect of this system would be the role of the Central Environmental Authority (CEA). The CEA would need to establish technical criteria for evaluating payment recipients and monitoring environmental outcomes. However, the actual disbursement of funds would require coordination with the Treasury and approval from the Minister of Finance through official warrants, as mandated by the constitution.

To maintain transparency and accountability, the system would require robust monitoring mechanisms. This includes tracking systems for both financial transactions and environmental outcomes. Regular audits would ensure proper use of funds, while public reporting would maintain transparency. The system would also need to evaluate its effectiveness in terms of both environmental protection and economic efficiency.

Advantages

- **Existing infrastructure:** Leverages established tax collection systems and institutional capacity
- **Immediate implementation:** Can be implemented more quickly than creating entirely new institutions

- **Broad coverage:** Taxation systems can reach a wide range of beneficiaries effectively
- **Integration with fiscal policy:** Aligns with broader government fiscal and environmental policy objectives

Challenges

- **Constitutional constraints:** Must comply with strict constitutional requirements for taxation and fund management (Articles 143, 149, 150)
- **Tax collection has not recognized as a fund collection mechanism under NEA.**
- **Complex fund flow:** Revenue must flow through Consolidated Fund, requiring parliamentary budget approval for disbursement
- **Political sensitivity:** Tax increases face political resistance and public opposition
- **Indirect connection:** May weaken direct link between ecosystem service provision and payment

6.3 Development of compliance-based PES through environmental licensing

Approach overview

This approach leverages and expands the existing environmental licensing framework under the National Environmental Authority Act, extending beyond current pollution-focused licensing to encompass ecosystem service utilization. The current Section 23A of the NEA should be expanded to encompass activities that impact ecosystem services, moving beyond its current focus on pollution-causing activities. A comprehensive licensing system should be developed for industries that utilize ecosystem services, with standardized fee structures based on the type and extent of ecosystem service use.

This licensing approach should include clear monitoring and compliance mechanisms, addressing the enforcement gaps identified in the current system. A unified fund management system would help consolidate licensing revenues, addressing the current issue of fragmented resource allocation identified in the research.

Advantages

- **Existing legal framework:** Builds upon established National Environmental Authority Act provisions
- **Regulatory experience:** Utilizes existing CEA expertise in environmental regulation and licensing
- **Immediate authority:** Can be implemented through amendments to existing

regulations

Challenges

- **Limited scope:** Current Section 23A focuses primarily on pollution-causing activities, requiring significant expansion
- **Enforcement challenges:** Existing gaps in monitoring and compliance enforcement would need addressing
- **Fragmented revenue:** Current system shows fragmented resource allocation that needs consolidation
- **Capacity constraints:** CEA may require significant capacity building to handle expanded responsibilities
- **Industry resistance:** Regulated industries may resist additional licensing requirements and fees

6.4 Comparative analysis and discussion framework

Based on the comparative analysis, a phased approach is recommended where the licensing system provides immediate PES implementation while a comprehensive PES Act is developed for long-term sustainability. Establishing a taxation-based compliance could also be considered as a short-term measure; however, challenges mentioned in the analysis may override its applicability. This phased approach allows Sri Lanka to begin realizing PES benefits quickly while building toward a more robust and comprehensive system. Nevertheless, the final decision on this implementation sequence must emerge from thorough stakeholder discussions that consider political feasibility, institutional readiness, and stakeholder preferences.

7. Conclusion

The implementation of PES in Sri Lanka requires careful consideration of three viable but distinct approaches, namely: (1) developing a comprehensive new PES Act with dedicated institutions and legal frameworks, (2) establishing a taxation-based compliance system through National Environmental Act and constitutional fund management mechanisms, and (3) expanding the existing environmental licensing framework under the National Environmental Act to encompass ecosystem service utilization, each with its own advantages and challenges. Rather than prescribing a single solution, this study recommends a structured discussion process involving all relevant stakeholders to determine the most appropriate implementation pathway.

The success of any chosen approach will depend on:

- Political commitment and legislative support

- Institutional capacity and coordination
- Stakeholder engagement and buy-in
- Technical expertise and monitoring capability
- Financial sustainability and transparency

What remains crucial is the establishment of transparent, efficient, and effective mechanisms for protecting and valuing ecosystem services in Sri Lanka. The path forward should be determined through inclusive dialogue that considers the unique environmental, economic, and political context of Sri Lanka while drawing upon international best practices in PES implementation.

The urgency of environmental challenges facing Sri Lanka makes it imperative that these discussions commence promptly, with the goal of implementing a PES system that can effectively contribute to the country's sustainable development objectives while ensuring equitable distribution of environmental benefits and burdens.