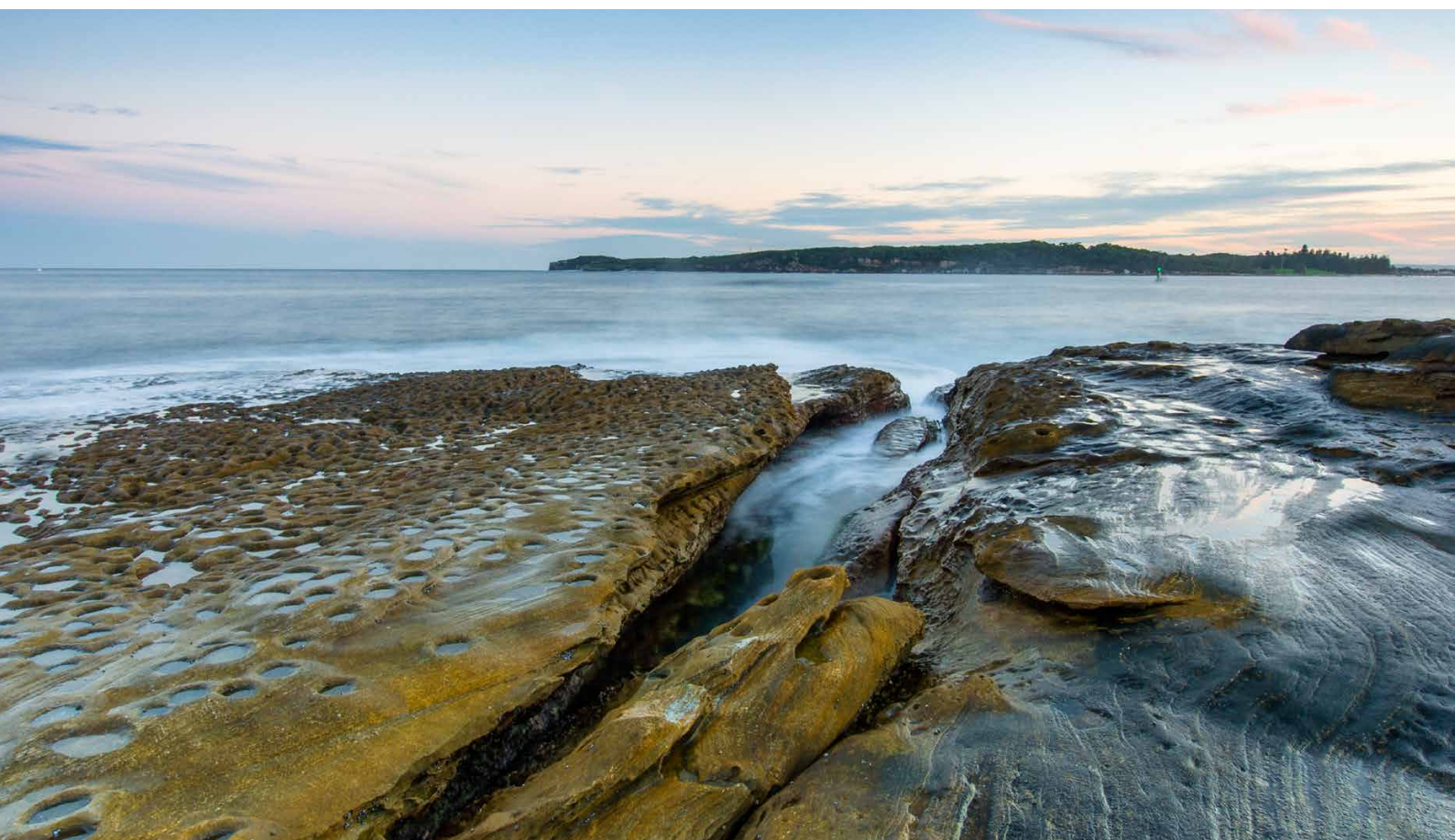




Pacific  
Community  
Communauté  
du Pacifique

# RESCCUE

***Exploring opportunities for land and land-rights transactions for  
conservation and climate change resilience  
in Pacific Island Countries and Territories***



## **MAIN REDACTOR(S)/CONTRIBUTOR(S):**

Eduard Niesten  
Hari Balasubramanian  
Julisa Edwards  
Philippe Taïeb  
Jakob Timmer

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Vanuatu landscape, Ron Wood, 2011.

## **DISCLAIMER:**

This report is based on literature review, interviews and focus group discussions that captured a wide range of perspectives. The analysis and conclusions presented are those of the authors only and do not constitute a statement of policy, decision or position of SPC, AFD or FFEM.



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# EXECUTIVE SUMMARY

This report presents the rationale for a concerted push to expand the use of land and land-rights transaction tools to achieve conservation and climate resilience objectives in the Pacific region. It draws on two background studies: a global review of land and land-rights transaction tools, supplemented by regional and country-specific experience with transaction tools in the Pacific; and a feasibility assessment for expanding use of these tools in four focal Pacific Island Countries and Territories (PICTs) – Fiji, Vanuatu, New Caledonia and French Polynesia. These two studies combined desk research, key informant interviews, and stakeholder consultation workshops to produce the analysis presented in this report.

The three main transaction types examined are:

- i. Outright purchase for conservation, in which a landowner irrevocably relinquishes all property rights to a buyer against payment.
- ii. Conservation easements or other voluntarily accepted encumbrances on rights to dispose of land and resources in particular ways.
- iii. Conservation leases, in which landowners relinquish use-rights for a defined period of time without fully ceding ownership of a property.

We refer to these tools collectively as transactions or transaction tools, by which we mean exchanges between willing buyers and willing sellers for land or specific rights attached to a parcel of land. This is distinct from imparting conservation status on an area through use of regulatory authority, and also from approaches such as environmental education and awareness campaigns or alternative livelihood programs, though these other types of tools may complement a transaction.

Transaction tools offer a pragmatic approach to conservation that builds on the basic concept of a *quid pro quo* that is familiar in virtually every society today. That is not to say that every transaction tool can succeed everywhere, and some settings will not be amenable to any such tools at all. Although this report finds that there is a role for conservation transactions in PICTs, design of a suitable intervention for any particular site will require deeper site-specific due diligence, feasibility analysis and conservation planning. Pragmatism also means recognizing when transaction tools do not apply.

The overarching lesson from global experience with transaction tools is that in many contexts, given a combination of creativity, persistence, and, almost always, extensive stakeholder engagement, a transaction can be structured on the basis of property and use rights. While funding constraints, legal systems, governance capacity, and various other factors can pose challenges and obstacles, the basic premise of making an offer to landowners to accept payment in return for land transfer or restriction on land uses offers promise in many settings. Examples from the PICT region itself include purchases, leases, and one conservation easement.

In PICTs where a significant proportion of land is under traditional tenure and thus not amenable to

purchase, building on global and regional experience with leases presents an intuitive strategy. While ad hoc response to purchase opportunities may result in significant conservation gains, by far the greater opportunity set will be addressed using tools that suit the customary land context. Similarly, if much of the land is under public (government) ownership, leases (or concessions) may offer greater scope than purchases as government agencies may be reluctant to consider permanent reductions in the public estate through land sales. Conservation easements would overcome the main limitation of leases, namely their impermanence, but the legal and institutional context for applying and enforcing easements may not be as robust in most jurisdictions as provisions and practice for leases.

In countries and territories with a larger proportion under private ownership, a strategy of seeking and responding to opportunities to purchase land may be warranted. However, both to overcome resistance to permanent and complete relinquishing of property rights and to create more cost-effective options, strengthening and applying conservation easement tools may offer a solution. In some cases, a short-term lease may be suitable as an interim arrangement before purchase or application of an easement, to create a window of time during which to build trust and put in place other enabling conditions.

We note the following key challenges for expanded use of transaction tools:

***Institutional capacity/mandate:*** The most dynamic application of transaction tools involves dedicated organizations with the mandate to pursue conservation. In a conservation context without such actors, promoting the use of transaction tools will require targeted investment in the requisite capacity after identifying entities with an interest in developing in this direction. Although much of the legal and real estate expertise can be outsourced for a given transaction, the driving institutions must be conversant in the essentials of major transaction models as well as specific legal and policy contexts.

***Funding:*** Although funding challenges attend every conservation intervention, transaction-based strategies face particular challenges. For purchases, the need to secure all funds for the initial purchase price can be daunting; for easements and leases, the need to be able to guarantee payments over long periods of time perhaps even more so. Also, the transaction itself represents only part of the cost; ongoing management costs can be significant, especially with respect to ongoing stakeholder engagement.

***Stakeholder engagement:*** Community engagement and management of other relationships will be a persistent need in any transaction. This has important implications for the use of transaction tools at scale; as such use is scaled up, the burden of engagement in terms of time and funding will grow ever larger. Co-management models or absorption of areas into formal government protected area networks may ease this burden to some degree.

***Enforcement:*** The environmental integrity of areas purchased, leased, or held under easement depends critically on legal enforcement. This means that success depends on the capacity of enforcement mechanisms, and the political will of decision-makers who dictate the deployment of these enforcement mechanisms. A combination of continuous engagement and appropriate incentives must cultivate and reinforce political, legal and social will for enforcement.

Challenges facing land and land rights transactions should not be underestimated. That said, although some challenges may be particular to transaction tools, many are common to any conservation intervention or approach. Challenges related to funding needs, changes in opportunity cost, stakeholder management, and alignment with government priorities must be addressed in any conservation strategy. Arguably, by mimicking negotiated deals with which landowners already are familiar and proceeding on the basis of willing buyers and sellers, transaction approaches will in some contexts offer distinct



advantages relative to other conservation tools. Although the challenges may be non-trivial, transactions to obtain land or land rights can be a powerful component of the set of tools available for conservation in the Pacific.

Feasibility analysis for transaction tools in the four focal PICTs of the RESCCUE project (Fiji, Vanuatu, New Caledonia and French Polynesia) considered conservation priorities, policy context, legal context, social and cultural context, implementation capacity, financing options and management sustainability.

## **Fiji**

A survey of feasibility considerations for expanded use of land and land-rights transactions to achieve conservation and climate resilience goals suggests a highly conducive context in Fiji. A Protected Area Committee that includes government, NGO and academic partners has identified priority sites, and the need for placing additional areas under conservation management is clearly recognized in government policy. Experience with conservation leases and land purchase initiatives in Fiji demonstrates legal feasibility, and there are also as-yet unused legal provisions for conservation covenants (equivalent to easements). The constellation of conservation actors including government agencies, the National Trust of Fiji, the University of the South Pacific and environmental NGOs collectively embody ample technical capacity, mandates and appetite for increased use of transaction tools.

Although funding is a significant constraint (for transaction costs themselves as well as to support the capacity of actors to absorb long-term management responsibility for additional sites), conservation and climate interventions in Fiji enjoy a broad base of donor and private sector support that lends confidence in financing potential given a clear, robust strategy. Such a strategy would benefit from further refinement of spatial priorities as well as articulation of a national conservation financing mechanism (potentially through expansion of the Sovi Basin endowed trust fund to accommodate additional sites). However, in addition to replication of the Sovi and Kilaka conservation lease models, further purchases beyond the Macuata or Nakanacagi initiatives, and demonstration of conservation covenants or easements, Fiji would benefit from improved protected area legislation that includes provisions for permanent protected areas.

## **Vanuatu**

Perhaps the most significant factor with respect to the feasibility of expanding use of transaction tools for conservation and climate resilience in Vanuatu is the strong emphasis on community resource management, in national policies as well as locally motivated action. This emphasis is reflected in strong policy commitments to including Community Conservation Areas (CCAs) in the formal national protected area system. Purchases are not possible as all land is under inalienable customary tenure, and there is no strong legal basis for conservation easements. Leases are possible, but historical experience has led to widespread suspicion or antipathy towards leases among rural communities.

Hence, pursuing a lease requires clarity as to what a lease can accomplish above and beyond a CCA at a particular site, including a strong case for introducing payments into a context where conservation management is largely voluntary. There are at least two cases where leases were considered as a possible tool but the notion was ultimately discarded, despite substantial technical and financial support for the projects. Protected area category definition, spatial prioritization and policy formulation and planning are currently fluid processes in Vanuatu, with key legislative, regulatory and execution mechanisms under development. An effort to apply conservation leases before these processes are more mature may complicate the government's task by impacting community perceptions, precedents, messaging, and conservation finance flows.

## New Caledonia

Transaction tools could complement the current set of available mechanisms in New Caledonia, particularly in the design of win-win agreements that would reduce the incidence of infractions by increasing the financial rewards of compliance. The financial compensation component of most transaction tools would be a new element in the Caledonian context. So far, leases and more or less formal conservation agreements have been the most frequently used transaction or transaction-like tools. The major entities using these tools are the CEN New Caledonia and the Southern and Northern Provincial administrations. With the required political will, conservation easements could be used within the next few years.

On customary land, leases with Kanak communities have been fairly widely used for housing and agricultural purposes in particular. The main potential for expanded use, including conservation applications, lies with communities already residing on customary land. Legal bodies to serve as collective management entities for development activities on customary land (GDPLs) may also choose to expand their activities to include transaction-based conservation as an alternative means of economic empowerment. With respect to social and cultural considerations, the feasibility of using leases is furthered on customary land by traditional linkages between people and the land. Engagement and relationship management will benefit from mutually trusted intermediaries and emphasis on the fact that a correctly structured transaction will reinforce ownership, cultural links, and local management capacity.



*Photo by user g rard on Flickr, 2018*

## French Polynesia

The supply of land for transactions historically has been limited in French Polynesia because of geography and complex multi-generational joint ownership situations. To date, land purchases, leases, and more or less formalized conservation agreements have been used in the territory, but several constraints complicate efforts to apply such tools at scale. Despite the introduction of new provisions and resources to resolve multi-generational joint ownership situations, it is unlikely that the amount of land available for transactions will grow significantly in the near future. Right of way agreements have been used in the territory but suffer from poor enforcement, seen in multiple instances of landowners changing their minds with no recourse for the other parties. Small embankment-type walls are popular



on properties along the coast, but have caused severe erosion. In these two cases, the introduction of conservation easements could formalize agreements, make rights of way more permanent, and freeze further proliferation of coastal walls. However, a broad cross-section of the territory's environmental stakeholders views easements with skepticism due to their permanence.

The most feasible avenue for expanding use of transaction tools in French Polynesia may be to extend applications of leases through longer durations and more contracts on private lands. Longer durations will suit those willing to make long-term commitments without imposing the irreversible binding nature of easements. Contracts with farmers on private lands will offer more economic opportunities to property holders and farmers in the form of incentives for conservation. The provision of payments has not been the norm in the majority of available examples in French Polynesia. Indeed, as in New Caledonia, the absence of payments has often characterized transactions such as right of way and conservation agreements, and government agency representatives emphasize enforcement of appropriate regulations as a higher priority than application of new tools. Although payments or compensation might be attractive to landholders, the feasibility of an effort to expand use of transaction tools could be hampered by this perspective on the part of key government stakeholders.

For use of a particular transaction tool at a specific site in any PICT, a thorough feasibility assessment will be required before proceeding; this report is not a substitute for site-specific due diligence. The analysis indicates that circumstances in each PICT with respect to transaction tools vary considerably, such that strategies to expand their use would take quite different forms. That said, there are several common points:

- The definition of conservation priorities, though at different stages of advancement in the four focal PICTs, requires further refinement in all of them. In particular, climate resilience is not factored into existing priorities. Furthermore, to inform strategies for transaction tools, priority mapping must include thorough mapping of tenure and ownership details for potential sites.
- In each PICT, there are no legal obstacles to conservation purchases per se, but the amount of land that is available for purchase in priority areas for conservation or climate resilience is known to be limited in Fiji and Vanuatu and likely to be limited in New Caledonia and French Polynesia. Therefore a major investment to catalyze purchases is not warranted, though opportunistic responses to parcels that become available may be justified.
- In each PICT, legal frameworks accommodate the use of leases to achieve conservation and climate resilience objectives. This is attributable to the fact that leases are feasible in each country and territory to facilitate various types of investment in economic development (agriculture, forestry, tourism, mining, residential construction, etc.), and that the provisions for such leases can be adapted for conservation. However, even if legally practicable, the actual scope for using leases varies widely, primarily as a function of complexities surrounding tenure.
- Conservation easements are unknown in all the focal PICTs. Generally, provisions for easements in the various legal regimes envision affirmative rights such as rights of access, rather than restrictions on rights more typically relevant to conservation easements, such as giving up development rights. Moreover, on native or customary lands the notion of ceding rights in perpetuity is likely to encounter significant obstacles. Therefore conservation easements remain at an experimental stage, warranting a search for promising sites for pilot/demonstration initiatives.

## Recommendations

Based on the global review of mechanisms and the feasibility assessment for transaction tools in Fiji, Vanuatu, New Caledonia and French Polynesia, a few general recommendations emerge that are relevant to any PICT with respect to expanded use of these tools. Of course, in any geography additional financing for conservation in general and transaction-based conservation in particular would be helpful. However, to ensure that additional financing, once secured, could be used to maximize beneficial impacts, a strong institutional context is essential. In practical terms, this means the presence of an entity with a strong, unambiguous mandate to advocate for and lead the use of transaction tools for conservation and climate resilience, and sufficient capacity to do so. In this respect Fiji and New Caledonia benefit from the presence of the National Trust of Fiji (NTF) and CEN respectively (as well as greater presence of international conservation organizations); in Vanuatu and French Polynesia investment in such an entity is highly desirable.

A national or territorial land trust entity should have good links to the legal community, through staffing, board representation, and collaborative endeavors. Relationships with the legal community will strengthen the trust's ability to work with governments to interpret and develop laws and regulations in ways that facilitate further transactional approaches to conservation. In particular, continuous efforts to increase the degree of permanence of protection for parcels under conservation transactions are crucial, to provide the confidence needed to attract additional conservation finance. With respect to financing for transactions in pursuit of conservation or climate resilience, the existence of standing financing mechanisms would be of immense value.

The key factors that inform recommendations with respect to transaction tools for conservation and climate resilience in Fiji are that: 1) 88% of land in Fiji is under customary tenure and thus unavailable for purchase; and 2) there are several successful examples of conservation leases in Fiji by the National Trust of Fiji (NTF), the Fijian Government, and environmental and climate-focused NGOs. Therefore the primary tool for applying conservation status to additional areas in pursuit of Aichi targets and national policy goals will be conservation leases, building on precedent and the growing body of experience.

When opportunities to purchase strategic priority areas arise, the NTF, the government, and partners should respond as financial and other constraints allow, but such opportunities are likely to be few and far between. Although easements are an option under Fijian law (in which they are termed covenants), they have not yet been used for conservation purposes, and it is not clear to what degree there would be an appetite to do so on the part of landowners. That said, seeking a suitable site to pilot a conservation covenant with the NTF could generate an important learning and demonstration opportunity.

Like elsewhere in the Pacific, ni-Vanuatu have customary ways to determine allocation of rights on a particular parcel of land, as well as ways to prevent disputes and resolve those that do arise. Following decades of colonial displacement of these rules, accompanied by land losses, the ni-Vanuatu have become quite sensitive to the idea of foreign regulations on land. Community Conservation Areas (CCAs) are the key product of this perspective and have grown in popularity over the last decade. Vanuatu's NBSAP emphasizes CCAs as best practice, and communities throughout the archipelago have responded to this national conservation option.

The momentum behind CCAs as a conservation tool underpins a strong recommendation that future efforts to support conservation in Vanuatu function within the CCA framework. This does not mean that leases and easements are necessarily out of the question. Leasing arrangements in furtherance of conservation have been used in a small number of cases. These might not be easily replicable in other parts of the country, but they show that the legal framework for long-term leases is in place and can be applied to conservation, and that potentially a fairly large area can be covered under a lease without evoking conflicts of interest among those who claim the land. Although such fortuitous contexts may

be rare, a complete strategy for transaction tools should include a means by which to respond to such opportunities when they arise.

Institutionally, the landscape of conservation-focused organizations in New Caledonia is relatively strong. The sector is led by CEN New Caledonia and the Provinces' Environment Departments on the public side and by Conservation International and WWF on the non-profit side, with smaller, local NGOs such as EPLP and Action Biosphere focusing more on advocacy. In 2016 CEN commissioned a legal review of transaction tools. Drawing on this review's discussions of how various tools can be applied, CEN will likely expand the range of its interventions. However, conservation easements remain an exception, as a country-level law would be needed to enable their use.

Long-term leases are the most commonly used tool on customary land in New Caledonia. Given the availability of land and the mandate of communal-level institutions which focus on catalyzing economic activity, we can anticipate growing use of this transaction tool, around farming activities in particular. A party interested in promoting wider use of conservation leases should identify an area with local stakeholders willing to consider an explicit conservation lease to serve as a highly visible demonstration site. Key points to demonstrate will be: participatory approaches and inclusive stakeholder engagement processes; conservation outcomes; cost-effectiveness; and concrete benefits to landowners.

The prospects for broader use of transaction tools are mixed in French Polynesia. The policy context is characterized by the absence of framework documents for conservation strategies, and by somewhat stretched resources for the country's administrative departments whose work affects the environment. Despite considerable quality and expertise on the part of these departments' staff, the policy and resource limitations constrain the scope for advancing use of transaction tools. Moreover, a strong government emphasis on economic development goals means that any environmental or conservation actions must be integrated into wider policy objectives to have a chance of success.

With respect to all three transaction tools, the limited amount of available land due mostly to unresolved joint ownership situations is a constraint. However, entire valleys remain untouched in the interior of some French Polynesian islands. By cultivating community support and addressing ambiguities in land ownership, the supply of parcels of potential value to conservation could expand significantly for transactions in an area that has known little economic activity to date. Some of these parcels could prove to be good demonstration or pilot sites, as would the two sites already working with RESCCUE located in Moorea and the Gambier archipelago.

## 1. INTRODUCTION

The overarching intent of this work is to ascertain whether there is a rationale for embarking on a concerted push to expand the use of land and land-rights transaction tools to achieve conservation and climate resilience objectives in the Pacific region. The work did not entail an in-depth re-examination of much studied questions of wider policy context, the range of available conservation models, conservation finance options and strategies, conservation priorities, etc., but rather sought to draw on the wealth of work that already has been done to articulate a case for investing in scaled-up application of transaction tools.

This report draws on two background studies conducted in the course of this research effort: a global review of land and land-rights transaction tools that may be applicable in Pacific Island Countries and Territories (PICTs), supplemented by regional and country-specific experience with transaction tools in the Pacific region; and a feasibility assessment for expanding use of these tools in four focal PICTs – Fiji, Vanuatu, New Caledonia and French Polynesia. Together, these two studies combined desk research, key informant interviews, and stakeholder consultation workshops to produce the analysis presented in this report. The desk study component drew on academic and grey literature relating to research as well as project implementation. Discussions with key informants took the form of semi-structured interviews with several types of individuals including conservation practitioners, government officers, civil society actors, researchers in academia, and operators in the real estate and legal services sectors. Consultation workshops likewise convened a wide range of stakeholders. Thus, the work is indebted to numerous people for information and insights that helped shape our conclusions.

The work focused on three principal tools – purchases, conservation easements, and leases:

- i. Outright purchase for conservation, in which a landowner irrevocably relinquishes all property rights to a buyer against payment. The buyer can be another private entity, a government entity, or an organization such as a land trust specifically established for the purpose of acquiring lands for conservation.
- ii. Conservation easements or other voluntarily accepted encumbrances on rights to dispose of land and resources in particular ways. Landowners relinquish partial rights over property (e.g. development rights) or accept restrictions on certain activities on the property, but not ownership of the property itself. Incentives to landowners to accept such encumbrances on their property can include direct payments (using private or public funds), tax relief, and technical support for conservation management. A key consideration is to what degree the easement attaches to subsequent land transactions (sale or bequest) involving the parcel in question.
- iii. Conservation leases, in which landowners relinquish use-rights for a defined period of time without fully ceding ownership of a property. Leases typically include payments based on economic value of the land, though all terms including payment amounts are subject to negotiation. Lease payments can involve private or public funds. Concessions can be considered as a special case of leases relating to public land.

We refer to these tools collectively as transactions or transaction tools, by which we mean exchanges between willing buyers and willing sellers for land or specific rights attached to a parcel of land. This is distinct from imparting conservation status on an area through use of regulatory authority (with or without compensation to landowners), and also from approaches intended to motivate voluntary conservation (such as environmental education and awareness campaigns, or alternative livelihood programs). That said, these other types of tools may complement a transaction as when a purchase leads to formal protected area designation or a lease is accompanied by livelihood investments.

This work may be viewed as a reflection on the directness of conservation investments and the distinction between changing behavior and changing ownership. Conservation interventions can be characterized along a spectrum with respect to directness, where investment in livelihoods is an indirect approach intended to lead to behavior change and collateral conservation benefits, while transaction tools involve direct incentives to relinquish ownership or use rights and thereby place areas under conservation management. We do not assess the comparative strengths and weaknesses of these different types of approaches, but note that under the Convention on Biological Diversity, Aichi Target 11 signals a consensus that expanded use of area-based measures is essential, suggesting a clear role for direct protection through transaction tools.<sup>1</sup>

Indeed, among the most attractive aspects of transaction tools is that they offer a pragmatic approach to conservation that builds on the basic concept of a *quid pro quo* that is familiar in virtually every society today. That is not to say that every transaction tool can succeed everywhere, and some settings will not be amenable to any such tools at all. Although the remainder of this report argues that there is a role for conservation transactions in the PICTs, design of a suitable intervention for any particular site will require deeper site-specific due diligence, feasibility analysis and conservation planning. Pragmatism also means not succumbing to the temptation to fit a square peg in a round hole, and recognizing when transaction tools do not apply.

An important terminological point that emerged through stakeholder discussions is that although in some contexts purchases and acquisitions are seen as equivalent, the term ‘acquisition’ also is used to denote government appropriation of land from owners as a temporary or permanent measure in the public interest. Although such appropriations may be accompanied by compensation measures, they are distinct from purchases as they do not involve a voluntary sale; other than by initiating legal proceedings, a landowner cannot refuse. Acquisition of this type therefore is more of a regulatory measure and exercise of government authority than a true transaction tool. To avoid confusion, we avoid using the term.

Another important distinction is the difference between transaction tools and possible sources of financing for the use of these tools. Transaction tools are not financing mechanisms in and of themselves; any party wishing to pursue a conservation purchase, easement or lease will need to consider how they will finance the transaction. A given transaction tool may be more or less effective in attracting funding from new sources (thus offering a kind of financial additionality beyond conventional sources of conservation funding), or may be conducive to certain efficiencies and cost effectiveness, but will require a concerted fundraising effort regardless. However, as transactions involve payment to owners for relinquishing property or use rights, they offer a transparent way of channeling global willingness to pay for conservation, from whatever source, so as to equitably distribute the costs and benefits of conservation.

The global review provided further detail on the transaction tools, identified some actors associated with their use, and presented examples including cases from within the PICT region. As summarized in Section 2 of this report, the review concluded that there is potential for expanded use of these mechanisms in PICTs that merits further exploration. That said, there are challenges facing such efforts, which were examined in the feasibility analysis summarized in Section 3. Recommendations informed by the global review and feasibility analysis are presented in Section 4.

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1 Aichi Target 11: By 2020, at least 17 per cent of terrestrial and inland water areas and 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well-connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscape and seascape.

## 2. MECHANISM REVIEW

The global review of mechanisms examined purchases, easements and leases. Considerable global conservation experience using a variety of land and land rights transactions indicates that in many contexts, given a combination of creativity, persistence, and, almost always, extensive stakeholder engagement, a transaction can be structured on the basis of property and/or use rights. Although funding constraints, legal systems, governance capacity, and various other factors can pose challenges and obstacles, the basic premise of offering payment to landowners in return for land transfer or restriction on land uses offers promise in many settings. Examples from the PICT region itself include purchases and leases, and also indicate that legal systems may accommodate easements.

### PURCHASES

Land purchases have a long history in the conservation movement, particularly through land trusts in the United States. Mermet et al. (2014) show that there is also a long tradition of land purchases for conservation in Europe.<sup>2</sup> The basic proposition is straightforward: by purchasing land to effect a full transfer of all ownership and use rights, a conservation investor places a property beyond the reach of development interests. The US-based Land Trust Alliance terms such purchases Conservation Buyer Transactions (CBTs), and emphasizes that there is an important role for intermediaries (such as land trusts) to facilitate conservation purchases.<sup>3</sup>

Motivations for use of purchases as a conservation tool or an intervention in response to anticipated climate change derive principally from institutional mandates (e.g. land trusts or government agencies with a statutory mandate to expand the conservation estate), personal values (e.g. individuals purchasing properties with the intent to conserve), or commercial interests (e.g. purchase of land to manage as an ecotourism asset). Fiscal or other government incentives may exist to apply easements to purchased land or donate acquired property to an appropriate institution, but there are no examples of such incentives for the purchase itself.

Thorough due diligence is essential when pursuing a land purchase (or indeed any transaction), with particular emphasis on title investigation, market assessment, and of course conservation value. The purpose of due diligence is to reduce various types of risk, such as the possibility that other claimants to the property may emerge or that neighboring landowners raise disputes over boundaries. That said, total elimination of risk is not possible:

*Risk is integral to the business of saving land. In virtually every project, the land trust faces a certain degree of risk — financial risk, legal risk of contaminated property, or risk of negative public perceptions and reactions. Yet if a land trust doesn't put its resources and reputation on the line, it won't achieve its goals. The more a land trust can accept risk — even the risk of failure — the more it will achieve.<sup>4</sup>*

Global experience with land purchases as a conservation tool can be characterized along several dimensions, as described in Table 1.

2 Mermet L., Y. Laurans, and T. Leménager. 2014. *Tools for what trade? Analysing the Utilisation of Economic Instruments and Valuations in Biodiversity Management*. AFD publication, Collection A Savoir, N° 25. Paris: France.

3 Land Trust Alliance. 2008. "Fact Sheet: Conservation Buyer Transactions." Washington, DC: USA.

4 From *Doing Deals: A Guide to Buying Land for Conservation*, quoted in Henderson & O'Donnell (2009).



The potential for land purchases as a conservation tool in a given country or territory is a function of several factors. The extent of possible purchases mainly depends on the physical overlap between the geography of conservation priorities and privately held land (and, where relevant, crown land) that potentially is for sale; customary land tenure contexts can preclude purchases due to complexity of property rights and possibly legal restrictions.<sup>5</sup> The attractiveness of the candidate parcels may be influenced by issues pertaining to subsurface mineral rights, as well as rights of upstream and downstream water users, which can affect the probability of achieving conservation objectives after purchase. Thus, the importance of mapping and conservation priority setting is evident; unless the potential area for CBTs is substantial and relevant to high-priority areas for conservation, investment in institutional capacity to deploy a proactive purchasing strategy may not be warranted.

### **The Nature Conservancy**

The largest single actor with respect to land purchases for conservation is US-based organization The Nature Conservancy (TNC), with involvement in land trusts, buyer programs, conservation easements, private reserves, and other transaction-based models.<sup>6</sup> TNC itself currently owns over 800,000 hectares in the United States. TNC also invests in purchases with the intention of reselling after applying a conservation easement to the property; they currently hold such easements over 1.2 million hectares of land in the United States (see Box 1 below for a description of this approach drawn from their website at [www.nature.org](http://www.nature.org)).

#### **BOX 1: THE NATURE CONSERVANCY'S CONSERVATION BUYER PROGRAM**

In recent years, the Conservancy has begun working with private, conservation-minded individuals, or “conservation buyers,” interested in acquiring and protecting ecologically-valuable lands. Through this program, the Conservancy identifies and purchases target properties within priority conservation areas, or in zones that buffer and surround core natural areas. The Conservancy then widely and publicly markets the property, seeking a buyer committed to protecting the property's important natural values and willing to ensure the land's long-term conservation by placing a conservation easement on the land. The value of the land before and after the conservation easement restrictions is established by professional, independent appraisals.<sup>7</sup>

5 Farran, S. 2001. South Pacific Land Law: Some Regional Challenges, Cases and Developments. *Victoria University of Wellington Law Review* 23(4): 953-971.

6 <https://www.nature.org/about-us/private-lands-conservation/index.htm>

7 <https://www.nature.org/about-us/private-lands-conservation/conservation-buyer/properties/index.htm>

**TABLE 1: KEY ASPECTS OF CONSERVATION BUYER TRANSACTIONS (CBTS)**

FACTOR	EXPLANATION	EXAMPLE
Who buys?	The purchaser in a CBT can be a government agency, private persons/entities, land trusts, or NGOs.	World Land Trust (WLT) in 2016 purchased 120 hectares of habitat in Brazil's highly threatened Atlantic Forest region. <sup>8</sup>
Who funds?	Sources of funding for CBTs span the same range as for any other conservation intervention, including government, bi- and multi-lateral aid agencies, philanthropic donors (foundations, individuals, corporations), etc. Some sources are statutorily precluded from supporting land purchases, for any of a variety of reasons such as those pertaining to legal liability, public perceptions, or other donor restrictions.	Crowdfunding and donations raised about £48,000 (around €55,000 or US\$62,000), in a campaign centered on the Olympic Games.
Ownership after purchase?	Ordinarily the purchaser becomes the owner following a CBT. However, the transaction may include the granting of an easement to a third party, or the transfer of the property by donation to a conservation management body (government agency, land trust or NGO).	Reserva Ecológica de Guapiaçu (REGUA)
Management after purchase?	Even if the purchaser retains ownership following the CBT, they may cede management rights and responsibility to a conservation body (government agency, land trust, or NGO). When transferring ownership and/or management responsibility following the purchase, a key concern is how management activities will be financed. For instance, donating property to a government agency can expand the formal conservation estate, but also increases the burden on management agencies that often already are financially challenged.	REGUA accepted responsibility for protection and management in perpetuity.
Permanence of conservation status?	CBTs in the US context typically are accompanied by an additional transaction involving a conservation easement to ensure permanent protection. Other settings may offer analogous possibilities such as conservation covenants or servitudes. CBTs can involve incorporation of the property into an existing protected area, or designation as a new part of the formal government protected area system. <sup>9</sup>	Permanently incorporated into existing reserve as the Olympic Forest Reserve.

### Rainforest Trust

Since its establishment in 1988 the Rainforest Trust, based in Virginia (United States), has purchased over 7.3 million hectares of habitat around the world.<sup>10</sup> They focus principally on tropical forests and pursue protection of purchased areas through partnerships with local organizations and community engagement. The strategy explicitly involves efforts to have purchased areas designated as formal reserves, or integrated as expansions of existing reserves. In 2017, their purchases created 38,000 hectares of privately protected areas and 506,000 hectares of permanently protected areas. The permanently protected areas are part of national networks of legally designated protected areas; the privately protected areas are owned and managed by local conservation organizations. In Palau the Rainforest Trust helped the Palau Conservation Society purchase just over 30 hectares of critical habitat for the endangered Micronesian Scrubfowl on Kayangel atoll and the island of Peleliu; the

8 <http://www.worldlandtrust.org/news/2017/05/olympic-forest-reserve>

9 For example, incorporation of acquired lands into formal protected area systems features in many of the transactions supported by the World Land Trust and the Rainforest Trust.

10 Rainforest Trust. 2018. *2017 Annual Report*. Warrenton, VA: USA.

organizations raised US\$222,000 through a public fundraising campaign for this purchase, with the intention of incorporating the areas into Palau's national network of protected areas as a reserve on Peleliu and bird sanctuary on Kayangel.<sup>11</sup> In Fiji, the Rainforest Trust has worked with the National Trust of Fiji (NTF) to raise nearly US\$250,000 for NTF to purchase 22.25 hectares of land that provides critical habitat for 95 percent of the global population of the threatened Fijian Free-tailed Bat, with the intention to establish the area as the Nakanacagi Cave Reserve.<sup>12</sup>

## World Land Trust

The UK-based World Land Trust (WLT), founded in 1989, notes that ownership of land gives more control over its future than other conservation approaches, and therefore is dedicated to purchasing land and vesting ownership in local organizations who are then responsible for its protection.<sup>13</sup> They focus on developing countries, noting that 6,000 hectares in Britain could cost up to £60 million, while WLT was able to purchase a similar sized property in Patagonia for £250,000. WLT's Annual Report for 2016 describes purchases totaling 22,185 hectares of habitat that year in 10 countries around the world, for management by local partners. This brings total WLT-supported purchases to just under 250,000 hectares. The transactions in 2016 ranged in size from 2.5 and 8.5 hectares at the small end of the scale in Malaysian Borneo and Paraguay respectively to 11,735 hectares in Peru.<sup>14</sup> WLT does not own these purchased properties; ownership rests with local organizations or communities with whom WLT acts in partnership. Several of these purchases consist of extensions to existing nature reserves, thus avoiding the question of who is responsible for management or how to ensure long-term conservation status.<sup>15</sup>

## Other Organizations

TNC, the Rainforest Trust, and the World Land Trust are among the most prominent organizations with a global remit and an explicit focus on land purchases. Other notable examples are the Global Conservation Fund housed at Conservation International,<sup>16</sup> which is focused on protected area creation around the world, and Tompkins Conservation,<sup>17</sup> which pursues national park creation in Chile and Argentina. Both of these examples seek to use land purchases to expand formal protected area systems.

There are also several land trusts that pursue purchases (and different types of easements) in Australia. Several of these have joined under the Australian Land Conservation Alliance (ALCA), for multiple purposes including harmonization of approaches to conservation on private lands, disseminating knowledge and best practices to other organizations, cultivating public support, and reinforcing the permanence of conservation on private lands.<sup>18</sup> Its members include the most prominent land trust actors in each of Australia's states: the Nature Conservation Trust of New South Wales, Queensland Trust for Nature, Nature Foundation South Australia, Tasmanian Land Conservancy, Trust for Nature (Victoria), and National Trust of Australia (Western Australia), as well as The Nature Conservancy – Australia Program. The tools used by these organizations include purchases as well as conservation covenants (easements).

11 <https://www.rainforesttrust.org/project/crucial-land-purchase-save-palau-megapodes/>

12 <https://www.rainforesttrust.org/project/strategic-cave-purchase-fijian-free-tailed-bat/>

13 <https://www.worldlandtrust.org/what-we-do/how-we-work/how-we-workland-purchase/>

14 World Land Trust. 2017. *Annual Review and Accounts 2016*. Halesworth: UK. Available at: <http://www.worldlandtrust.org/documents/2016-annual-report.pdf>

15 <https://www.worldlandtrust.org/what-we-do/how-we-work/>

16 <https://www.conservation.org/projects/Pages/global-conservation-fund.aspx>

17 <http://www.tompkinsconservation.org/home.htm>

18 <http://www.alca.org.au/>

## Challenges and Limitations

Although in principle outright purchase appears to be a straightforward conservation intervention, a range of challenges can arise for land purchases as a strategy. These include mismatch between supply and demand of eligible properties of conservation interest; competing tenure or title claims; complexities with respect to easements or other measures to ensure permanence of conservation management; expense of retaining and managing property for conservation; and resistance on the part of potential sellers to see their property permanently removed from the productive sphere. That said, for an institution such as a land trust, accumulation of experience with purchases over time should yield increasing efficiencies (economies of scale and declining transaction costs).

One risk for CBTs as a conservation strategy is that purchases may be perceived as a form of eco-colonialism or green imperialism. Purchasing property and setting it aside for conservation can be seen as a threat to livelihoods and economic development. Extensive purchases in Chile by the late Douglas Tompkins (which evolved into the aforementioned Tompkins Conservation organization) attracted such criticism, and later conversion to national parks was not without controversy and generated resistance from timber and ranching interests.<sup>19</sup> Johan Eliasch's purchase of 1,600 km<sup>2</sup> of forest in the Brazilian Amazon similarly provoked an outcry and protests from development interests as well as indigenous rights groups.<sup>20</sup> Foreign funding sources or purchasers can provide ready targets for in-country politicians as well as activists.<sup>21</sup> Although we have no examples of CBT processes that had to be abandoned due to this type of resistance, the risk may be even more acute in PICTs characterized by politically and socially sensitive land ownership issues.

A second challenge is the need to secure sufficient funding. Areas of conservation value may be of interest to mining, timber, agroforestry or other development concerns, and competing in the marketplace for such properties can be extremely costly. Most purchases will require that all the needed funding is secured ahead of the transaction, compared to other conservation interventions that may spread costs over time. Loans can offer a way to spread purchase costs over time, but many CBTs will not result in significant if any revenue streams, reducing the scope for credit-based financing. Also, purchases can represent a significant opportunity cost as the funds could instead be used to pursue other approaches that might be less expensive and equally effective, and stretch scarce funding for biodiversity conservation further. Transactions that restrict use rights might be more affordable and equally effective; the abovementioned TNC Conservation Buyer Program was a response to this challenge.

A third challenge is the question of management responsibility following a purchase. Although the purchase may be a straightforward transaction, ensuring robust, long-term conservation management requires legal, financial, and institutional solutions. Even if incorporation into the formal protected area system is possible, the increased budgetary burden on the protected area management authority may present difficulties.

## LEASES

A conservation lease uses standard provisions for land leases to negotiate terms with owners that preclude development or extractive activities. Virtually every jurisdiction around the world has some provision for land leases that transfer use rights for a defined period of time without ceding actual

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19 <https://www.theguardian.com/environment/2018/jan/29/chile-creates-five-national-parks-in-patagonia>

20 "Brazil investigating land sales to foreigners." New York Times June 11, 2008.

21 That said, we have not found examples of CBT processes that had to be abandoned due to this type of resistance.

ownership; for example, in areas that might be of potential interest for habitat conservation, leases often are used as the basis for investments in mining and logging operations, as well as agroforestry plantations.

Leases typically include payments based on economic value of the land, though all terms including payment amounts are subject to negotiation. Payments can be a combination of a flat annual rental rate per unit of land, linked to the underlying value of the property, and a variable royalty linked to revenues generated by the lessee. Thus, in simple terms a lease can be described as a long-term rental agreement. One benefit of using leases for conservation is that the transaction is one with which many property owners will be familiar at least in general terms (in contrast, perhaps, to easements). Moreover, lease agreements can be constructed for properties under different kinds of tenure, including public lands, private lands, and traditional or communal tenure properties.<sup>22</sup> Thus, leases may be a viable tool in contexts where outright purchase is not an option.

Existing provisions for forestry leases, for instance, can serve as a model for a conservation lease. In many jurisdictions, particularly developing country settings, regulatory requirements for forestry leases specify key steps and safeguards that must be observed, including resource inventories and valuations, social and environmental impact assessments, and preparation of management (harvest) plans. These elements are readily transposed to conservation leases, perhaps with greater emphasis on social impacts and consent of local communities as co-managers, and less concern over environmental impacts. In conservation as well as other types of leases, particularly those pertaining to lands under traditional or communal tenure, consent processes and conflict resolution mechanisms are essential.

### **Who Uses Conservation Leases?**

Given that leases would appear to be a flexible and widely applicable land rights transaction tool for conservation purposes, one might expect a plethora of organizations with an explicit focus on using this approach. However, although many different actors have employed conservation leases, most instances appear to be ad hoc responses to opportunities or specific individual contexts. There are no examples of institutions or programs that focus on conservation leases.

In sub-Saharan Africa, the African Wildlife Foundation (AWF) deployed a land-lease program in 2009 in response to increasing habitat fragmentation in Kenya's Amboseli-Chyulu Corridor.<sup>23</sup> These agreements are a quick response to threatened ecosystem integrity as a consequence of land sales to developers, as well as pressure from agriculture and livestock that is increasing in parallel with population growth. The International Fund for Animal Welfare (IFAW) has partnered with AWF to lease a large parcel in this corridor, a little over 10,000 hectares in the Kitenden Corridor Conservation Area, from landowners who are members of the Olgulului/Olalarashi Group Ranch.<sup>24</sup> A noteworthy aspect of this intervention is that the vision is not to maintain long-term leases, but to use the leases as a temporary measure while working with communities to establish conservancies for long-term protection and ecotourism development.

The AWF and IFAW effort in Amboseli built on precedent using leases elsewhere in Kenya, in a project initiated in 2000 by the Kenya Wildlife Service with Maasai landowner members of the Kitengela Group Ranch near Nairobi National Park. A local organization was established specifically to implement this Wildlife Conservation Lease project, which pays landowners the equivalent of about US\$10 per hectare per year in return for commitments to: manage the land for the benefit of wildlife and sustainable livestock

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22 Concessions can be considered a special case of leases relating to public land.

23 <http://www.awf.org/projects/amboseli-chyulu-wildlife-corridor>

24 <https://www.ifaw.org/international/news/kitenden-land-lease-begins-year-three>

grazing; leave land under lease open and not to install any perimeter fencing; desist from cultivation, mining or quarrying on land under the lease; keep the land free from buildings or other structure; and protect indigenous plants and trees.<sup>25</sup> Most of the leases are renewable one-year agreements, and long-term funding is identified as the principal challenge facing the initiative, particularly given the context of rising land prices. It is worth noting that the initiative received support from TNC, and later the World Bank with Global Environment Facility (GEF) funding.

In the PICT region, the Sovi Basin project in Fiji offers a valuable demonstration of a conservation lease. The National Trust of Fiji (NTF) holds a 99-year lease over 16,304 hectares of land covered by tropical lowland rainforest. The landowners are members of 9 landowning units distributed among 4 villages surrounding the basin, totaling about 1,241 people.<sup>26</sup> The lease is signed by NTF as lessee and the iTaukei Land Trust Board (TLTB) as lessor on behalf of the landowners. The annual payment amount is composed of a land rental rate, royalties, and contributions to a Community Conservation and Development Fund (CCDF). For further details on the Sovi project and the process of securing the lease, see Box 2 below and Annex 2.

## **BOX 2: KEY FEATURES OF THE SOVI BASIN CONSERVATION LEASE**

- The lease structure was modeled on regulations for forestry leases in Fiji, with guidance from the Forestry Department in Fiji's Ministry of Fisheries and Forest.
- Distribution of lease payments is channeled through a transparent, well-established system managed by the statutory body established to manage native land, the TLTB, with a pre-set formula that apportions amounts to each member within each landowning unit.
- Lease payments are based on an annual land rental rate (F\$32,971, or about US\$15,710) plus a royalty to replace foregone potential logging income (F\$56,637, or about US\$26,990), based on an inventory of commercial timber in the area. These payments are supplemented by annual contributions to the CCDF in the amount of F\$40,000 (about US\$19,200) with allocations for each village.
- NTF is responsible for conservation management, but undertakes management activities with community members whenever possible. The overarching conservation objective is to maintain the forest ecosystem of the Sovi Basin in its pristine state, such that management activities concentrate on vigilance, ecological monitoring, and stakeholder engagement to sustain support for the protected area.
- CCDF benefits are not restricted to Sovi landowners, but available to all villagers regardless of whether or not they own part of the leased property.
- Decisions on how to use funds from the CCDF are made through a participatory process reflected in community development priorities identified through socioeconomic surveys, facilitated by NTF.

25 Matiko, D. 2014. "Wildlife Conservation Leases are Considerable Conservation Options outside Protected Areas: The Kitengela - Nairobi National Park Wildlife Conservation Lease Program." *Journal of Ecosystem and Ecography* 4:146. doi:10.4172/2157-7625.1000146

26 Last census data from 2013.



- The lease payment rates are subject to review and revision every 5 years, though there is a maximum increase permitted in any given revision
- Financing for lease payments, CCDF contributions, and management activities is secured for the life of the lease through a fully capitalized endowed trust fund, with initial contributions from the Global Conservation Fund and the Fiji Water company's corporate foundation totalling US\$3.75 million.

NTF, with support from Conservation International, signed the Sovi Basin lease in 2012. The Wildlife Conservation Society (WCS) in 2017 signed a 99-year conservation lease modeled closely on the Sovi experience. The WCS lease is with the Nadicake landowning group in the village of Kilaka, providing annual rental payments channeled through the TLTB in return for protection of the 402-hectare Kilaka Forest Conservation Area. As with the Sovi lease, the Kilaka lease was mediated by the TLTB, and protects a national conservation priority; payment amounts were negotiated using the Sovi case figures as a point of departure.<sup>27</sup> Another initiative in Fiji seeks to use a 99-year lease to protect 4,120 hectares of forest as a carbon credit project, working with 8 landowner groups to avoid deforestation and generate 18,800 carbon credits per year.<sup>28</sup> Thus, replication of the lease approach to securing land for conservation is well underway in Fiji.

### **Challenges and Limitations**

Leases enjoy several advantages as a transaction tool for objectives related to conservation and climate resilience. The basic transaction is well understood and already accommodated by most jurisdictional systems, with flexibility that allows adaptation to specific needs and circumstances, including a variety of tenure contexts. Particularly in traditional or communal tenure situations, leases may offer possibilities where other transaction tools such as purchases cannot be applied. However, lease initiatives are not without their challenges.

For enduring conservation success, a lease should be in place for the long term, as in the case of 99-year conservation leases in Fiji (acknowledging that in some settings a shorter lease may serve as a rapid response to threats and a transition to other solutions). That said, even a long-term lease is not the equivalent of permanent protection. Nevertheless, for a conservation actor to sign a lease there must be an assurance that funds will be available in the long term to meet payment obligations, not to mention costs of ongoing conservation management activities. Especially for large parcels, this means that up-front financing requirements can be significant.

A second challenge, related to initial financing, is the fact that the value of land and resources is likely to change over time. This means that lease payment amounts may need to change in order to remain competitive against alternative options faced by landowners. Most lease agreements will have provisions that allow adjustment of payment amounts, which offers some protection against landowner dissatisfaction over divergence between payment amounts and land values. Despite protections, such divergence can put pressure on a lease agreement.

27 <https://fiji.wcs.org/About-Us/News/articleType/ArticleView/articleId/10249/Land-owning-unit-secures-lease-agreement-for-the-protection-of-its-forest.aspx>

28 <http://www.nakau.org/drawa-fiji.html>

A particular potential threat to the robustness of a conservation lease is the fact that in many settings subsurface mineral rights will be excluded from the lease, and the government retains the right to issue overlapping exploration or mining licenses. Similarly, water rights, such as those related to upstream hydropower development, may be excluded from a lease (and indeed may be contested between government and local inhabitants). Such scenarios could undermine or negate the conservation investment. Even if at the outset of the lease an understanding can be reached with the relevant government authorities, later changes in administration or government policy can create problems for the conservation lease. Indeed, in some jurisdictions this challenge also can arise in the case of purchased land.

Finally, although leases lend themselves to contexts with traditional or communal land tenure, this typically also means that there may be a large number of local stakeholders involved. Rivalries, conflicts, or simply differences in priorities and perspectives among landowners present an ongoing management challenge for the conservation actor holding the lease. The task of identifying the full set of legitimate owners in and of itself may present a significant challenge. Therefore, leases (and other transactions) on customary land require significant investment of time and resources in engaging stakeholders, mediating conflicts and generally maintaining positive relationships with landowners.

## EASEMENTS

A conservation easement is a property rights arrangement that helps landowners, conservation organizations and governments work together in pursuit of conservation objectives.<sup>29</sup> The key feature of the conservation easement mechanism is that the property in question remains under ownership and control of landowners. Moreover, while conservation objectives may require some restrictions on land use, other uses that do not conflict with those objectives can still be permitted. For example, if a conservation organization wants to work with a community to protect riverine habitat on their land, an easement could still allow harvest of non-timber forest products (NTFPs) or farming beyond a specified minimum distance from waterways.

In a conservation easement, the landowner(s) and the 'holder' (a conservation organization or government) sign a legally binding document that vests in the holder a real property interest in the area identified for protection. Rights to possess, control and responsibly manage the land are retained by the landowner(s), as well as the right to exclude trespassers. The holder is granted the right to constrain the use of the land only as necessary to achieve agreed-upon conservation objectives specified in the easement document. The land/resource use restrictions agreed upon as conservation measures are also specified. Crucially, conservation objectives and restrictions established under the easement, as well as the rights granted to the holder to advance the objectives and enforce the restrictions, are tied to the property and binding on all future owners of that property.

Alternative names for a conservation easement include conservation servitude or conservation covenant.<sup>30</sup> The essential feature of these instruments, regardless of label, is that they provide stable, perpetual arrangements to ensure conservation management on a property. However, the rights and powers vested in the holder are not unlimited; they must be related to achieving the conservation easement purpose, and the parties need to define a set of restrictions that is demonstrably related to achieving that purpose. Easements are "non-possessory", meaning that all rights of ownership and

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29 This section draws extensively on the description of easements provided by the Pennsylvania Land Trust Association, available at: <http://conservationtools.org/guides/19-conservation-easement>.

30 Conservation easements differ from a related instrument, deed restrictions, in that a deed restriction does not involve a designated third party to enforce compliance. An example of a deed restriction is a condition placed on inherited land requiring that it be maintained as a conservation area.

possession remain with the landowners. This distinguishes easements from purchases and leases. Although use must be consistent with the conservation objectives of the conservation easement, landowners remain in sole and full possession of their property, and maintain absolute control over who may enter the property. The conservation easement will ordinarily grant the holder the right to enter only for purposes of monitoring compliance with, or remedying violations of, the conservation easement.<sup>31</sup>

In common law systems, easements have been created through jurisprudence. In civil law, they are usually a provision of the civil code as servitudes (see Box 3 below). Certain jurisdictions feature specialized laws that deal with easements. One example is the law relating to *Derecho Real de Conservación* in Chile, passed to address deficiencies in the existing legal construct of an easement in the Chilean Civil Code.

### BOX 3: COMMON LAW VS. CIVIL CODE

Two important practical distinctions between the common law versus civil code systems, as applicable to the mechanisms under consideration, are:

- i. **The flexibility to contract.** Common law jurisdictions generally recognize the binding nature of contracts subject to the conditions that there is an agreement, the parties to the contract are the ones that have the obligation to perform, and something of value is exchanged for such performance. Contracts generally do not require any type of legal authority other than that the contract be between legal persons and is not illegal or coerced. In contrast, under a civil code system, contracts, particularly real property agreements, must conform to the terms of the civil code or other relevant legal bases, which in some cases may be highly prescriptive/formulaic, and must be grounded in certain rights to contract stipulated in the code (for example Servitudes, as described in the French Civil Code). This may prove burdensome from a practical perspective when trying to negotiate new or innovative legal mechanisms. (Amendment of the French Civil Code in 2016 sought to address some of these issues.) For example, in the case of leases, common law allows the parties to contract the restrictions as needed to suit their objectives, as in the case of the lease used for conservation in the Sovi Basin in Fiji. Civil law will rely on more narrowly defined types of easements in the civil code; for example, the French Civil Code provides for scenic easements (*servitude de vue*), right of way easement (*servitude de passage*) and public interest easements.
- ii. **The binding nature of precedent vs. codified rules in associated legal challenges.** In understanding the limits of contracts, the recognition of precedent in the common law system (*stare decisis*) provides the parties with some level of predictability regarding how new or innovative clauses or substance may be adjudicated if challenged. This may mean that until a concept is tested in the courts its interpretation can vary. For example, if a legal description of servient tenement in easement is not specific enough it may be struck down, as in the North Carolina Supreme Court Case of *Cummings v. Dosam Inc.* However, once adjudicated, appeals are only applicable to the legal issues

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31 Some easement arrangements may include holder rights to access the property for related conservation activities (research, restoration, etc.). Others may include public access rights that allow passage or recreational uses. However, these rights of entry for particular purposes are affirmative access easements, distinct from conservation easements and typically specified under a separate legal document.

subject to appeal, rather than a de novo review of all aspects of an entire case. So in subsequent cases (e.g. *Allen v. Duvall*) the same standard would be upheld. In contrast, civil code countries rely on the text of the law to serve as the guiding principle. A new or innovative contracting mechanism not codified could be subject to prolonged challenges with uncertain outcomes, which could reduce the attractiveness and cost effectiveness of those mechanisms. Nonetheless, once a new mechanism is codified such as the *derecho real de conservación* in Chile, it can provide greater certainty that it will be upheld from the moment it is enacted.

**In sum, civil and common law each provide benefits and present challenges with regard to the implementation of innovative legal mechanisms.** Common law, as in Fiji, may allow for greater flexibility in contracting, but if an innovative mechanism is properly codified, civil law as in New Caledonia and French Polynesia can provide greater certainty in its application.

Some jurisdictions offer tax incentives for conservation easements donated to a charitable organization or public agency. These typically are set forth in separate legislation dealing with fiscal matters; for example, in the United States permitted tax deductions for donated easements are defined in the US Tax Code. Generally, this requires that the landowner donate the easement, or be compensated at less than the reduction in market value of the property attributable to the easement (the gap between compensation received and reduction in value then constitutes the charitable donation). Further requirements include that the easement be granted to a charitable institution, exclusively for conservation purposes, and in perpetuity. The value of the charitable contribution for tax deduction purposes should be determined by independent appraisal. The value reflects how the easement restricts present and future land use, and thereby diminishes the amount that a willing buyer would pay for the property.

A conservation easement is not an agreement in the nature of a contract. The legal easement document creates an irrevocable right to restrict resource use. The grant of an easement permanently and unconditionally vests in the holder a right or power to use, or constrain the use of, land for a particular purpose. Once the granting document is recorded, the conservation easement is binding whether future owners agree with it or not. Thus, the easement itself is a legal interest in real property serving a particular conservation purpose.

After conducting due diligence, and reaching agreement with the landowners on what conservation values are to be protected and how, the holder prepares the first draft of the grant of conservation easement.<sup>32</sup> This draft is then refined until all parties agree on its final form. The process for entry into legal force depends on the relevant system in place in a particular legal jurisdiction, but typically will involve some form of registering the easement with a governmental land agency. Once the easement is executed, the holder is responsible for ensuring the conservation objectives are upheld. This includes regular site monitoring trips, maintaining positive relationships with landowners, ensuring easement violations are resolved, responding to landowner requests to exercise reserved rights, and amending the easement when necessary. In the event of persistent violations of the easement conditions, the legal framework for easements may provide remedies available to the easement holder (injunctions, adjudications, etc.), and the legal easement document itself will also have provisions on how it may be enforced. Other remedies may be pursued through civil courts, such as bringing suit for damages.

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32 See Annex 3 of the Global Mechanism Review for an example easement document. For another widely used model for the grant of conservation easement, see the Pennsylvania Land Trust Association (PALTA).

As indicated above, in the United States there are on the order of 1,700 land trusts, many of which include conservation easements in their interventions. The largest of these is the aforementioned TNC, which holds more than 1.2 million hectares under easements. TNC's use of easements takes several forms, including voluntary donations as well as sales by landowners, or enactment of easements after purchasing lands for resale to conservation-minded buyers. They emphasize that one feature of easements that makes it a powerful tool is that it makes possible permanent conservation of habitat with significant public benefits while keeping the property in private hands. In the United States, TNC's expertise with respect to tax benefits is another factor that enables it to promote the conservation easement approach among conservation-minded landowners. Outside the United States, however, even specialized organizations like TNC find far fewer opportunities to use easements. A notable exception is the Yela Forest in the Federated States of Micronesia (see Box 4).<sup>33</sup>

### **BOX 4: THE YELA FOREST CONSERVATION EASEMENT IN KOSRAE**

In 2004 the Kosrae Circumferential Road Project was planned to cut across the Yela forest, 160 hectares of unique ka tree rainforest and wetland ecosystem, held in part by the Alik families.<sup>34</sup> The families approached TNC for help to protect this rare ecosystem. TNC partnered with the Forest Service of the United States Department of Agriculture (USDA) to structure a conservation easement to protect the conservation values in the area while providing revenue to the Alik family to compensate for foregone development. A lack of familiarity with conservation mechanisms, including what would be allowable under Micronesian law, required TNC to engage both the landowners and the government on title and easement issues. TNC used legal precedents from U.S. jurisdictions; thus, the easement was established under Kosraen law but supported by an opinion of the Attorney General that precedents in US law were applicable.<sup>35</sup>

The landowners established the Yela Environment Landowners Authority (YELA) as a non-profit organization to advance the titling process, involving recognition of customary rights by the Kosrae Land Court and culminating in the issuance of deeds. YELA now manages the stream of easement payments to the 10 landowning families, sustained by an endowed fund held and managed by the Micronesia Conservation Trust. The endowment was capitalized by contributions of approximately US\$550,000 provided in a public-private partnership between the US Forest Service's Legacy Program and the David and Lucile Packard Foundation.<sup>36,37</sup> The annual yield of the endowment, about US\$25,000, is distributed to the landowners as long as the terms of the easement are met. These terms principally are to restrict development (including road construction) and desist from clearing forest.<sup>38</sup> The Kosrae Island Resource Management Authority (KIRMA) is the easement holder, and the Kosrae Safety and Conservation Organization (KSCO) serves as the monitoring entity on behalf of the easement holder. The success of this easement indicates that with adequate stakeholder engagement, a workable legal mechanism, and consistent flows of funding, this can be an effective model for customary lands in remote areas as it allows for the land to remain in the hands of its traditional owners while providing an incentive to protect the conservation values.

33 <https://www.fs.usda.gov/detail/r5/news-events/?cid=STELPRD3794698>

34 McFarland, B. 2018. *Conservation of Tropical Rainforests: A Review of Financial and Strategic Solutions*. Palgrave Studies in Environmental Policy and Regulation. Palgrave Macmillan: New York, NY: USA.

35 These ties stem from the compact of Free Association currently in place between FSM and the United States, which grew out of the history of US administration of FSM as a Trust Territory.

36 T. Leberer (Director, Pacific Division, TNC). 2018. pers. comm., March 28, 2018.

37 Information on the set-up/transaction costs of this initiative is not available.

38 M. Conner (California Director of Land Protection, TNC). 2018. pers. comm., April 10.

In contrast, despite numerous institutions involved in purchases and easements for conservation in Australia (see above), their activities relate principally to private, or freehold, lands. The Humane Society International established the Wildlife Land Trust (WLT) in Australia, which engages private landowners to manage and register their properties as ‘sanctuaries’; about 30% of the 531 sanctuaries currently included are also under some form of conservation covenant (analogous to an easement).<sup>39</sup> The WLT also directs interested parties to resources such as government incentive programs<sup>40</sup> and government approved covenant programs with respect to tax considerations.<sup>41</sup> However, strategies to advance conservation objectives on Aboriginal lands do not appear to involve transaction tools, but rather focus on co-management and empowering owners to improve land and resource management. The Government of Australia’s Indigenous Protected Areas program is a prime example.<sup>42</sup> In New Zealand, purchases for conservation appear rare but there is a well-developed, high-volume institution pursuing conservation covenants, the QEII National Trust. This trust now holds more than 4,400 covenants, protecting more than 180,000 hectares of private lands.<sup>43</sup> The Government of New Zealand also has made explicit legal provision for conservation covenants on Māori land, a form of covenant termed Ngā Whenua Rāhui kawenata. A difference between this instrument and conventional covenants is that although protection may be in perpetuity, the terms and conditions may be revisited every generation (not less than 25 years).<sup>44</sup> Elsewhere in the PICT region, the conservation easement approach remains unutilized.

### **Challenges and Limitations**

A conservation easement specifies permitted and restricted land uses and management practices. If conditions change such that different management approaches are needed to maintain conservation objectives, this would require renegotiation and restructuring of the easement, with no obligation on the landowner to accept any changes. Thus, an easement does not easily accommodate adaptive management. This is also compounded by the need to provide monitoring to ensure that the restrictions are respected. Nor does a conservation easement necessarily permit ongoing access to the property to parties other than the landowner. Owners may elect to specify in the easement a right of access to remove invasive exotic species, or public access to allow people to cross a property, but they are not obligated to do so.

The main limitation with respect to conservation easements is that they require a firm grounding in existing legal frameworks to ensure enforceability. Moreover, the general legal and institutional context must be sufficiently developed such that easement holders can rely on these systems to enforce legal requirements. Particularly in contexts with complex and contentious issues surrounding land ownership and use and access rights, enforcement of conservation easements can become a volatile and politicized question. Mermet et al. (2014) suggest that this requirement is a main reason why use of easements is restricted largely to the United States.

One motivation for landowners in the United States to accept easements is the potential for tax benefits. However, in many developing country settings, tax systems are insufficiently elaborated to create such incentives. Moreover, tax benefits for landowners will not be as compelling for land-rich but cash-poor landholders as for more affluent landholders, as they will not be able to realize the full value of the tax

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39 <https://www.wildlifelandtrust.org.au/index.php/resources/conservation-covenants>

40 <http://www.environment.gov.au/biodiversity/conservation/incentive-programs-around-australia>

41 <http://www.environment.gov.au/biodiversity/conservation/covenants/approved-programs>

42 <https://www.pmc.gov.au/indigenous-affairs/environment/indigenous-protected-areas-ipas>

43 <http://qeiiinternationaltrust.org.nz/>

44 <https://www.doc.govt.nz/about-us/science-publications/conservation-publications/protecting-and-restoring-our-natural-heritage-a-practical-guide/legal-protection/>



deductibility.<sup>45</sup> Another related challenge with respect to incentives to accept an easement is that the landholders' perception of the value of their land may differ substantially from the fair market value. For instance, in the case of the Kosrae Circumferential Road Project mentioned above, TNC and its partners had to manage the community's disappointment that the fair market value of the land was much lower than the intrinsic value the community had attached to its land.<sup>46</sup>

Finally, another potential risk pertaining to conservation easements may be posed by the existence of other use rights, particularly related to subsurface resources or water, that are not within the control of the conservation organization holding the easement. Thorough due diligence efforts need to anticipate the degree to which the holder has any recourse in the event that exercise of other use rights can undermine conservation objectives.<sup>47</sup>

## REFLECTIONS

In countries and territories where a significant proportion of land is under traditional tenure and thus not amenable to purchase (88% for Fiji and 98% for Vanuatu),<sup>48</sup> building on global and regional experience with leases presents an intuitive strategy. Ad hoc response to purchase opportunities may result in significant conservation gains, but by far the greater opportunity set will be addressed using tools that suit the customary land context. Similarly, if much of the land is under public (government) ownership, leases (or concessions) may offer greater scope than purchases as government agencies may be reluctant to consider permanent reductions in the public estate through land sales. Conservation easements would overcome the main limitation of leases, namely their impermanence, but require robust legal and institutional provisions. Therefore, in parallel to a deliberate effort to expand the use of conservation leases, prospects for enhancing the enabling conditions for easement tools should be examined.

In countries and territories with a larger proportion under private ownership, a strategy of seeking and responding to opportunities to purchase land may be warranted. However, both to overcome resistance to permanent and complete relinquishing of property rights and to create more cost-effective options, leases or strengthening and applying conservation easement tools may offer solutions. In some cases, a short-term lease may be suitable as an interim arrangement before purchase or application of an easement, to create a window of time during which to build trust and put in place other enabling conditions (comparable to acquiring an option on the property).

The review of transaction tools suggests the following key challenges:

**Institutional capacity/mandate:** The most dynamic application of transaction tools involves dedicated organizations with the mandate to pursue conservation using purchases and easements (with leases typically being used more opportunistically). In a conservation context without such actors, promoting the use of transaction tools will require targeted investment in the requisite capacity after identifying entities with an interest in developing in this direction. Although much of the legal and real estate expertise can be outsourced for a given transaction, the driving institutions must be conversant in the essentials of major transaction models as well as specific legal and policy contexts. The existence and

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45 *Nature Conservation* 10: 1-23, "Private Protected Areas in Australia: current status and future directions", James Fitzsimmons - citing submission in 2008 by The Nature Conservancy to Australia's Future Tax System Review.

46 T. Leberer (Director, Pacific Division, TNC). 2018. pers. comm., March 28, 2018.

47 "Privately Protected Areas: Advances and Challenges in guidance, policy, and documentation" (Bingham et al. 2017)

48 AusAid 2008, *Making Land Work*, Volume One, p.4, and <http://www.adraf.nc/component/cartographie/?zone=generale&type=TP>

continued growth of global actors in this arena (e.g., TNC, Rainforest Trust, and Land Trust Alliance) may offer valuable technical and other types of resources in a strategy to cultivate the relevant capacity in a particular geography.

**Funding:** Although funding challenges attend every conservation intervention, transaction-based strategies face particular challenges. For purchases, the need to secure all funds for the initial purchase price can be daunting; for easements and leases, the need to be able to guarantee payments over long periods of time perhaps even more so. For leases, changes in opportunity cost over time can result in continuous pressure on the arrangement that implies a growing funding challenge. Regardless of the transaction model, the transaction itself represents only part of the cost; ongoing management costs can be significant, especially with respect to stakeholder engagement.

**Stakeholder engagement:** Community engagement and management of other relationships will be a persistent need following any transaction. This has important implications for the use of transaction tools at scale; as such use is scaled up, the burden of engagement in terms of time and funding will grow ever larger. While technical staff involved in structuring and executing transactions can shift from one initiative to the next, staff involved in community engagement and other relationship management can only be involved in so many sites. Co-management models or absorption of areas into formal government protected area networks may ease this burden to some degree, but ultimately the need for ever more staff to handle ever more relationships is inevitable.

**Enforcement:** The environmental integrity of areas purchased, leased, or held under easement depends critically on enforcement. This means that success depends on the capacity of enforcement mechanisms, and the political will of decision-makers who dictate the deployment of these enforcement mechanisms. This will bring to the fore legitimate differences in perspectives on priorities among stakeholders and decision makers. Purchasing land will not be effective if local politicians will not act against squatters. An easement will not work if courts are reluctant to penalize landowners for non-compliance with resource-use restrictions. A conservation lease will not achieve its objectives if government concession systems do not respect its boundaries. A combination of continuous engagement and appropriate incentives must cultivate and reinforce political, legal and social will for enforcement.

In sum, challenges facing land and land rights transactions should not be underestimated. That said, it should be noted that although some challenges may be particular to transaction tools, many are common to any conservation intervention or approach. Challenges related to funding needs, changes in opportunity cost, stakeholder management, and alignment with government priorities must be addressed in any conservation strategy. Arguably, by mimicking negotiated deals with which landowners already are familiar and proceeding on the basis of willing buyers and sellers, transaction approaches will in some contexts offer distinct advantages relative to other conservation tools. Although the challenges may be non-trivial, transactions to obtain land or land rights can be a powerful component of the set of tools available for conservation in the Pacific.

**TABLE 2: MECHANISM REVIEW SUMMARY**

	<b>PURCHASE</b>	<b>EASEMENT</b>	<b>LEASE</b>
<b>Enabling Conditions</b>	<ul style="list-style-type: none"> <li>• Up-front funding</li> <li>• Transferrable land title</li> <li>• Willing owner/seller</li> <li>• Conservation buyer eligible to receive property</li> </ul>	<ul style="list-style-type: none"> <li>• Clarity of title</li> <li>• Easement codified in law</li> <li>• Government/judicial commitment to enforcing easement</li> </ul>	<ul style="list-style-type: none"> <li>• Agreement by the parties on lease terms</li> <li>• Government/judicial commitment to enforcing lease terms</li> <li>• Long-term financing</li> </ul>
<b>Advantages</b>	<ul style="list-style-type: none"> <li>• All rights secured and subject to conservation management</li> <li>• Permanence</li> </ul>	<ul style="list-style-type: none"> <li>• Owners retain possession</li> <li>• Remains in force regardless of changes in ownership</li> <li>• Does not expire</li> </ul>	<ul style="list-style-type: none"> <li>• Owners retain possession</li> <li>• Grants conditioned access</li> <li>• Lease terms can specify conservation measures and restrictions</li> </ul>
<b>Challenges</b>	<ul style="list-style-type: none"> <li>• High dollar amount</li> <li>• May alienate local population</li> </ul>	<ul style="list-style-type: none"> <li>• Relies on enduring judicial willingness to enforce</li> <li>• Can require purchase of dominant tenement</li> </ul>	<ul style="list-style-type: none"> <li>• Statutory limits on duration</li> <li>• Long-term financing requirements</li> <li>• Changes in opportunity cost</li> </ul>
	Ongoing responsibility for stakeholder engagement		
	Ongoing responsibility for conservation management (and associated costs)		
	Sub-surface rights typically remain with the State		



*Photo by user dcaloren on Flickr, 2010*

### 3. FEASIBILITY ASSESSMENT

The global review in the preceding section concluded that there is potential for expanded use of these mechanisms in PICTs that merits further exploration. That said, there are challenges facing such efforts, and the following analysis of feasibility considerations presents favorable factors and opportunities as well as these challenges in the four focal PICTs of the RESCCUE project (Fiji, Vanuatu, New Caledonia and French Polynesia). The analysis will devote attention to the following main areas of relevance to the feasibility of expanding use of land and land-rights transaction tools:

- i. Conservation priorities: if use of land and land-rights transactions is to be scaled up, there must be a clear geographical sense of where investment in conservation and climate resilience will achieve the greatest positive impacts. Therefore, a clear prioritization of sites that explicitly takes into consideration factors relevant for biodiversity conservation and climate resilience is essential.
- ii. Policy context: execution of a transaction strategy at significant scale will require government support; to facilitate relevant approval processes and also ensure enforcement of transactions and property or use rights. Government as a supportive partner as reflected in commitments to international agreements, national policy documents, agency mandates, and the like is therefore essential.
- iii. Legal context: a land and land-rights strategy must be grounded in the legislative and regulatory frameworks governing transactions, and transactions must be enforceable under the law. The nature of legal tenure and property rights are central factors in such a strategy.
- iv. Social and cultural context: as much as a legal issue, the nature of land rights and governance is a matter of social and cultural context. The relationships of people individually and collectively to land influence their roles as conservation counterparts, can be a key factor in stakeholder conflicts, and also shape the political context for land transaction programmes.
- v. Implementation capacity: application of transaction tools requires a range of technical capacities including those related to financing and legal arrangements to underpin transactions, as well as conservation capacities such as site management, ecological monitoring, and stakeholder engagement.
- vi. Financing options: transactions such as purchases, easements and leases involve paying landowners for transfers of property or partial property rights. Moreover, after a transaction is executed most sites will involve long-term management costs to ensure that conservation or climate resilience objectives are met.
- vii. Management sustainability: to ensure integrity of sites after a transaction, there will need to be an actor that accepts responsibility for long-term management, and there must be funding to ensure adequate capacity to do so.

The following sections examine each focal PICT in light of these considerations, noting that in many instances there is considerable overlap between them.



## Conservation priorities

In Fiji ongoing collaboration between government and environmental organizations has resulted in a clear prioritization of terrestrial sites for inclusion in the national protected area network. This collaboration is structured as the Protected Areas Committee (PAC).<sup>49</sup> The PAC has defined a set of proposed terrestrial protected areas to advance toward a national target of placing 17% of the nation's land area under protection.<sup>50</sup> However, the mapped priorities remain subject to further refinement, especially as the PAC seeks to optimize the balance between multiple conservation objectives. For example, Klein et al. (2014) demonstrated how protected area network design in Fiji can change by increasing emphasis on ecological links between terrestrial protected areas and coastal ecosystems.<sup>51</sup> Similarly, additional analyses focused on climate change adaptation, disaster risk management, and other green infrastructure approaches could inform further refinement of priorities. Current priorities emphasize biodiversity considerations, but this lens does not necessarily capture areas critical for climate resilience. A further layer of information that will be important for ranking and sequencing priorities for additional protection relates to land tenure. Generally a clear indication of which areas fall under customary, state, or freehold tenure would also inform an overarching transaction strategy. An analysis of the numbers of landowning units implicated in a given proposed protected area would help stratify the set of proposed areas by degree of ownership complexity.

## Policy context

The Government of Fiji has affirmed that the conservation lease pioneered in the Sovi Basin initiative and replicated in the Kilaka forest is an approved and suitable approach.<sup>52</sup> In combination with a government commitment to the above-mentioned Aichi Target of protecting 17% of terrestrial areas, this suggests that the policy context is favorable for a concerted effort to promote and support additional use of leases in Fiji. This is reinforced by ratification of international agreements such as the Ramsar Convention, the Nouméa Convention, and the Convention on Biological Diversity, and policy documents such as the Fiji Biodiversity Strategy and Action Plan, Fiji's Action Plan for Implementing the Convention on Biological Diversity's Programme of Work on Protected Areas, and the Fiji Forest Policy Statement.<sup>53</sup> That said, in addition to commitments to expanding areas under conservation management the Government of Fiji also seeks to spur economic growth and development and enhance food security, including a strong policy emphasis on promoting agriculture.<sup>54</sup> The Sovi Basin experience also illustrates that mining ventures attract strong government support. Thus, in particular locations where conservation priorities overlap with significant agricultural development potential or mineral resources, the policy context may lean in favor of development over conservation.

49 Jupiter, S., Tora, K., Mills, M., Weeks, R., Adams, V., Qauqau, I., Nakeke, A., Tui, T., Nand, Y., Yakub, N. 2011. *Filling the gaps: identifying candidate sites to expand Fiji's national protected area network*. Outcomes report from provincial planning meeting, 20-21 September 2010. Wildlife Conservation Society: Suva, Fiji. 65 pp.

50 Some sources indicate a target of 20%, but the 17% figure conforms to Aichi Target 11.

51 Klein, C., Jupiter, S., Watts, M. and Possingham, H. 2014. Evaluating the influence of candidate terrestrial protected areas on coral reef condition in Fiji. *Marine Policy* 44(c): 360-365.

52 E. Erasito. 2018. pers. comm., Feb. 21; S. Mangubhai. 2018. pers.comm., Apr. 13.

53 Clarke, P. and Gillespie, C. 2009. *Legal Mechanisms for the Establishment and Management of Terrestrial Protected Areas in Fiji*. IUCN: Suva, Fiji.

54 Ministry of Agriculture. 2014. *Fiji 2020 Agriculture Sector Policy Agenda "Modernizing Agriculture."* Government of Fiji: Suva, Fiji.

## Legal context

Of the three main types of land tenure in Fiji (state lands, freehold lands, and customary lands held in trust for native communities), customary, or *iTaukei*, lands are by far the most prevalent.<sup>55,56</sup> State and *iTaukei* lands are defined as inalienable (unavailable for purchase) under the 2013 Constitution of Fiji (see article 28).<sup>57</sup> As more than 88% of the land area in Fiji is held in communal ownership and therefore inalienable, leases are the pre-eminent way to obtain an interest in land.<sup>58</sup>

Land purchase as a conservation tool is relevant only to the 8% of land in Fiji that is freehold.<sup>59</sup> Aside from properties subject to current purchase initiatives by the National Trust of Fiji (NTF), there is no mapping of freehold areas that might overlap with conservation priorities. NTF is explicitly empowered to purchase property for cultural or environmental conservation, and nothing precludes other Fijian entities or individuals from doing so. However, foreign entities face obstacles in using purchases as a conservation strategy, including a legal requirement to build a new home within 2 years after purchasing vacant freehold property.<sup>60</sup>

Easements in essence are alienations of certain real property rights and as such would not be allowable on either State or *iTaukei* land in Fiji. The Lands Transfer Act specifically allows for easements on freehold properties. Although easements for conservation are not expressly provided for in Fijian law, easements for light and scenic purposes (such as an easement that prohibits erecting a building that would block light or views on another property) are permitted. However, the Land Transfer Act, principally Part VII – Restrictive Covenants, defines a legal construct that functions much like easements and can be applied for conservation objectives.<sup>61</sup> The act establishing the NTF explicitly empowers the Trust to make use of this construct, though again this is relevant only to freehold properties.<sup>62</sup>

The *iTaukei* Land Trust Board (TLTB), as the parastatal entity that serves as trustee for all communal

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- 55 Does land lease tenure insecurity cause decreased productivity and investment in the sugar industry? Evidence from Fiji [https://www.researchgate.net/publication/237325986\\_Land\\_tenure\\_system\\_in\\_Fiji\\_the\\_poverty\\_implications\\_of\\_expiring\\_leases](https://www.researchgate.net/publication/237325986_Land_tenure_system_in_Fiji_the_poverty_implications_of_expiring_leases) [accessed Apr 30 2018].
- 56 <https://onlinelibrary.wiley.com/doi/pdf/10.1111/1467-8489.12133> Please note that there also other communal regimes relating to Rotuman and Banaban communities.
- 57 2013 Constitution of Fiji- 28. (1) *The ownership of all iTaukei land shall remain with the customary owners of that land and iTaukei land shall not be permanently alienated, whether by sale, grant, transfer or exchange, except to the State in accordance with section 27. (2) Any iTaukei land acquired by the State for a public purpose after the commencement of this Constitution under section 27 or under any written law shall revert to the customary owners if the land is no longer required by the State. (3) The ownership of all Rotuman land shall remain with the customary owners of that land and Rotuman land shall not be permanently alienated, whether by sale, grant, transfer or exchange, except to the State in accordance with section 27. (4) Any Rotuman land acquired by the State for a public purpose after the commencement of this Constitution under section 27 or under any written law shall revert to the customary owners if the land is no longer required by the State. (5) The ownership of all Banaban land shall remain with the customary owners of that land and Banaban land shall not be permanently alienated, whether by sale, grant, transfer or exchange, except to the State in accordance with section 27. (6) Any Banaban land acquired by the State for a public purpose after the commencement of this Constitution under section 27 or under any written law shall revert to the customary owners if the land is no longer required by the State.*
- 58 Farran, Sue, *South Pacific Property Law*, Routledge-Cavendish (April 2002)
- 59 <https://fijirealty.com/buying-in-fiji/>
- 60 <http://www.munroleyslaw.com/doing-business-in-fiji/buying-or-dealing-in-fiji-land/>
- 61 Government of Fiji. 1970. *Land Transfer Act* [Cap 131]. *Laws of Fiji*.
- 62 Clarke, P. and Gillespie, C. 2009. *Legal Mechanisms for the Establishment and Management of Terrestrial Protected Areas in Fiji*. IUCN: Suva, Fiji.



land in Fiji, can grant leases for up to 99 years, in accordance with the National Land Trust Act.<sup>63</sup> TLTB leases are flexible and readily adapted to a range of purposes. It is under this regime that the Sovi Basin lease with the National Trust of Fiji was enacted. However, landowners may object to any renewal, so it is crucial that landowners not only be engaged with the conservation mission but also receive economic benefits that are perceived to be fair.

One challenge is that all subsurface and mineral rights in Fiji are held by the government, with the right to permit exploration anywhere except areas listed in the Mining Act as expressly reserved.<sup>64</sup> Therefore even if a parcel is placed under a conservation lease, there is a possibility that mining interests working with relevant government agencies can undermine conservation efforts by persuading customary owners to abrogate that lease, as happened with a portion of the Sovi Basin.



### **Social and cultural context**

Of the four PICTs examined in this study, Fiji has the least difficulty with recognition of customary landholding. This largely is due to the colonial legacy of land administration, a written record of land registration including names of land-owning clans and their members. The TLTB uses this record for determining ownership and distribution of lease payments.<sup>65</sup> This means that for most land transactions there is no need for extensive and ongoing recording of genealogies and determination of clan membership.

Land owned by indigenous people (*iTaukei*) is inalienable and managed according to what people perceive as native ways (*vakavanua*). Land rights and tenure systems, including those that are impacted

63 Under Common Law the longest length of an easement is 99 years. This is in order to avoid perpetual contracts, also known as the rule against perpetuities.

64 Fiji Mining Act [http://www.paclii.org/fj/legis/consol\\_act\\_OK/ma81/](http://www.paclii.org/fj/legis/consol_act_OK/ma81/)

65 Vukikomoala K, Jupiter S, Erasito E, and Chand, K. 2012, *An analysis of international law, national legislation, judgements, and institutions as they interrelate with territories and areas conserved by indigenous peoples and local communities*. Report No. 19 Fiji. Natural Justice and Kalpavriksh: Bangalore and Delhi.

by a lease, are governed by the main landowning unit (LOU), the *mataqali* ('clan'). Effective local level *vakavanua* governance depends largely on maintaining good relationships and mutual understandings within the community. Land transactions for conservation will intersect with these dynamics, particularly with respect to expectations around revenues flowing to the landowning groups. Those not living on the land and not involved in the decision-making processes may cause problems. Such problems can be overcome through inclusive consultations of all LOU members and ongoing efforts by the facilitating NGO and the chiefs. Leasing land necessarily dictates a degree of alienation in order to exchange temporary use rights for income, which may be compatible with customary objectives if the landowners have control over the leasing process. Real or felt alienation largely depends on the time spent on consultation and the size of the area considered. If consultations happen haphazardly, landowners will likely disagree with the outcome and if the area is large, the consultation will need to include more *mataqali* and therefore likely run into more issues around boundaries and particular uses of the land that have been negotiated between the clans.

### **Implementation capacity**

Use of land and land-rights transaction tools in Fiji benefits from the presence of several actors with relevant direct experience, mandates and appetite. Collectively, the government, the NTF, USP, and conservation NGOs represent the requisite technical capacity as demonstrated by initiatives such as the Sovi Basin and Kilaka Forest conservation leases, and the government's own lease initiative in a REDD+ project at Emalu. Moreover, the majority of these actors already are actively working together in various projects and initiatives, and therefore have a track record of combining their capacities to achieve conservation objectives. That said, capacity is constrained in terms of human resources and logistics, which could be functions of available funding.

The NTF plays a central role, given its specific mandate as reflected in being the leaseholder for the Sovi Basin, leading an effort to purchase land to protect the Nakanacagi Cave, and openness to exploring opportunities to demonstrate the use of easements (conservation covenants). The NTF has on-the-ground site-management experience in a variety of ecosystems and stakeholder contexts, and good working relationships with all the other key actors in government and the NGO sector, as well as USP. USP, often in collaboration with environmental NGOs, provides essential research and monitoring functions to numerous initiatives in Fiji. It benefits from a dedicated core of researchers who are active in applied research (both social and ecological) of direct relevance to conservation, and a steady stream of students eager to enter into this field.

One area that may merit further attention relates to legal capacity. Legal services are readily available in Fiji to execute transactions, but must be retained for each initiative; actors such as the NTF or its partner conservation NGOs do not have the legal capacity locally in-house to conduct due diligence, draft transaction documents, and the like. For a large programme of purchase, lease and easement activities it may be cost-effective to secure such capacity on a permanent dedicated basis through in-house staffing in the appropriate institution or through dedicated *pro bono* support.

### **Financing options**

There are multiple ongoing initiatives to assess the financing requirements for establishing and managing a comprehensive national protected area network (marine as well as terrestrial). This is linked to a policy brief prepared by the PAC making the case for a National Protected Area Trust Fund, based on a study of protected area financing options commissioned by WCS and WWF.<sup>66</sup> The PAC will serve as an

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66 Nimmo-Bell. 2016. *Options for sustainable financing of Protected Areas in Fiji*. Draft final report for the Protected Areas Committee, Government of Fiji. Auckland, New Zealand.

important forum for validating results once these analyses are completed and harmonized, leading to a robust set of figures to inform national strategy.

Fiji offers a wide range of examples of funding sources for relevant initiatives. Although bilateral funding has been limited, protected area work has received multilateral support through the World Bank, UNDP, UNEP, and GEF. The Sovi Basin initiative demonstrated private sector appetite for financing conservation leases, in the form of funding from the Fiji Water company. Protected area work in Fiji attracts support from private foundations (for example the MacArthur Foundation and the Walton Family Foundation) as well as NGO-hosted financing mechanisms such as the Global Conservation Fund and the Critical Ecosystem Protection Fund. The NTF successfully has entered into partnerships with institutions such as the Rainforest Trust and the San Diego Zoo to raise funds for purchases. The Kilaka Forest and Sovi Basin leases can be seen as Payment for Ecosystem Services (PES) schemes in which international willingness-to-pay for conservation is channeled to landowners for protecting critical habitat.<sup>67</sup> The REDD+ initiatives at Emalu and Drawa also are forms of PES,<sup>68,69</sup> and the prevalence of hydropower in Fiji suggests possible scope for PES linked to watershed maintenance.

### **Management sustainability**

After a transaction, sites require ongoing management to ensure that conservation and climate resilience objectives are met. In Fiji three possibilities present themselves for management of sites managed for conservation and climate change resilience. First, government agencies such as the Department of Environment and Department of Forestry include such management authority and responsibility in their mandates, as does the Fisheries Department for coastal sites. Second, site management is one of the core purposes of the NTF. Finally, conservation NGOs can lead site management, typically in partnership with relevant government agencies as well as local communities. However, there is a dearth of spare capacity on the part of any of these actors for long-term management of additional sites. For example, the NTF identified staff numbers, legal expertise, and scientific expertise relating to protected area management as critical areas for capacity development before adding significantly to its portfolio of sites.

### **Fiji: Conclusion**

A survey of feasibility considerations for expanded use of land and land-rights transactions to achieve conservation and climate resilience goals suggests a highly conducive context in Fiji. A Protected Area Committee that includes government, NGO and academic partners has identified priority sites, and the need for placing additional areas under conservation management is clearly recognized in government policy. Experience with conservation leases and land purchase initiatives demonstrates legal feasibility, and there are also as-yet unused legal provisions for conservation covenants (equivalent to easements). The constellation of conservation actors including government agencies, the statutory body National Trust of Fiji, the University of the South Pacific and environmental NGOs collectively embody ample technical capacity, mandates and appetite for increased use of transaction tools.

Although funding is a significant constraint (for transaction costs themselves as well as to support the capacity of actors to absorb long-term management responsibility for additional sites), conservation and climate interventions in Fiji enjoy a broad base of donor and private sector support that lends

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67 Lumelume, R., Manghubai, S. and Dulunaqio, S. (no date). "Achieving Forest Conservation in Fiji through Payment for Ecosystem Services Schemes." (presentation). Wildlife Conservation Society.

68 Ministry of Fisheries and Forests. (no date). The Fiji National REDD+ Pilot Site: Emalu, Navosa Province. Factsheet: The National REDD+ Unit. Suva, Fiji. Available at: [https://www.pacificclimatechange.net/sites/default/files/documents/CCCPIR-Fiji\\_Fiji%20REDD%2B%20Site%20Emalu%20Study.pdf](https://www.pacificclimatechange.net/sites/default/files/documents/CCCPIR-Fiji_Fiji%20REDD%2B%20Site%20Emalu%20Study.pdf)

69 <http://www.nakau.org/drawa-fiji.html>

confidence in financing potential given a clear, robust strategy. Such a strategy would benefit from further refinement of spatial priorities as well as articulation of a national conservation financing mechanism. However, in addition to replication of the Sovi and Kilaka conservation lease models, further purchases beyond the Macuata or Nakanacagi initiatives, and demonstration of conservation covenants or easements, Fiji would benefit from improved protected area legislation that includes provisions for permanent protected areas.

**TABLE 3: SYNTHESIS OF FEASIBILITY CONSIDERATIONS FOR FIJI<sup>\*,\*\*</sup>**

	PURCHASE	EASEMENT	LEASE
Identification of conservation priorities	2	1	4
Policy context	4	2	4
Legal context	5	3	5
Social and cultural context	4	1	5
Implementation capacity	5	2	5
Financing options	4	2	4
Long-term management solutions	4	3	4
Average Score	4	2	4.4

\* Each factor is scored from 1 to 5 where 1 means *least conducive to feasibility*, and 5 means *most conducive to feasibility*.

\*\* The numbers reflect initial scoring based on desk review, interviews with key informants, and group discussions in stakeholder workshops.

## VANUATU

### Conservation priorities

The most significant efforts to date to identify priority sites for conservation in Vanuatu are the compilation of KBAs in the East Melanesian Islands Biodiversity Hotspot Ecosystem Profile prepared for the Critical Ecosystem Partnership Fund (CEPF) in 2012, its Directory of Wetlands that identifies important wetland sites, and listings of priority sites for protection and/or conservation management in the individual sections on each province in the National Biodiversity Strategy and Action Plan (NBSAP). The Ecosystem Profile identifies 27 KBAs in Vanuatu, two of which are Alliance for Zero Extinction (AZE) sites: Aneityum and the Santo Mountain Chain.<sup>70</sup> The NBSAP notes a third AZE site on Vanua Lava and Mota for the Vanikoro Flying Fox (*Pteropus tuberculatus*). The NBSAP (pp. 43-44) summarizes conservation priority areas, indicating a wealth of needs and opportunities, but site prioritization is complicated by the fact that Vanuatu's biodiversity remains poorly known with detailed studies limited to a few genera, focused on the country's larger and more accessible islands. Indeed, the NBSAP highlights an urgent need to

70 As noted in the CEPF Ecosystem Profile, these sites are the highest biological priorities for conservation as their loss would result in global extinction of at least one species. The criteria for AZE sites are: 1. Endangerment - An AZE site must contain at least one Endangered (EN) or Critically Endangered (CR) species, as assessed on the IUCN Red List; 2. Irreplaceability - An AZE site should only be designated if it is the sole area where an EN or CR species occurs, contains the overwhelmingly significant known resident population (>95%) of the EN or CR species, or contains the overwhelmingly significant known population (>95%) for one life history segment (e.g. breeding or wintering) of the EN or CR species; and 3. Discreteness - The area must have a definable boundary within which the character of habitats, biological communities, and/or management issues have more in common with each other than they do with those in adjacent areas (<http://zeroextinction.org/site-identification/aze-site-criteria/>).



inventory and map species, habitats, existing conservation areas, and priorities.<sup>71</sup> The results of this mapping effort are intended to inform a national planning process for conservation area prioritization and establishment, including attention to protected area types and categories.

## Policy context

Vanuatu's NBSAP,<sup>72</sup> released in June 2018, reiterates Vanuatu's commitment to Aichi Target 11. Strategic Area 2 (Forests and Inland Waters Ecosystems Conservation and Management) states the following targets:

1. By 2030, at least 17% of important biodiversity areas, livelihoods and kastom importance are conserved through community and government effective management measures.<sup>73</sup>
2. By 2030, at least 15% of natural forest and 10% of wetland areas are conserved through effective community and government management measures.
3. By 2030, 30% of Vanuatu's natural forest (Forestry) is being actively managed and protected.

Vanuatu has signed and ratified the United Nations Convention on Biological Diversity (UNCBD), and includes conservation of the environment as one of the three main pillars of its National Sustainable Development Plan (NSDP), which is directly linked to policy objectives of the National Environment Policy and Implementation Plan (NEPIP). Vanuatu has had a conservation strategy in place since 1993. Over the last two decades, this plan has evolved into a policy that seeks to address environmental issues, including climate, biodiversity, land resources, water, coastal and marine, and waste and pollution.<sup>74</sup>

The NBSAP, as the principal conservation policy document, includes the following mission statement in section 5: To (1) manage and safeguard biological resources through government, provinces and local communities so as to maintain fully our natural and cultural heritage for all ni-Vanuatu; (2) guide governments, provinces, local communities, landowners and landholders in the sustainable management of Vanuatu's natural resources; (3) ensure that all ni-Vanuatu, including future generations, are able to benefit from biodiversity and enjoy its use; and (4) protect the custom, intellectual and legal rights of ni-Vanuatu as resource custodians and users.<sup>75</sup> This mission statement puts ni-Vanuatu (the people of Vanuatu) at the centre of conservation, reflecting nation-wide sentiment around community sovereignty over natural resources.<sup>76</sup>

## Legal context

In Vanuatu, constitutionally vested, inalienable land ownership rights rest with customary tenure, with recognition of leasing arrangements by ministerial consent. All land in Vanuatu belongs to the indigenous 'custom owners' and almost all land is held under customary tenure, whether leased (9.3%)

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71 NBSAP 2018, p. 32.

72 Department of Environmental Protection & Conservation, National Biodiversity Strategy and Action Plan, 2018. Available at: <https://environment.gov.vu/index.php/projects/nbsap-project>.

73 Note that the Aichi Target is to achieve this goal by 2020.

74 Vanuatu National Environment Policy and Implementation Plan, 2016-2030. Available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/VANUATU%20NEPIP-Final.pdf>

75 Department of Environmental Protection & Conservation, National Biodiversity Strategy and Action Plan, 2018. Available at: <https://environment.gov.vu/index.php/projects/nbsap-project>.

76 Compare the mission statement in Fiji's NBSAP: "To conserve and sustainably use Fiji's terrestrial, freshwater and marine biodiversity, and to maintain the ecological processes and systems which are the foundation of national and local development."

or un-leased (89.7%). Land tenure is a mix of indigenous custom (*kastom*), common law and civil law regimes owing to Vanuatu's historic amalgam of cultures.<sup>77</sup> When Vanuatu became independent, one of the main outcomes was that ownership of all land reverted to the traditional landholders.<sup>78</sup> This concept is enshrined in the Constitution of Vanuatu in Article 73, which establishes that all land is owned by the indigenous people and may not be alienated from their use. Thus, land purchase is not an available option and non-customary landowners rely on leases and strata titles (meaning title to improvements) to allow a form of temporary possession of customary land.

Easements in Vanuatu are rights linked to a piece of land (the dominant tenement) that allow the proprietor to exert rights over another property (the servient tenement), such as rights of access. Per the Land Acquisition Act, easements are only alienable from customary landowners by the government for a public purpose, such as to allow for rights of way. Once the purpose has been met or is no longer relevant, all rights revert to the customary owners. This limited scope means that any conservation easement would have to be placed by the government in service of the public national interest. If an easement were to cease to be in the public interest (or deemed so by a court, for instance), all rights to the land would revert to the customary landowners for their use or lease.

Leases are the principal land transaction instrument in Vanuatu.<sup>79</sup> In 2012, there were 13,815 leases in Vanuatu of which 6,803 were in rural locations. These leases have a statutory length of up to 75 years and may be renewed. A key feature of leases in Vanuatu is that although a lease may be terminated by the customary landowners, they would be required to reimburse the tenant for any improvements made on the property. This has proven prohibitive at times and led to continuous renewals of the leases. The Land Leases Act does not limit the types of purposes for which a lease may be granted. Section 68 of the Land Leases Act in particular allows for restrictive agreements, such as those needed for conservation, (e.g. no logging or no development). The biggest challenge for leases is the need to identify all legitimate members of a landowning group.

### **Social and cultural context**

Vanuatu is a culturally diverse country with generally long-standing and widespread resentment against outside regulation of land and resources, including current government. After independence in 1980 and the adoption of a Constitution that mandated the return of all rural lands to custom owners, Village Land Trusts became a popular concept.<sup>80</sup> Village Land Trusts are legally recognised bodies that make decisions on behalf of the custom owners. However, apart from the village-based Ifira Trustees Ltd. and Mele Trustees Ltd. which enjoy exceptional solidarity, no successes have been reported. Most trusts began to function without customary control and thereby lost legitimacy and authority. The problem was that they “were incorporated at too high a level – that is, the village, which is a settlement unit, but not a traditional landowning or land-managing body”.<sup>81</sup>

In many places, traditional functions of the chief have been replaced by an assertion of chiefly

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77 Forsyth, Miranda, Understanding Judicial Independence in Vanuatu, State, Society & Governance in Melanesia, SSGM DISCUSSION PAPER 2015/9, Australia National University. Available at: [http://ssgm.bellschool.anu.edu.au/sites/default/files/publications/attachments/2015-12/DP-2015-9Forsyth-ONLINE\\_0.pdf](http://ssgm.bellschool.anu.edu.au/sites/default/files/publications/attachments/2015-12/DP-2015-9Forsyth-ONLINE_0.pdf)

78 Burlo, Charles, Land alienation, land tenure, and tourism in Vanuatu, a Melanesian Island nation, *GeoJournal* (1989) 19: 317. Available at: <https://doi.org/10.1007/BF0045457>

79 Sue Scott, Milena Stefanova, Anna Naupa, and Karaeviti Vurobaravu, Vanuatu National Leasing Profile: A Preliminary Analysis, World Bank Briefing Note, Vol 7 issue 1, May 2012, accessed at <http://documents.worldbank.org/curated/en/652341468124775547/pdf/699940BRIOP1170IOLeasingOProfileOBN.pdf>

80 Fingleton, Jim, 2008, Pacific Land Tenures: New Ideas for Reform. FAO Legal Papers Online #73. Available at: [www.fao.org/legal/prs-ol](http://www.fao.org/legal/prs-ol), p. 9.

81 *Ibid.*, p. 10.



landownership, in which the chief has become the landowner and authority over the people in transactions with the state and other outside parties. As a result, much customary land is being leased by powerful local chiefs who in fact do not have a rightful claim in *kastom* over land, creating a major risk for lease agreements.<sup>82</sup> These factors have led to widespread distrust of and antipathy toward leases, and suggest that conservation initiatives initiated at the local level are more likely to secure legitimacy in the eyes of landowners and therefore result in more robust arrangements. The goal then is to recognise and identify the potential of 'custom' management of land as a conservation tool. One movement that conservation efforts may fruitfully tap into is known as *kastom ekonomi* and 'self-reliance and sustainability', terms that refer to a growing tendency in Vanuatu to focus on indigenous economies instead of 'modern development' and 'progress'.

This should be seen as local attempt to encompass modernity, utilising aspects of the traditional economy and customary ways as a basis for achieving self-reliance.<sup>83</sup> It is thus well-aligned with the bottom-up, community-driven process to improve sustainable resource management embodied in the Community Conservation Area (CCA) mechanism.



Photo by user Joe Hitchcock on Flickr, 2011

### Implementation capacity

There are few conservation actors in Vanuatu, and none engaging in formal transactions over land or land rights for conservation or climate change resilience. The focal government institution for facilitating conservation leases is the Department of Environmental Protection and Conservation (DEPC). Owing to the wide geographic spread of Vanuatu's many islands, not to mention the large number of communities throughout the country, DEPC's ability to execute or oversee on-the-ground conservation transactions is constrained. The set of non-government organizations likewise is limited in number as well as scope when it comes to transaction tools. IUCN is an important source of technical support, but has not focused on transactions and is not involved in site-based efforts. Live & Learn, an Australia-based international NGO active in the Asia-Pacific region with a focus on environmental education, is implementing the Loru Forest Project, a REDD+ initiative on the island of Espiritu Santo.<sup>84</sup> Although Live & Learn have the capacity to engage in leases, they deliberately eschewed this option in Vanuatu due to anticipated obstacles presented by the customary land tenure context.

The dearth of actors with adequate capacity to pursue transaction tools in Vanuatu reinforces the DEPC perspective that for the time being the CCA remains the core tool for site-based conservation. In the absence of other capable actors, improved community management of their own lands and resources

82 Suzie Greenhalgh, interview, 10 May 2018

83 Rousseau, Benedicta and John P. Taylor, 2012, *Kastom Ekonomi and the Subject of Self-Reliance: Differentiating Development in Vanuatu*, in S. Venkatesen and T. Yarrow (eds), *Differentiating Development: Beyond an Anthropology of Critique*, Berghahn, pp. 169-186.

84 Live & Learn is also supporting coordination of RESSCUE activities in Vanuatu.

through establishment of CCAs, with support from DEPC (and others when available/appropriate), is a pragmatic response to the current context. This view also aligns with wider challenges surrounding leases in Vanuatu's customary land tenure setting. However, the capacity for proactive outreach to communities relevant to particular KBAs or sites of importance of climate resilience to encourage consideration of CCAs also is very limited.

### **Financing options**

The Environmental Protection and Conservation Act provides for an Environmental Trust Fund, to be funded by penalties and bonds, intended to support research, monitoring, management of CCAs, rehabilitation and other conservation activities. In principle, then, this could be a source of funding for transaction tools. However, given the emphasis of DEPC on CCAs, this use of funds would seem unlikely. In any case, the Environmental Trust Fund has yet to be operationalized. Financing for the use of transaction tools then would rely principally on conventional conservation funding sources: bilateral and multilateral aid flows, and philanthropic support from individuals, foundations and the private sector. The challenge in Vanuatu appears to be less a matter of identifying funding sources, and more one of absorptive capacity. Without credible actors and initiatives to which funding for transaction-based conservation and climate resilience efforts can be directed, the question of financing options is moot.

### **Management sustainability**

As with implementation capacity, the options for long-term management sustainability are limited. There are no organizations active in Vanuatu with the capacity, mandate and appetite for long-term management of conservation sites following application of a transaction tool. The government has a clear mandate but insufficient capacity, and strongly prioritizes CCAs over transactions, all the more so as transactions would increase management burdens. This leaves community self-management of CCAs as the long-term management solution, which is widely seen as obviating the need for transaction tools.

### **Vanuatu: Conclusion**

Perhaps the most significant factor with respect to the feasibility of expanding use of transaction tools for conservation and climate resilience in Vanuatu is the strong emphasis on community resource management, in national policies as well as locally motivated action. This emphasis is reflected in the NBSAP's Objective CA2b, relating to the inclusion of CCAs in the formal national protected area system.

Pursuing a lease given the contraindications described above requires clarity as to what a lease can accomplish above and beyond a CCA at a particular site, including a strong case for introducing payments into a context where conservation management is largely voluntary. In at least two cases where leases were considered as a possible tool the notion was ultimately discarded, despite substantial technical and financial support for the projects: the Nakau/Live & Learn International REDD+ project at Loru Forest and RESCCUE's efforts in North Efate. Nevertheless, there is a strong rationale for continuing to build on the RESCCUE work on exploring leases in North Efate, including development of guidelines on leasing for local landowners to enhance local control of the process.

The feasibility exercise for use of transaction tools in Vanuatu boils down to the question of what a lease can do, in general and at a specific site, to improve on a CCA. Protected area category definition, spatial prioritization and policy formulation and planning are currently fluid processes in Vanuatu, with key legislative, regulatory and execution mechanisms under development. An effort to apply conservation leases before these processes are more mature may complicate the government's task by impacting community perceptions, precedents, messaging, and conservation finance flows.

**TABLE 4: SYNTHESIS OF FEASIBILITY CONSIDERATIONS FOR VANUATU<sup>\*, \*\*</sup>**

	PURCHASE	EASEMENT	LEASE
Identification of conservation priorities	1	1	3
Policy context	1	2	2
Legal context	1	3	5
Social and cultural context	1	2	2
Implementation capacity	2	1	2
Financing options	1	1	3
Long-term management solutions	2	2	2
Average Score	1.3	1.7	2.7

\* Each factor is scored from 1 to 5 where 1 means *least conducive to feasibility*, and 5 means *most conducive to feasibility*.

\*\* The numbers reflect initial scoring based on desk review, interviews with key informants, and group discussions in stakeholder workshops.

## NEW CALEDONIA

### Conservation priorities

The area under protection on New Caledonia’s main island of Grande Terre represented about 4% of its surface in 2015. The Southern Province has four different levels of Protected Areas (PAs), while the Northern Province has six. As of 2015, there were a total of 71 terrestrial PAs in New Caledonia, 54 of which are in the Southern Province. Conservation International prepared an Ecosystem Profile in 2016 for the Conservatoire d’Espaces Naturels (CEN) of New Caledonia, in the context of EU-funded programme BEST.<sup>85</sup> However, knowledge gaps persist about biodiversity value and richness in the territory, particularly on customary land. The Ecosystem Profile noted the very high biodiversity value of the territory but also pointed to threats. For instance, 67 species found in New Caledonia’s dry forest are on IUCN’s Red List. Only 2% of original dry forest area remains, due to agricultural clearing, fires, grazing, invasive species and, more recently, urban development. Conservation of dense humid forest is another priority, particularly in Northern Province’s mining areas where there are no PAs.<sup>86</sup> The Ecosystem Profile identifies specific sites within dry forest ecosystems that require protection, with a goal of doubling area under protection and connecting forest fragments, including high altitude patches.

### Policy context

New Caledonia’s three regions – Northern, Southern, and Loyalty Islands Provinces – enjoy significant autonomy in decentralised administrative structures. The Provinces have been delegated authority for environmental policies and regulations. According to the head of the Southern Province’s environment department this control over the environmental code affords them a lot of flexibility.<sup>87</sup> It is fairly easy for instance to amend the environmental code and make small changes when needed (“those amendments can be finalized in two months”). In his own words, “we already have dynamic and adaptable tools – do we need more tools?” Several regulatory tools at the Provinces’ disposal enable them to protect biodiversity. For example, the Southern Province has prohibited the destruction of native ecosystems (called “patrimoniaux”), and any damage would incur sanctions.

85 “Profils d’Ecosystèmes de la Nouvelle Calédonie”, June 2016

86 Ibanez. et al., 2014.

87 Interview, May 6th, 2018

The range of tools currently in use or being explored explains widespread skepticism about the need for transaction tools. However, monitoring and enforcement for existing tools is a concern, due to limited resources and the risk of high incidence of infractions (despite the threat of prosecution). Existing tools rely largely on regulatory constraints and planning processes at the country, provincial, intercommunal, and municipal levels. A 2008 framework document called “NC 2025” serves as a territorial master plan. Provincial “master plans for space use and economic development” (French acronym SAEDE) were prepared as diagnostic exercises. At the intercommunal level (covering several municipalities), a “master plan for land use and urban planning” (French acronym SDAU) is a 15-year prospective document drafted by the province and municipalities. Finally, individual municipalities develop their own “urban planning master plans” (French acronym PUD).

Job opportunities may be a higher priority than environmental protection for a mayor; attracting new hotels and small industries will bring employment but may also result in pressure on the environment. Involvement of the Province in the PUD process provides some safeguards against aggressive development at the expense of biodiversity and climate resilience, but there is a persistent lack of consistency and coordination between provincial and municipal interventions. For example, native ecosystem protections in the Southern Province’s environmental code can be overlooked by municipalities when designing PUDs, without repercussions. Since 2017, the PUD process is supposed to include an environmental impact assessment, but the older PUDs do not include such assessments. Ideally, a well-documented PUD designed in coordination with the Province’s environmental and development priorities could be a valuable tool to help determine local conservation strategies, identify land parcels requiring protection, and decide what mechanisms would be best suited.<sup>88</sup>

Mining remains a powerful economic force in New Caledonia. Although political decisions around land use are likely to favor whatever the mining industry desires, conservation opportunities do exist in partnering with the mining industry, particularly through environmental offset requirements imposed on mining operators. In addition, the prevalence of mining raises the issue of social and cultural impacts. In areas around mining ventures, in particular in the Southern Province, provincial levels of government are seen to provide “inadequate environmental and social protection.” Protective legislation exists but there is little political will to enforce it.<sup>89</sup> Questions surrounding what to do with land, and the notion of development and productive use (“mise en valeur”), have been described as a “political hot potato”.<sup>90</sup> As such, most politicians avoid issuing strong opinions on the topic. On the ground however, there are customary leaders interested in a holistic view of land use, one that would include areas with productive activities but also taboo / restricted areas, hunting reserves, and commons.

## Legal context

Land in New Caledonia is managed as three distinct types of titles or land ownership regimes: private, public and customary.<sup>91</sup> Private title involves lands provided to non-customary right holders, and public land is owned by the New Caledonia government and the Provinces. On Grande Terre, a little over 60% is public land (mostly owned by the government of New Caledonia – 53%), about 19% is customary land and 18% is in the hands of private landowners.<sup>92</sup> The Loyalty Islands comprise only customary lands. On public and private land, transaction tools could be helpful in agreements or partnerships directly with landowners or users such as farmers. On customary land, purchases are not an option and the planning

88 RESCCUE workshop, Nouméa, June 14-15th, 2018

89 Horowitz, Leah S., 2017, Indigenous by association: Legitimation and grass roots engagements with multinational mining in New Caledonia, in Horowitz, L. S. and M.J. Watts (eds.), *Grassroots Environmental Governance: Community Engagements with Industry*, Routledge: London and New York, p. 87.

90 Interview, June 4th, 2018

91 [https://www.cci.nc/sites/cci/files/2018-02/cci-nc-le\\_foncier\\_en\\_nouvelle\\_caledonie.pdf](https://www.cci.nc/sites/cci/files/2018-02/cci-nc-le_foncier_en_nouvelle_caledonie.pdf)

92 <http://www.adraf.nc/component/cartographie/?zone=generale&type=TP>

tools mentioned above do not apply.

A mechanism for managing customary land pioneered in New Caledonia is the *Groupement de Droit Particulier Local* (GDPL), created to receive property surrendered in recognition of Kanak links to the land. A GDPL allows customary land owners to jointly manage land in accordance with the group's decision-making process. A GDPL represents a group, tribe, clan, or family. The GDPL appoints a representative, but she/he does not have decision-making authority; any decision is made by the entire community. By extension, GDPL now often refers to a piece of customary land associated with the location of the group or clan in question. Although the fact that the land cannot be alienated or divided still impedes certain types of transaction, the GDPL does enable customary landowners to enter into agreements such as leases. According to ADRAF, GDPLs own about 100,000 hectares in New Caledonia; with limited activity to date on much of these lands, many conservation agreements, leases or easements could potentially take place.

## BOX 5: CEN-LEGAL REVIEW OF MECHANISMS

The CEN is the most active entity in New Caledonia in the field of transaction tools and strategies. Historically, it has purchased outright land from private owners. Due to rising land prices and limited supply of high biodiversity-value parcels, CEN now pursues agreements with landowners that are simple contracts with respective obligations for both parties. Cases of financial compensation to the landowner are rare. CEN has also worked with the government and provinces, generally through free transfers of land to be managed by CEN. CEN commissioned a legal review of the mechanisms it uses and others that exist in French law that could be well suited for its work.<sup>93</sup> The main findings of this review include:

- The contracts signed between CEN and private landowners offer substantial flexibility but can be easily recused with no significant consequences, especially in the absence of financial retribution.
- In the case of sale of a parcel for which CEN has a contract with the selling owner, the contractual obligations may be overlooked by the future owner unless current contract wording is tightened.
- Though legally fragile, “sustainable collaboration contracts” are among CEN's more successful tools, offering a commitment to conservation activities when a lease may not be possible.
- When considering a larger area (where public and private land coexist), CEN can combine the use of regulatory and contractual tools.

Regarding transactions, the main recommendation was to use a combination of conservation easements, contracts (like the sustainable collaboration contracts), “rural leases with environmental clauses”, and “real property environmental obligations” (*obligations réelles environnementales*) as introduced by French law in 2016. These obligations are a middle ground between easements (although they may extend for 99 years, they are not in perpetuity) and the collaboration contracts (they are viewed as a form of compensation and come with financial incentives).<sup>94</sup>

93 “Etude juridique pour l'amélioration de la maîtrise foncière des forêts sèches en Nouvelle Calédonie”, GIP-CEN, prepared by Cabinet Plaisant (2016).

94 Ministère de la Transition Ecologique et Solidaire, 25 juin 2018, <https://www.ecologique-solidaire.gouv.fr/obligation-reelle-environnementale>



New Caledonia's 1999 organic law dictates that customary land is inalienable, non-transferrable, incommutable, and untouchable, such that no land purchases are possible on customary land. On public land, leases have been preferred to sales by country and provincial administrations. For the remainder, there are no legal obstacles to purchases but ADRAF and CEN NC have slowed down land purchases in the past few years because of the significant rise in land prices.<sup>95</sup>

Easements are cumbersome to apply as the law presupposes the existence of two adjoining land parcels (such that the easement connects the two plots). Conservation easements will require either an adjustment to the French Civil Code, which observers agree would be long, arduous, and not necessarily successful, or integration into New Caledonian civil law and Provincial environmental codes. The latter could take an estimated 18 to 36 months.<sup>96</sup>

The New Caledonia government predominantly uses leases on public land, primarily to provide farmers with long-term (generally over 30 years) security at a low cost.<sup>97</sup> Rural leases are possible on public, private, and customary lands. They can include environmental clauses or obligations, as the stated goal in the relevant law is to “apply practices on land with rural leases for the preservation of water resources, biodiversity, landscapes, product quality, soil and air, the prevention of natural hazards and the fight against erosion”.<sup>98</sup>

As of 2014, leases were used in all the municipalities harbouring customary land on the main island, for a total of 14,000 hectares and 260 leases, mostly (61%) in the Northern Province.<sup>99</sup> Many leases are signed with a GDPL. Leases on customary land can be complemented by a customary act, an official document that captures what the community will have agreed to do. The official function of customary public officer was created to facilitate agreements and ensure full representation of the community. The duration of rural leases is generally around 15 years while leases to non-Kanak people usually are set for 10-12 years.<sup>100</sup> The possibility of 99-year leases has been discussed but has not been commonly used to date. As the legal/regulatory context evolves, a lease instrument designed specifically for customary land could help boost transactions if it helps increase clarity, simplicity, and accountability.

### **Social and cultural context**

New Caledonia's contemporary land tenure system resulted from colonial efforts to introduce a system of individual land ownership.<sup>101</sup> Through government policies collectively known as *cantonement* from the mid-19th century onwards, customary land tenure and traditional leadership were superseded by administrative constructs. Communities were obliged to surrender territory in return for monetary compensation, and settlers and their cattle began to use Kanak lands. This process of dispossession ruptured ties between Kanak people and their land, and undermined traditional governance.<sup>102</sup>

After the Second World War the French government introduced a number of land reforms but tensions remained. Attempts at decolonisation have not yet resolved issues around land, as “colonial land

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95 Interview, April 23rd, 2018

96 RESCCUE workshop, Nouméa, June 14-15th, 2018

97 Interview, April 15th, 2018

98 Loi d'orientation agricole, 2006: <http://www.espaces-naturels.info/tout-interet-bail-rural-clauses-environnementales>

99 “Etude sur le bail et les mises a disposition de terres coutumières en Nouvelle-Calédonie” (September 2014)

100 Interview, May 16th, 2018

101 Ward, Alan W., 1982, *Land and politics in New Caledonia*, Canberra: Research School of Pacific Studies, Australian National University.

102 *Ibid.*, p. 5.



expropriation has left deep scars on the collective Kanak memory.”<sup>103</sup> Over the last few decades the territory has seen a significant resurgence of indigenous identity and land claims; Kanak politicians’ main concern revolves around land rights. A key demand has been to extend Kanak *réserves*, because of a need for space due to growing populations and as a way to repossess lands lost during the *cantonnement*. Nevertheless, confusion over land ownership and the fear of government land confiscation persist.<sup>104</sup>

After decades of marginalization and alienation from land, the value of customary authorities is important to most Kanak.<sup>105</sup> Throughout New Caledonia, Kanak tend to judge the legitimacy of any endeavor according to whether it has been initiated and/or supported by customary authorities.<sup>106</sup> People value their customary ways of doing things, so conservation projects should seek customary authorities’ approval. Conservation efforts that recognize cultural heritage or work in tandem with cultural heritage conservation may gain more traction. For any transaction or agreement happening on customary land, thorough community engagement and outreach will be essential.



Conflict over contracts on customary land reportedly is rare, despite the common stereotype of complexity and difficulty.<sup>107</sup> Nevertheless, any initiative at the local level will be affected by the aforementioned debate regarding development and productive use (“mise en valeur”). Within a typical

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103 Winslow, Donna, 1991, Land and Independence in New Caledonia, *Cultural Survival Quarterly Magazine*, June 1991, available at: <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/land-and-independence-new-caledonia>

104 Ibid.

105 Le Meur, Pierre-Yves, 2013, Locality, mobility and governmentality in colonial/postcolonial New Caledonia: The case of the Kouare tribe (xûâ Xârâgwii), *Thio (Cöö)*, *Oceania* 83(2), 142.

106 Horowitz, Leah S. 2008, “It’s up to the clan to protect”: Cultural heritage and the micropolitical ecology of conservation in New Caledonia. *The Social Science Journal* 45(2): 258-278.

107 Interviews: May 15th and 16th, 2018

community some will be in favor of encouraging productive use (including selling land to outside investors on private land) while others are more eager to conserve the land or develop it differently. Pursuing conservation transactions necessarily means an encounter with this debate as it is taking place within local government and communities.

### **Implementation capacity**

CEN and Southern and Northern Province administrations are the major actors in the application of mechanisms for land and land rights transactions, for both public and private land. In addition, municipalities have a vested interest in land uses that enhance climate resilience and minimizing the effect of catastrophic weather events on public land that they (or the Province) own or on customary land within the municipalities' boundaries. CEN is seeking to improve the effectiveness of its interventions by optimizing the use of contractual tools at its disposal, including the more recent options introduced in French legislation. CEN also plays a leadership role in the implementation of dry forest protection and invasive species management strategies. By statute, CEN's existence originally was limited to a 10-year period (until 2021). If CEN were to cease operating beyond 2021, the properties it owns today could be in jeopardy.<sup>108</sup>

Conservation International and WWF are the only international NGOs active in terrestrial conservation. With the greatest resources among environmental non-profits, they are well-placed to support land-based conservation mechanisms. The Ecosystem Profile noted the presence of about 20 local environmental non-profit organizations, but only a few have a terrestrial focus or carry out relevant activities. ASNNC is the oldest environmental non-profit in New Caledonia and has the broadest mission. Birdlife-partner SCO focusses on Important Bird Areas (IBAs) and managing invasive species that affect sea birds. Mocamana designs projects by bringing together various stakeholders, such as public and private land owners, non-profit organizations, companies, and elected officials; this experience as a facilitator can help design and implementation of transaction tools. Community-run Dayu Biik focuses on sustainable development and livelihoods around the Mont Panié Reserve, which it co-manages with the Northern Province. Action Biosphere has been an active advocacy organization for over 20 years, and could be a valuable partner as land and land rights transaction mechanisms become more widely used. Action Biosphere, Dayu Biik, and WWF were among the 17 founding members of Ensemble pour la Planète (EPLP) in 2006; EPLP also focuses on advocacy and covers a broad set of environmental issues. On customary land, many smaller community organizations are used to receiving grants and carrying out activities to improve their communities.<sup>109</sup>

### **Financing options**

Public funding accounts for most of the funding for environmental protection and climate change resilience in New Caledonia. This is consistent with the major role played by the government and the Provinces in carrying out environmental activities and distributing funding to organizations that do such activities. Public funding originates from various sources: the French state, the New Caledonian government, French cooperation agencies (e.g. AFD), and the EU (principally the European Development Fund). The amount of private funding flowing to conservation or climate change resilience is unclear. Besides the mining sector, some companies with economic interests in New Caledonia have set up foundations or contribute to environmental causes. For instance, the Catala-Stucki Foundation (focused on marine ecosystems) is supported by the transportation operator (Mary-D) in Amédée Island. However, according to the 2015 State of the Environment report, corporate sponsorship ("mécénat d'entreprise" in French) – which comes with a 60% tax credit for gifts to non-profits – is under-utilized for environmental support.

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108 Interview, April, 23rd, 2018

109 RESCCUE workshop, Nouméa, June 14-15th, 2018

The mining industry funds projects in the communities where it has operations. For example, Société Le Nickel (SLN – jointly owned by France and by New Caledonia's Provinces) supports education, research, and environmental work, particularly in Thio where it is the town's major employer. The company has also made small grants to community organizations through awarding the so-called "Nickel de l'Initiative" for over 20 years. There exists a wider mining industry financing mechanism, called Fonds Nickel. This Fund, established in 2009, receives mandatory contributions from the mining industry with amounts required from each company set based on the size of their operations. As the Fund's main purpose is to support post-mining land restoration, the opportunity to support protection of high biodiversity value sites may be limited.

In general, the mining industry is already heavily solicited for sponsorship and philanthropic activities, and may be resistant to additional requests from newcomers.<sup>110</sup> That said, mining companies legally are required to offset negative environmental impacts of their operations. Currently, adhoc offsets (*compensation à la demande*) and financial compensation are used in New Caledonia, while supply-driven offsets (*compensation par l'offre*) are being tested in the Southern Province.<sup>111</sup> Adhoc offsets are designed based on the specific project and carried out by the operator or an external service provider. Financial compensation is limited to a payment, generally to a non-profit organization or public entity. Supply-driven offsets consist of credits originating in actual compensation actions (e.g. habitat restoration) that can be bought by operators seeking to offset their activities.

### **Management sustainability**

CEN and the Provinces on Grande Terre have significant experience using leases, conservation agreements, and to a lesser extent purchases, and also in cooperating with each other. CEN has a clear roadmap regarding types of tools and optimal ways to use them, including long-term management. The presence of international conservation NGOs and local non-profits such as Dayu Biik with extensive experience and community credibility will be an asset when implementing transaction tools. These entities will also be able support smaller non-profit organizations or community organizations that will need capacity-building. Long-term management in many sites necessarily will rely on local organizations and community organizations, requiring training as well as technical and financial support. Ongoing links between the conservation world and communities will be essential for success. This will require far greater coordination and interaction between actors in government, civil society, and the NGO sector than is currently the norm in New Caledonia. For long-term management sustainability, the Northern and Southern Provinces' Environment Departments, CEN, and international NGOs such as WWF and CI have an important convening role to facilitate such coordination.

### **New Caledonia: Conclusion**

Transaction tools could complement the current set of mechanisms at the Provinces' disposal, particularly in the design of win-win agreements that would reduce the incidence of infractions by increasing the financial rewards of compliance through formalized agreements. The financial incentive aspect of most transaction tools would be a new element in the Caledonian context. So far, leases and more or less formal conservation agreements have been the most frequently used transaction or transaction-like tools. The major entities using these tools are the CEN and the Southern and Northern Provincial administrations. Private landowners have been involved as well as farmers, in particular when they have leased public land from the Provinces.

The introduction of newer mechanisms, with laws recently passed in France and now under consideration in New Caledonia, and CEN's interest in widening the array of tools it uses, will expand the range of

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110 RESCCUE workshop, Nouméa, June 14-15th, 2018

111 Interview, May 6th, 2018



options. The recommendations of CEN's legal review of the various mechanisms at its disposal pointed to the notion of a “legal toolbox”, in that the different characteristics of these transaction tools make it possible for CEN to apply the most appropriate and relevant mechanism for a specific context. With the required political will, conservation easements also could be used within the next few years.

There is potential to expand the use of transaction tools on customary land. Leases have been fairly widely used for housing and agricultural purposes; GDPLs may also choose to expand their activities to include conservation, using their land as an instrument for economic empowerment. The feasibility of expanding leases in this direction hinges on effective communications and stakeholder engagement. With respect to social and cultural considerations, the feasibility of using leases is furthered on customary land by traditional linkages between people and the land. Engagement and relationship management will benefit from emphasis on the fact that a correctly structured transaction will reinforce ownership, cultural links, and local management capacity.

**TABLE 5: SYNTHESIS OF FEASIBILITY CONSIDERATIONS FOR NEW CALEDONIA<sup>\*,\*\*</sup>**

	PURCHASE	EASEMENT	LEASE
Identification of conservation priorities	3	3	3
Policy context	3	1	4
Legal context	5	2	5
Social and cultural context	4	2	4
Implementation capacity	5	2	5
Financing options	2	1	3
Long-term management solutions	5	4	5
Average Score	3.9	2.1	4.1

\* Each factor is scored from 1 to 5 where 1 means *least conducive to feasibility*, and 5 means *most conducive to feasibility*.

\*\* The numbers reflect initial scoring based on desk review, interviews with key informants, and group discussions in stakeholder workshops.

## FRENCH POLYNESIA

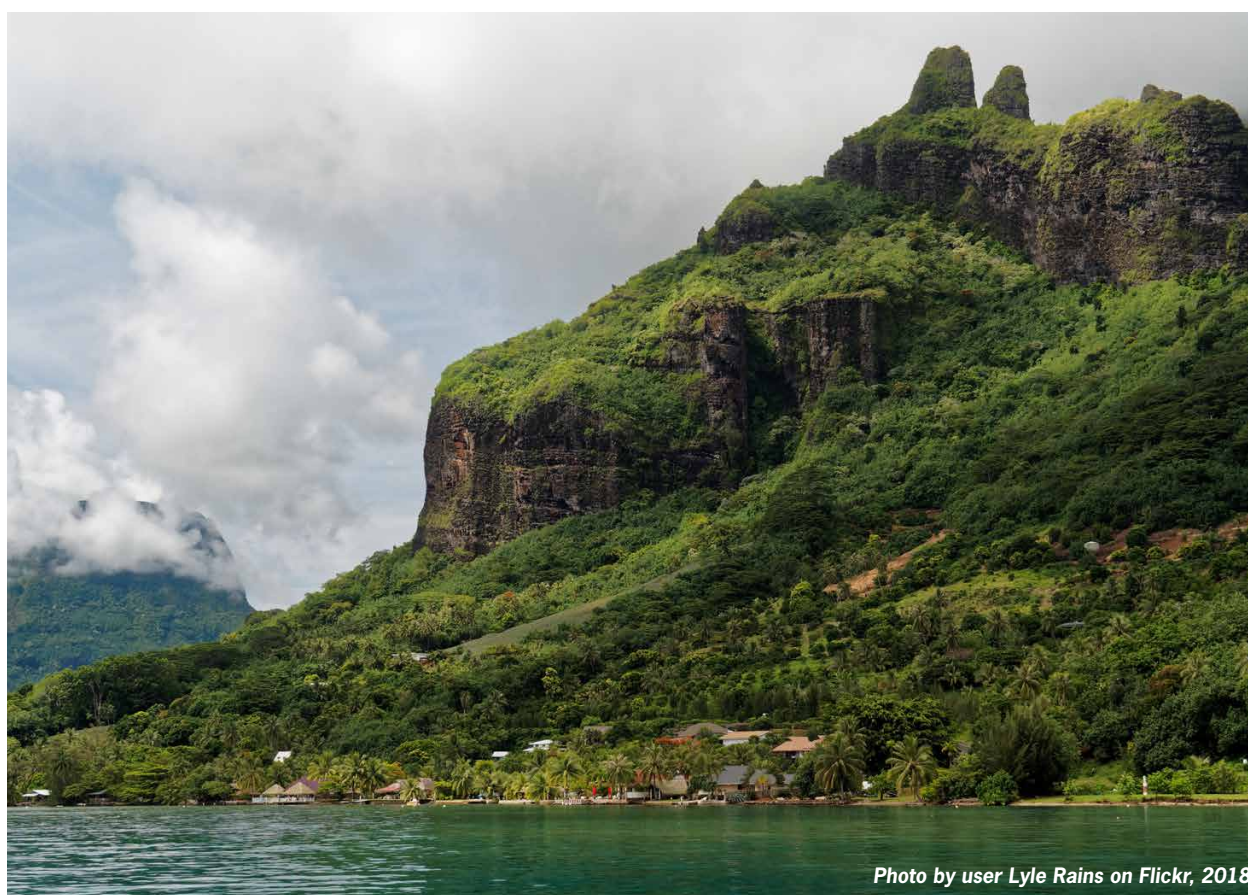
### *Conservation priorities*

The geography of French Polynesia makes its environment inherently fragile. The territory comprises 120 islands scattered in 5 archipelagos over 5.5 million km<sup>2</sup>, with less than 300,000 inhabitants. As noted in a review of French Polynesia’s environmental policy conducted in 2017 by the Chambre Territoriale des Comptes (a public administration audit body), “indigenous species are particularly vulnerable because they occupy a limited land area (e.g. 300 endemic species listed in Rapa over only 43 km<sup>2</sup>), because of their low population number, and their limited capacity to resist competition and predation by species imported by man”.<sup>112</sup> The report also cited evaluations by the government: “biodiversity is threatened”, “many lagoons [are affected] by overfishing”, “the territory’s waters and coastline are in bad shape”, and “too many freshwater rivers are polluted”. French Polynesia is the French Overseas Territory with the most extinct or threatened species, and ranks 16<sup>th</sup> in the global list

112 Chambre Territoriale des Comptes (PF): Rapport d’observations définitives – Collectivité de la Polynésie Française (politique de l’environnement) – Exercices 2010 et suivants (2017) [https://www.ccomptes.fr/sites/default/files/2017-10/PFR2017009\\_0.pdf](https://www.ccomptes.fr/sites/default/files/2017-10/PFR2017009_0.pdf)

of countries and territories with the highest number of threatened species. There is broad consensus among stakeholders from a range of sectors that the level of actual protection is inadequate.

A total of 115 sites have been identified as significant for conservation, including 15 that are high priority or critical, but only between 2% and 4% of the land area is formally protected.<sup>113</sup> French Polynesia has 51 Protected Areas (PAs).<sup>114</sup> Thirty-nine PAs have been created since 2010, but 40% of these are Marine Protected Areas. Moreover, management of existing reserves is inadequate as they may lack a completed management plan (e.g. Scilly) or a management committee (e.g. Marquesas); the Chambre Territoriale report adds that a number of PAs simply “lack surveillance or are little or not managed at all”. According to the report, a number of protection projects have been initiated in the past 30 years but they have not been completed (for example, a natural reserve that would have included Te Pari cliffs in Tahiti).



## Policy context

To this day, the government<sup>115</sup> has not been able to finalize a broader conservation strategy. A “sector policy” for biodiversity or nature was formulated by the Environment Department (DIREN), but for internal use only. According to the Chambre Territoriale report, “there does not appear to be a protection strategy designed for the entire French Polynesia territory, or even at the archipelago level”. An effort to formulate local environmental charters was launched in 1994 and documents were drawn up for Tahiti,

113 Note that the Convention for Biological Diversity (CBD) goal for 2020 is that every country should have 17% of its land (terrestrial) under protection.

114 <http://www.environnement.pf/les-espaces-naturels-protoges-et-geres-0>

115 French Polynesia’s central authority (which enjoys a large degree of autonomy from France) is commonly referred to as “le Pays” (the Country).



Raiatea-Taaha, Moorea, Huahine and Bora Bora, but they have not been implemented. As noted by the Chambre Territoriale: “there have been plenty of working groups and strategic documents but too rarely have those processes produced anything concrete”. The definition of a broader conservation strategy is made difficult by a significant lack of data: there is no forest inventory and no data on erosion and resulting sedimentation, air quality, land use, or the impact of waste.

The Chambre Territoriale report states that there have been “repeated failures since 1984 at putting in place a general land use plan for the territory”. Therefore, there is no coherent broader framework for municipal master plans (*Plan Général d’Aménagement*, or PGA) or more detailed land use plans (*Plan d’Aménagement de Détail*, or PAD) for specific areas. The majority of municipalities have yet to complete their land use plans, and there is no PGA in several areas with fragile biodiversity or important urban planning issues (e.g. mountainous areas, Bora Bora, Faa’a). In its assessment of these planning tools, the Chambre Territoriale report concludes that, “experience has shown that PGAs ... are more tools to organize space than to protect the natural environment”. However, according to one official, the government has the right planning tools: “we just have to adapt them to the level of protection that we seek”.<sup>116</sup> He argues that the issue is rather one of enforcement: “it is then just a question of having the appropriate resources for enforcement, which we don’t have”.

The notion that there is little land available is very present in French Polynesia, so setting aside land for conservation, through transactions or other means, appears problematic to many stakeholders. In a region struggling with poverty it is expected that there will be more of a focus on economic development, productive activities, and the provision of social services. As stated by one government official, “Nothing can be done on the environmental front with politicians if environmental measures do not have social and economic benefits”.<sup>117</sup> Another added, “The environment is not the government’s priority”.<sup>118</sup> Quoted in the Chambre Territoriale report, the Environment Minister himself indicated that “The environmental policy is not considered a priority. It is still too often perceived as an obstacle linked to a series of constraints to urban and economic development”.

## Legal context

French Polynesia houses multiple land tenure systems. Rapa Island in the Austral archipelago is the only area with customary land ownership and no land registry. In the land registry for the remainder of the country, completed as of 2017, 20% of land is public and 80% private, of which 50% is under joint ownership (*indivisions successorales*).<sup>119,120</sup> Jointly owned properties commonly have dozens or even hundreds of owners, which has made leases or other types of agreements as well as sales rare because of the complexities involved. Numerous private (as well as public) land parcels are subject to conflicts over tenure claims, and thus unavailable for use or transactions. As mechanisms to resolve joint ownership situations become available, the supply of land for use and purchase, and the resulting threat of unsustainable development, will increase.

French Polynesian laws are framed within French Republic’s legal regime, particularly the Civil Code. Although French legal principles remain applicable, many areas, including aspects of property rights and transactions, have been devolved to the French Polynesia Legislative Assembly. The challenges

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116 Interview, April 27th, 2018.

117 Interview May 2nd, 2018

118 Interview April 27th, 2018

119 Source: “Sécurisation foncière en Polynésie française – Restitution des travaux du colloque des 27 et 28 novembre 2017.”

120 Grauman, Teresa, Un projet de loi pour faciliter la sortie de l’indivision, <https://la1ere.francetvinfo.fr/polynesie/tahiti/polynesie-francaise/projet-loi-faciliter-indivision-548207.html>

of this hybrid system are ongoing.<sup>121</sup> In particular, joint ownership has constituted a major obstacle to the supply of land for sale or other transactions. This is a major issue as politicians and many others consider it as hampering the territory's development. Significant resources have been allocated to resolve joint ownership conflicts (referred to as "sorties d'indivision"). A new land court was created, housing three separate courts working simultaneously. However, resolution can be long and complex with some cases dating back over twenty years and counting more than 2,000 joint owners.

Land tenure uncertainties extend to relations between municipalities and the government, as in transactions where municipalities realized that they did not own land but that ownership rested with the government. From one municipality to the next, public land on municipal grounds can be owned by the "Pays" (government) or by the municipality. Therefore, as with private land, any transactions on public land also require extensive due diligence and investigation of ownership status.

Land purchase has been used sporadically as a public policy tool in the past, but only 14 hectares of land have been bought by the government for their protection. Legally, there are no obstacles to land purchases, but land transactions of any kind, and purchases in particular, can be encumbered by joint ownership. The profound economic and emotional implications of a sale can make purchases complex to arrange, even in the absence of conflict among joint owners. However, there is a great deal of variety among landowners in French Polynesia, including some very large individual or institutional landholders. Thus, dealing with that sub-set of landowners for biologically significant parcels presents more potential because of the greater clarity in land tenure and simplicity of having a single interlocutor.

Community organizations and municipalities have pursued right of way agreements with landowners to organize public hiking trails. However, as in New Caledonia, such agreements are often verbal and landowners can change their minds overnight, suggesting a role for more formalized easements accompanied by incentives. Easements exist in French Polynesia as part of the Civil Code, in the form of servitudes which are traditionally granted for rights of way, scenic purposes and water access.<sup>122,123</sup> They involve servient and dominant tenements, in which the dominant tenement (land parcel), has certain enforceable rights (e.g. the right to use an access path) over an adjoining parcel, the servient tenement.<sup>124</sup> This construction limits the use of easements for conservation purposes.<sup>125</sup> A new law passed in France (Loi 2016-1087) better addresses conservation needs through *L'Obligation Réelle Environnementale* (ORE), allowing contractual agreements between a landowner and public institution, a public collectivity or a moral person to protect the conservation values of a property.<sup>126</sup> This arrangement is recorded by a notary as an "acte authentique" in the local land registry, constituting a perpetual real interest in the property.

The ORE construct could provide a model for adaptation in French Polynesia as an alternative for conservation on private land. A territory-level law (*Loi du Pays*) would be needed for conservation easements of this type to be applicable. It would have to be advocated by the Environment Department and presented by the Environment Ministry to the French Polynesia Assembly, after consulting French Polynesia's Economic, Social, and Cultural Council (French acronym CESC).

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121 Bambridge, Tamatoa, What are the lessons to be learned from the rahui and legal pluralism? The political and environmental efficacy of legal pluralism.

122 Worliczek, Elizabeth, Customary Land Tenure and the Management of Climate Change and Internal Migration. *Land Tenure Journal*, 2-11 <http://www.fao.org/nr/tenure/land-tenure-journal/index.php/LTJ/article/view/36/76>

123 Direction des Affaires Foncières, <http://www.dgae.gov.pf/article164-servitudes/>

124 DGAE, Servitudes, <https://www.dgae.gov.pf/article164-servitudes/>

125 Servitudes, La Libre Circulation est une Obligation Juridique [https://www.tahiti-infos.com/Servitudes-la-libre-circulation-est-une-obligation-juridique\\_a146674.html](https://www.tahiti-infos.com/Servitudes-la-libre-circulation-est-une-obligation-juridique_a146674.html)

126 <https://www.efl.fr/droit/immobilier/details.html?ref=ui-6429bd77-0ace-4d3a-a3f0-8778a7cf9c5b>

The legal framework for leases is well developed and readily applied to conservation when ownership complexities can be overcome. SOP Manu, BirdLife's partner organization in French Polynesia, has worked with the government to lease an island (public land) in exchange for a symbolic payment of one Franc to protect endemic and threatened bird species present there. Long-term leases with farmers (on land owned by government) are common practice in French Polynesia. In the past few years, these leases increasingly include environmental obligations such as limitations on production levels or prohibitions against cultivating slopes to limit erosion. However, enforcement can be a challenge, both because of limited government resources and a lack of political will to impose more stringent obligations that would curb productive activities. Conservation-related agreements between the administration and private owners are not new; thirty to forty years ago, the territory struck agreements with a number of private landholders to carry out reforestation on thousands of hectares.<sup>127</sup> However, there are no recent examples.

### **Social and cultural context**

Realizing the need for conservation in the face of sea-level rise, increasingly severe weather events, and population growth, many communities have embarked on reviving traditional resource management systems. A key example of this is *rahui*, a taboo system that enforces a prohibition over certain marine and land areas and/or species based on traditional authority and sacred power.<sup>128</sup> The revival of culture includes the forging of new or renewed relations with natural resources, spirits and ancestors, and the establishment of 'traditional ways' of organizing societies. People plant and harvest with a strong commitment to subsistence agriculture and emphasis on social practices of exchange and respect.<sup>129</sup>

This revival comes with a significant reluctance towards land transactions. Although there is a tradition of long-term agreements between landlords and land users without monetary compensation, formal transactions would be seen as approximating land loss and thus loss of identity. In its comprehensive review of French Polynesia's environmental policy, the *Chambre Territoriale* report notes that,

*...charges for environmental services<sup>130</sup> and enforcement with possible repercussions in case of violations have been historically viewed by the population as constraints to avoid, whatever the environmental consequences. Arguments used in studies that have been conducted on the subject said that it did not correspond to the local culture and that the lack of or limited economic means of part of the population have forced government agencies to provide environmental services for almost free.*

Similarly, the perpetuity of easements may not appeal to landowners reluctant to cede property rights. The notion of easements may be better received if linked to the long-term protection of culture and traditions. More generally, participants in a workshop conducted in the course of this study agreed that there is a consensus in French Polynesia on the importance of culture and traditions, whereas conservation as a goal may be more controversial.<sup>131</sup> Thus, linking cultural and conservation elements when pursuing protection or sustainable use of a land parcel may increase the probability of success.

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127 Interview, April 27th, 2018.

128 Ibid., p. 2.

129 Donaldson, Emily C. 2018, *Troubled Lands: Sovereignty and Livelihoods in the Marquesas Islands*, *International Journal of Environmental Studies* 75(2), 344. See also Richard Moyle, 2018, *Ritual and belief on Taku: Polynesian Religion in Practice*, Adelaide: Crawford House.

130 'Environmental services' here connotes such functions as water provision and waste management.

131 RESCCUE Workshop, Papeete, June 19th, 2018.

The historical context of land rights has a strong influence. There remains a strong sense that the colonial land allocation process was unfair and led to widespread spoliation and fraud. There is a general consciousness of a track record of expropriation of land parcels by the government (for road construction for example) without prior consultation and recourse, with unequitable financial compensation. Such drastic practices are no longer the norm, but there persists a high level of skepticism among landowners towards land deals with the government.



Photo by user Julbo Eyewear on Flickr, 2012

### **Implementation capacity**

French Polynesia does not feature the presence of international conservation NGOs such as WWF and Conservation International active in terrestrial settings. The US-based Pew Charitable Trusts has an office in Papeete, but is focused on marine conservation. The State of the Environment report found fewer than 40 organizations active in conservation, adding that “non-profits are often created to take care of a localized problem, in a valley for instance. Once the problem has been solved the organization becomes less active”. SOP Manu is the biggest environmental NGO in the country. It has experience dealing with multiple actors, namely public and private land owners (including dozens of joint owners), as well as communes and resource users on public land in particular. A federation of environmental non-profits (FAPE) was created in 1988 and counts over 30 members. FAPE could play a leading role of convener or broker in the implementation of land-based conservation mechanisms.

The public administration and its various departments involved in environmental protection will be a major actor, primarily for transactions on public land but also on private land where its technical assistance could be helpful. However, the Chambre Territoriale report noted a lack of resources for effective environmental governance. The public administration’s geographic coverage is uneven, and

government resources are limited outside Tahiti. Given the limited reach of government, municipal administrations are particularly influential stakeholders. They will be direct partners in transactions that take place on public land owned by municipalities. They are also key players in terms of the need to coordinate conservation efforts with land use plans. Transaction-based strategies in French Polynesia therefore need to include components designed explicitly to achieve constructive engagement with municipal-level government.

### **Financing options**

Public funding (government, France, EU) constitutes the main source for the support of conservation and climate resilience activities in French Polynesia. A feature specific to French Polynesia is the existence of four different environmental taxes. The receipts of two of these support broader environmental actions: the tax for environment, agriculture, and fishing (French acronym TEAP), also called “green tax,” equal to 2% of the value of imported goods that averaged 2.5 billion FCFP per year between 2005 and 2015 (about €21 million); and the environmental tax for recycling vehicles (French acronym TERV), based on the value of imported vehicles, that averaged 145 million FCFP between 2011 and 2015 (a little over €1 million).<sup>132</sup> However, the TEAP has a broad mandate for use of these funds, conservation being just one of several supported needs (others including waste management, sanitation, and river cleanup, for example), and recycling claims the bulk of TERV revenue.

Some private foundations (e.g. Fondation Total, the Pew Charitable Trusts) support conservation work in the territory, but much of this support is more readily available for marine rather than terrestrial conservation, and many donors that support global conservation work restrict their programming to developing countries. One exception is the Critical Ecosystem Partnership Fund (CEPF), as Micronesia-Polynesia is one of the biodiversity hotspots where CEPF funds have been deployed.<sup>133</sup> More generally, French Polynesia seems to have attracted very little international philanthropy. Some major tourism actors present in the country have struck partnerships to compensate for their environmental footprint, such as the Accor hospitality group whose Sofitel property in Moorea sits on a Marine Protected Area that it helps protect through targeted funding.

### **Management sustainability**

Local conservation non-profit organizations should participate in future purchases, easements and leases. SOP Manu has developed considerable relevant experience. FAPE has an excellent reach in the conservation sector and thus could be an effective convener or intermediary for future capacity-building. The Association for the Promotion of French Polynesian Municipalities (French acronym SPC) that groups 46 out of 48 of the territory’s municipalities could play a similar role with its members (mayors and municipal councils) with respect to training on the various transaction tools. Communities will be important for long-term management of on-the-ground conservation work with respect to conservation leases and easements on customary lands. As one ingredient in institutional management capacity, the value of forming management committees in the affected communities has been consistently pointed out. Training around governance and the work of those committees would help build management capacity in communities.

### **French Polynesia: Conclusion**

Overall, the supply of land for transactions historically has been limited in French Polynesia because of geography and complex multi-generational joint ownership situations. To date, land purchases, leases,

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132 All figures from the 2015 State of the Environment report.

133 <https://www.cepf.net/our-work/biodiversity-hotspots/polynesia-micronesia>



and more or less formalized conservation agreements have been used, but several constraints complicate efforts to apply such tools at scale. Despite the introduction of new provisions and resources to resolve multi-generational joint ownership situations, it is unlikely that the amount of land available for transactions will grow significantly in the near future.

The institutional landscape is comprised of the territory's administration and government ("Le Pays"), including the Environment Department and other departments that impact environmental matters (e.g. Land, Agriculture), and of municipalities. Relations between these two levels of government are not always smooth, such that the reduced likelihood of easy and effective collaboration may hamper the feasibility of transaction tools (and other approaches).

There are a number of non-profits active in terrestrial conservation but most of them are small and local. The most notable is SOP Manu which has significant experience with leases and conservation agreements, but not with purchases for lack of adequate financial resources. With the help of FAPE to coordinate initiatives, SOP Manu could help build the capacity of smaller organizations related to conservation agreements and leases in particular. Likewise, should financial resources become available, SOP Manu could apply its technical expertise to land purchases for conservation.

Conservation easements could be effective solutions to solidify right of way agreements or avoid the proliferation of small walls on the coastline that lead to the disappearance of beaches. Right of way agreements have been used but they have suffered from poor enforcement. Small walls are popular in French Polynesia among those holding property on the coastline, but have caused severe erosion. In these two cases, the introduction of conservation easements could formalize agreements, make rights of way more permanent and freeze further development of small walls already present on the coastline. However, a broad cross-section of the environmental stakeholders views easements with skepticism due to their permanence.

Perhaps the most feasible avenue for expanding use of transaction tools is to extend applications of leases through longer durations and more contracts happening on private lands (for instance, with farmers who have relied principally on public land). Particularly if further examination of conservation easements confirms resistance on the part of landowners, leases and contracts would provide a more feasible solution for French Polynesia. Longer durations will suit those willing to make longer-term commitments without imposing the irreversible binding nature of easements for landholders. Contracts with farmers on private lands will offer more economic opportunities to property holders and farmers in the form of incentives for conservation.

Finally, the provision of payments has not been the norm in the majority of available examples in French Polynesia. Indeed, the absence of payments has often characterized transactions such as right of way and conservation agreements, and government agency representatives emphasize enforcement of appropriate regulations as a higher priority than application of new tools. Although payments or compensation might be attractive to landholders, the feasibility of an effort to expand use of transaction tools could be hampered by this perspective on the part of key government stakeholders.

**TABLE 6: SYNTHESIS OF FEASIBILITY CONSIDERATIONS FOR FRENCH POLYNESIA<sup>\*,\*\*</sup>**

	PURCHASE	EASEMENT	LEASE
Identification of conservation priorities	2	2	2
Policy context	2	1	3
Legal context	3	1	4
Social and cultural context	3	1	4
Implementation capacity	2	1	2
Financing options	2	1	3
Long-term management solutions	3	3	3
Average Score	2.4	1.4	3

\* Each factor is scored from 1 to 5 where 1 means *least conducive to feasibility*, and 5 means *most conducive to feasibility*.

\*\* The numbers reflect initial scoring based on desk review, interviews with key informants, and group discussions in stakeholder workshops.

## CONCLUSION

For the use of a particular transaction tool at a specific site, a thorough feasibility assessment will be required before proceeding; this report does not serve as a substitute for site-specific due diligence. Rather, it is intended to inform deliberation on whether investment in a wider strategy to expand use of transaction tools may be warranted and worthwhile in each focal PICT, and what form such strategy might take. In addition, the analysis may help efforts in other PICTs structure thinking around the potential for increased application of land and land-rights transaction tools.

The analysis indicates that circumstances in each PICT with respect to transaction tools vary considerably, such that strategies to expand their use (if warranted to begin with) would take quite different forms. That said, there are several common points shared between Fiji, Vanuatu, New Caledonia, and French Polynesia:

- The definition of conservation priorities, though at different stages of advancement in the four PICTs, requires further refinement in all. In particular, climate resilience is not factored into existing priorities. To inform transaction strategies, priority mapping must include thorough mapping of tenure and ownership details for potential sites.
- In each PICT, there are no legal obstacles to conservation purchases per se, but the amount of land that is available for purchase in priority areas is known to be limited in Fiji and Vanuatu and likely to be limited in New Caledonia and French Polynesia. Therefore a major investment to catalyze purchases is not warranted, though opportunistic responses to parcels that become available may be justified.
- Conservation easements are unknown in all four of the focal PICTs. Generally, provisions for easements in the various legal regimes envision affirmative rights such as rights of access, rather than restrictions on rights more typically relevant to conservation easements, such as giving up development rights. Moreover, on native or customary lands the notion of ceding rights in perpetuity is likely to encounter resistance. Therefore conservation easements remain at an experimental stage, warranting a search for promising sites for pilot/

demonstration initiatives. In New Caledonia and French Polynesia, conservation easements would require passage of legislation.

- In each PICT, legal frameworks accommodate the use of leases to achieve conservation and climate resilience objectives. This is attributable to the fact that leases are feasible in each country and territory to facilitate various types of investment in economic development (agriculture, forestry, tourism, mining, residential construction, etc.), and that the provisions for such leases can be adapted for conservation. However, even if legally practicable, the actual scope for using leases varies widely, primarily as a function of complexities surrounding land tenure.

With respect to feasibility for expanded use of transaction tools for conservation and climate resilience in each of the focal PICTs we offer the following concluding summaries:

- **Fiji:** In Fiji there are compelling precedents for the use of long-term leases to achieve conservation objectives. There are a set of mutually supporting actors that collectively offer experience and capacity to pursue additional leases, and thereby progress toward national conservation targets. The National Trust of Fiji serves as a logical focal entity to orchestrate a broad-based strategy, given investment in the capacity needed to scale up its efforts. In the meantime, strategic purchases are in process, and there is interest in experimenting with conservation easements. Existing national prioritization of terrestrial conservation sites can help guide a transaction strategy, but is subject to further refinement. However, consultations and coordination would be required to ensure an appropriate balance between government and non-government efforts to secure and manage additional sites for conservation and climate resilience.
- **Vanuatu:** Given the nature of land tenure in Vanuatu, purchases are not possible and conservation easements would be difficult to apply in their conventional construction. This leaves leases as a possible transaction tool, but distrust of lease arrangements is widespread and capacity for site-management after securing a conservation lease is limited. Instead, key actors in Vanuatu (notably the Department of Environmental Protection and Conservation) emphasize the use of formally recognized Community Conservation Areas (CCA) to promote voluntary community self-management for conservation and sustainable resource use. Although a conservation lease could in principle reinforce a CCA (e.g. offer incentives in the form of payments and provide a layer of legal robustness), it is not clear that under the present climate surrounding land issues in Vanuatu such an arrangement would solve more problems than it might cause.
- **New Caledonia:** Conservation efforts in New Caledonia benefit from the presence of a dynamic and capable actor in the Conservatoire d'Espaces Naturels (CEN). CEN itself has examined the potential for various legal mechanisms and transaction tools to advance conservation in New Caledonia. Having to date relied principally on a form of voluntary collaboration contract, they envision also using a combination of rural leases with environmental obligations, conservation easements, and an instrument related to easements, *l'Obligation Réelle Environnementale*. Moreover, the organization of customary land ownership over about 100,000 hectares under *Groupements de Droit Particulier Local* (GDPLs) facilitates transactions such as conservation leases on customary lands. Thus, expanded use of transaction tools is clearly feasible, constrained mainly by the availability of funding, especially in a context of rising land prices.



- **French Polynesia:** In French Polynesia there appears to be a strong sense that new transaction tools are less of a priority than efforts to ensure more consistent and effective application of existing tools and regulations. In particular, government planning tools for zoning and land use offer frameworks to rationalize and designate additional conservation areas (as is also the case in New Caledonia). Complex situations with respect to group landownership could make efforts to apply transactional tools arduous and expensive. Nevertheless, precedents set by agricultural leases do suggest potential for conservation leases. In addition, the introduction of environmental obligations into agricultural and other land use leases may offer a pragmatic way to pursue conservation objectives using existing arrangements.

**TABLE 7: SUMMARY OF AVERAGE FEASIBILITY SCORES\***

	PURCHASE	EASEMENT	LEASE
Fiji	4	2	4.4
Vanuatu	1.3	1.7	2.7
New Caledonia	3.9	2.1	4.1
French Polynesia	2.4	1.4	3

\* Each factor is scored from 1 to 5 where 1 means *least conducive to feasibility*, and 5 means *most conducive to feasibility*. The figures in this table are the average of individual feasibility factor scores for each PICT, per transaction tool.



Photo by user Possamai Stéphane on Flickr, 2011

## 4. RECOMMENDATIONS

### GENERAL RECOMMENDATIONS FOR THE PICTS

Based on the global review of mechanisms and the feasibility assessment for transaction tools in Fiji, Vanuatu, New Caledonia and French Polynesia, a few general recommendations emerge that are relevant to any PICT with respect to expanded use of these tools. Of course, in any geography additional financing for conservation in general and transaction-based conservation in particular would be helpful. However, to ensure that additional financing, once secured, could be used to maximize beneficial impacts, a strong institutional context is essential. In practical terms, this means the presence of an entity with a strong, unambiguous mandate to advocate for and lead the use of transaction tools for conservation and climate resilience, and sufficient capacity to do so. In this respect Fiji and New Caledonia benefit from the presence of the NTF and CEN respectively (as well as greater presence of international conservation organizations); in Vanuatu and French Polynesia investment in such an entity is highly desirable.

In the United States, the Land Trust Alliance (LTA) is an important source of support for organizations seeking to use different transaction tools for conservation.<sup>134</sup> The LTA has more than 1,000 members, out of about 1,700 land trusts in the United States alone. For efforts to promote land purchase as a conservation strategy, the LTA provides a model institution that advocates for supportive policies and incentives, provides training and guidance, helps trusts respond to threats, and generally promotes the land trust approach to conservation among the public as well as policy-makers. For example, the *Land Trust Standards and Practices* provide a valuable guide for designing a land trust mechanism that can be adapted to non-US contexts.<sup>135</sup> In Australia the aforementioned ALCA plays a similar role, with the potential for regional exchange.

A national or territorial land trust entity should have good links to the legal community, through staffing, board representation, and collaborative endeavors. On an immediate practical level, such links are beneficial to identifying opportunities and executing transactions. More generally, relationships with the legal community will strengthen the trust's ability to work with governments to interpret and develop laws and regulations in ways that facilitate further transactional approaches to conservation. In particular, continuous efforts to increase the degree of permanence of protection for parcels under conservation transactions are crucial, to provide the confidence needed to attract additional conservation finance.

With respect to financing for transactions in pursuit of conservation or climate resilience, the existence of standing financing mechanisms would be of immense value. Possible transactions for particular sites can emerge in small windows of opportunity, and financing to enable actors to respond rapidly to such opportunities is limited. Moreover, most transactions will involve long-term costs (for site management, stakeholder engagement, legal enforcement, etc.), and a standing mechanism to channel funding to cover these costs can offer significant cost efficiencies. Typically, this need is discussed in terms of endowed funds that generate investment income to cover annual recurring costs. A national conservation trust fund with the ability to serve as an umbrella for sub-accounts dedicated to specific sites can be an effective and efficient mechanism for managing such funds. The Micronesia Conservation Trust can serve this function at a regional level; in some countries or territories, the number or scale of anticipated transactions may warrant a domestic fund, as in Fiji where stakeholders are contemplating the possibility of expanding the Sovi Basin Trust Fund to become a national terrestrial protected area fund. Although capitalization of conservation trust funds can be challenging, global experience demonstrates a wide range of potential revenue sources, including green fees and taxes, protected

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134 <https://www.landtrustalliance.org/why- conserve-land/how-it-works/protected-forever>

135 <http://s3.amazonaws.com/landtrustalliance.org/LandTrustStandardsandPractices.pdf>



area entry fees, contributions from the tourism sector, payments under biodiversity offset frameworks, official development assistance (ODA), climate finance, and global environmental philanthropy.

With respect to particular transaction types, conservation easements remain highly underdeveloped. In Fiji, the legal framework accommodates a type of conservation easement, but this has yet to be tested in practice. Building on legal mechanisms developed in France, there are potential tools in New Caledonia and French Polynesia. The example of the Yela Forest Conservation Easement in Kosrae (Federated States of Micronesia) is compelling, but it is the only one in the region. The work reflected in this report suggests that there may be scope for easements in other PICTs, but this depends on factors specific to each country and territory. Therefore, addressing the vacuum with respect to easements in the PICT region will require legal and regulatory efforts, exploration of possible tax incentives, and, eventually, pilots or demonstration projects tailored to each individual jurisdiction. Prospects for achieving permanent conservation status without relinquishing ownership must be considerable throughout the region, and in many PICTs leases could serve as a stakeholder engagement 'entry' on a path towards an easement.

Another area that would benefit from jurisdiction-specific examination in each PICT is the specific question of land trusts across the region, looking at variations and creative applications as solutions to challenges of tenure, ownership, governance, etc. This report found a range of responses to these challenges in the four focal PICTs that were examined; other PICTs could offer even more lessons and models. A third critical information gap that needs to be addressed in each PICT involves spatial information on biodiversity, climate resilience, land tenure, opportunity costs, etc. required to advance on mapping conservation priorities and the overlap between priorities and tenure/ownership. This information is essential for a strategic approach to land protection, including expanded use of transaction tools.

In sum, recommended steps to facilitate expanded use of transaction tools throughout the PICT region include support for:

- Development, where lacking, of dedicated national or terrestrial conservation trust institutions such as the NTF in Fiji or CEN in New Caledonia.
- Establishment of a regional Land Trust Alliance to seek synergies through joint learning, financing efforts, advocacy for supportive policies, etc., and/or cultivating links to ALCA.<sup>136</sup>
- Development of national or terrestrial conservation trust funds (recognizing that for some PICTs relying on a regional financing mechanism may be more cost effective).
- Applying local legal expertise to the development of pilot projects that demonstrate the scope for conservation easements tailored to individual jurisdictions.
- Further documentation of jurisdiction-specific solutions to challenges of customary land tenure, collective land ownership, governance, etc. as a means to facilitate land transactions.
- Refinement of geospatial information layers in each PICT, to facilitate site prioritization on the basis of biodiversity, anticipated climate change impacts, land ownership, and opportunity costs.

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136 <https://www.alca.org.au/>

## FIJI RECOMMENDATIONS

The key factors that inform recommendations with respect to transaction tools for conservation and climate resilience in Fiji are that: 1) 88% of land in Fiji is under customary tenure and thus unavailable for purchase; and 2) there are several successful examples of leases in Fiji for conservation and climate-related initiatives (REDD+) by the National Trust of Fiji (NTF), the Fijian Government, and environmental and climate-focused NGOs. Therefore the primary tool for applying conservation status to additional areas in pursuit of Aichi targets and national policy goals will be conservation leases, building on precedent and the growing body of experience.

When opportunities to purchase strategic priority areas arise, the National Trust of Fiji (NTF), the government, and other partners should respond as financial and other constraints allow, but such opportunities are likely to be few and far between. Although easements are an option under Fijian law (in which they are termed covenants), they have not yet been used for conservation purposes, and it is not clear to what degree there would be an appetite to do so on the part of landowners. That said, seeking a suitable site to pilot a conservation covenant with the NTF could generate an important learning and demonstration opportunity.



Conservation stakeholders convened under the aegis of the Protected Area Committee (PAC) have identified priority sites for terrestrial conservation. However, to inform wider strategy for use of transaction tools, this prioritization needs to be advanced further and refined. One key factor is to explicitly incorporate climate considerations, so that in addition to biodiversity and ecosystem services the map of priorities reflects needs for climate resilience. This would incorporate, for example, anticipated changes in precipitation and shifts in habitat range as a consequence of climate change. Another essential element is to develop an information layer that reflects land ownership, so that strategy can be informed by complexity of tenure arrangements (number, size and distribution of

landowning units). Finally, prioritization would benefit from some characterization of opportunity costs and analysis of compatible land uses.

The principal constraint to area-based conservation in general and transaction tools in particular, noted by multiple informants, is the amount of funding available. Several sources argue that Fiji needs a sustainable financing mechanism for protected areas, and discussions through the PAC are ongoing as to structure, mandate, funding sources, and other design features of such a mechanism. A protected areas fund could address both costs of transaction tools and management costs, and would provide a powerful basis for spreading awareness of conservation leases as a viable option among Fijian communities. Therefore a strong recommendation to any party with an interest in supporting wider use of transaction tools is to support development and capitalization of a national protected area trust fund in Fiji, by investing in ongoing processes on this front under the PAC.

Although legislation, regulations and administrative support mechanisms for leases are highly developed in Fiji, with specific accommodation for conservation leases, the country does not have specific protected area legislation. The absence of comprehensive protected area legislation complicates efforts to create and manage a national protected area system as a coherent network, resulting in an array of ad hoc and uncoordinated efforts by different government agencies and their NGO partners. Therefore Fiji's NBSAP includes as a Priority Action, "Establish the Institutional and Legislative framework for a core protected areas system in both the terrestrial and marine environments". Again, activities under the PAC include efforts on this front, but a strategy for expanded use of transaction tools should include specific attention to ensuring that conservation purchases, easements and leases are addressed in relevant protected area legislation as it evolves. Legislation should make clear how areas conserved through such transactions relate to the formal protected area network; define pathways for closer integration into the national system; and define how transactions can be linked to national protected area financing options. In addition, engagement on this topic should include examination of possibilities for introducing fiscal incentives for easements (and potentially other conservation transactions).

Several sites throughout Fiji are sufficiently valuable with respect to biodiversity and ecosystem services that they can be anticipated as high priorities following any refinement of the current priority map. These include Greater Tomaniivi, Delaikoro and Taveuni, sites where NGOs and government partners already are working with local communities to explore options for protected area creation. Supporting these efforts, particularly in the form of solutions to long-term financing needs (i.e. contributing to dedicated endowments housed under an eventual national protected areas fund), would offer cost-effectiveness by building on existing initiatives and benefiting from prior activities (e.g. initial stakeholder engagement, socialization, mapping, etc.). As recognized priorities and areas of sufficient size to contribute meaningfully to Aichi targets, these sites also offer promise with respect to attracting further matching co-finance.

In sum, recommended steps to expand use of transaction tools in Fiji include support for:

- Refinement of prioritization of conservation sites, especially to include climate considerations and mapping of ownership situations.
- Strengthening and expansion of NTF capacity to undertake more transactions, with respect to staffing (legal expertise, community engagement, and site management) as well as funding, including capacity to manage sites after lease or purchase. Efforts to increase funding can be linked to work on a national sustainable financing mechanism, recognizing that the NTF is likely to play a lead role in such a mechanism.
- Demonstration of how to use available legislation and regulation for conservation covenants (easements), followed by comparative analysis of the use of easements versus conservation

leases on customary land. A first step would be to identify a site or sites where a covenant might be an attractive alternative to a lease or purchase.

- Development and capitalization of a national sustainable financing mechanism, including an endowed trust fund component, for protected areas.
- Efforts to address the lack of comprehensive protected area legislation, with a particular focus on ensuring constructive inclusion of conservation transactions (i.e. classification of transacted areas in the national protected area system, pathways for transacted lands to become part of the formal protected area network, and possibilities for including transacted lands under a national conservation financing mechanism).
- Use of conservation leases to create protected areas in Greater Tomaniivi, Delaikoro and Taveuni.

## **VANUATU RECOMMENDATIONS**

Like elsewhere in the Pacific, ni-Vanuatu have customary ways to determine allocation of rights on a particular parcel of land, as well as ways to prevent disputes and resolve those that do arise. Following decades of colonial displacement of these rules, accompanied by land losses, the ni-Vanuatu have become quite sensitive to the idea of foreign regulations on land. As a result, both the people and the government are keen to regulate land rights with recognition of customary ways that involve genealogies, local histories, and landmarks. Working on the basis of the principle that in Vanuatu one does not own the land but one belongs to the land, national conservation policies and strategies put ni-Vanuatu at the center.

Community Conservation Areas (CCAs) are the key product of this perspective and have grown in popularity over the last decade. Vanuatu's NBSAP emphasizes CCAs as best practice, and communities throughout the archipelago have responded to this national conservation option. When a community's proposed initiative meets the requirements of the Department of Environmental Protection and Conservation (DEPC), including their site being a conservation priority, the Department will help the community to develop a local management plan, organize workshops to build awareness, and enhance management capacity through trainings.

The momentum behind CCAs as a conservation tool underpins a strong recommendation that future efforts to support conservation initiatives in Vanuatu follow the established strategies that function within the CCA framework. While local management authority is granted through CCAs, the way they are set up and monitored by the government allows for prioritizing activities on national conservation goals. In addition, with increasing government decentralization, strengthening and monitoring of CCAs by local government may become more efficient.

With respect to the permanence of CCAs two issues are at stake. First, leadership and aspirations of the community may change over time. If a leader or a group of leading people have managed to secure the support of many in the region for a conservation strategy, this does not necessarily mean that the next generation of leaders can or will do so. Particularly under growing pressure of desires to engage with 'modernity', individualism may hamper effective functioning of CCAs and may draw people towards commercial investors (mining, tourism, logging, etc.). A second risk to permanence is the potential presence or emergence of disputes over land, often driven by similar development pressures, which may undermine effective organization of people around conservation efforts.

A community technically is permitted to cancel their CCA, which they may consider in light of loss of interest, difficulties with organizing the community and/or the emergence of potentially more



economically rewarding investments. However, if the area of the CCA is of national biodiversity significance the director of DEPC will intervene. The Department will do all it can to discourage the community from canceling the CCA and work together with the people to revive interest in conservation. Therefore a particularly valuable form of support would be to work with DEPC to examine strategies and tools to make such interventions as effective and locally palatable as possible.

This does not mean that leases and easements are necessarily out of the question. Leasing arrangements in furtherance of conservation have been used in a small number of cases. These might not be easily replicable in other parts of the country, but they show that the legal framework for long-term leases is in place and can be applied to conservation, and that potentially a fairly large area can be covered under a lease without evoking conflicts of interest among those who claim the land. Although such fortuitous contexts may be rare, a complete strategy for transaction tools should include a means by which to respond to such opportunities when they arise. In particular, the RESCCUE work in North Efate should continue in light of this potential, building on the investment in enabling conditions for use of conservation leases.



To date, the government has largely been reactive in responding to local community proposals to establishing CCAs. Given financial means and capacity, DEPC (ideally with environmental NGO partners) could adopt a more proactive approach to enlisting communities in conservation priority sites. CCAs could be combined with stronger, more explicit incentives such as improved access to education or health services, provision of scholarships, or other socio-economic investments identified in a participatory process with community members. Such incentives will also make conservation better able to compete against less sustainable commercial land development. This recommended transition to a more proactive role for DEPC requires clear definition of priority potential sites, which will require a baseline study to identify potential CCAs in sites of national interest.

Vanuatu features immense cultural variation and the nature of CCA arrangements throughout the country is correspondingly diverse and ever changing. As the feasibility of conservation interventions will depend on the capacity of local communities and their commitment to conservation, we recommend a survey of community-based conservation efforts to date. Ni-Vanuatu investigator teams with supervision and



coordination by USP would ideally conduct this survey, which could include, but should not be limited to, the following topics:

- Histories and capacities of CCAs throughout the islands, including regional comparisons
- The level and changing nature of localized community commitment to conservation at specific sites of conservation interest
- Feasibility of eventually transitioning CCAs into leases or easements, including financial sustainability solutions, to enhance permanence of conservation status
- Identification of new sites on the basis of conservation priority, contribution to climate resilience, low risk of conflict, manageable size, management capacity and experience, etc.
- Indicative mapping of land ownership that reflects complexities particular to each region.

Finally, we recommend the establishment of a national trust body for environmental conservation (and possibly also cultural heritage work, as in the case of the National Trust of Fiji, though we recognize the important role currently served by the Vanuatu Cultural Centre). In Fiji, the NTF serves an important role in convening stakeholders, liaising among relevant government agencies, and leading and participating in ambitious, ground-breaking conservation initiatives. In Vanuatu, a national trust could use greater flexibility to support DEPC efforts, serve as a financing conduit for conservation funding streams that cannot flow through government, and act as a trusted intermediary between communities and other potential conservation partners, including government. Particularly in terms of long-term financing mechanisms, a national trust could generate options that currently are unavailable, which could become especially important if the opportunity space for conservation leases expands.

In sum, recommended steps to expand use of transaction tools in Vanuatu include support for:

- Enhancing the capacity (in terms of human resources as well as operational budget) of the DEPC to strengthen its role in mapping, zoning and supporting CCAs. In the immediate future this will depend on availability of dedicated ODA.
- The abovementioned survey to inform DEPC work on a spatially explicit national CCA strategy, examining CCA potential, community commitments and management capacity, risk of landownership disputes, and the potential for eventual transition to long-term leases.
- A more proactive role for the DEPC in providing knowledge and infrastructure support to communities to encourage CCA establishment in priority sites, following a national strategy.
- The establishment of a national trust body and associated financing mechanism for environmental conservation. Funding for this mechanism would rely on ODA and international conservation partners in the near term.
- Expansion of international conservation NGO efforts to facilitate CCA establishment with local communities, in collaboration with DEPC, in priority sites identified by the DEPC.
- Continued efforts to apply conservation leases in North Efate, building on site-based investments in enabling conditions that have taken place under RESCCUE.

## NEW CALEDONIA RECOMMENDATIONS

Institutionally, the landscape of conservation-focused organizations in New Caledonia is relatively strong. The sector is led by CEN New Caledonia (CEN) and the Provinces' Environment Departments on the public side and by CI and WWF on the non-profit side. Smaller NGOs such as EPLP and Action Biosphere play more of an advocacy role. CI and WWF could help other conservation non-profit organizations build their organizational and technical capacity. For instance, CI has partnered with Dayu Biik to improve the provision of water supply in a catchment area serving the town of Hienghène, and Dayu Biik is now working with a range of partners to expand the Mont Panié reserve.

New Caledonia needs the continued presence of an institution like CEN, especially with respect to the use of transaction tools as well as various types of conservation agreements. Like analogous bodies in metropolitan France, CEN's mandate is to conserve valuable ecosystems, both terrestrial and marine. Its actions are guided by New Caledonia's environmental priorities and its leading partners are the Provinces to which decision-making regarding environmental matters has been delegated. In particular, the Northern and Southern Provinces have been close allies of CEN, having transferred ownership of parcels to CEN or having contracted CEN for the management of plots they own. CEN's original 10-year mandate comes to an end in 2021. Longer-term institutional stability will be needed to ensure that CEN can have enduring impact. Conservation and climate change response in New Caledonia will benefit enormously from a permanent institution along the lines of CEN and therefore adapting CEN's statutes to make the organization permanent is a strongly recommended course.

In 2016 CEN commissioned a legal review of its transaction tools.<sup>137</sup> Drawing on this review's discussions of how various tools can be applied, CEN will likely expand the range of its interventions. However, among the tools examined in the legal review, conservation easements remain the exception, as a country-level law would be needed to enable their use. A legal expert estimated that it would take between 18 and 36 months to achieve passage of such a law – provided of course that it would reach the legislature at all.<sup>138</sup>

After the completion of the legal review, CEN formed a working group that in mid-2018 selected twenty dry forest sites on the basis of biological, vulnerability, and management criteria for a so-called “monitoring – action – land management” intervention (*veille – animation – maîtrise foncière*). Eight of these sites were identified as suitable for a comprehensive intervention, whereas the other twelve were deemed worth considering for monitoring only or action only. Since this early selection effort, not much progress has been made as the working group shifted its focus to other issues. As this work is ongoing, any party with an interest in supporting expanded use of transaction tools should liaise with the group to jointly determine which prioritized sites might be suitable for experimentation and demonstrations. Moreover, in addition to the abovementioned criteria, demonstrations of transaction tools could also consider criteria related to climate change resilience as well as habitat connectivity.

Long-term leases are the most commonly used tool on customary land. Given the availability of land and the mandate of GDPLs which focus on catalyzing economic activity, we can anticipate growing use of this transaction tool, around farming activities in particular. Together with the above-mentioned working group for prioritization of sites, a party interested in promoting wider use of conservation leases should identify an area with local stakeholders willing to consider an explicit conservation lease to serve as a highly visible demonstration site. Key points to demonstrate will be: participatory approaches and inclusive stakeholder engagement processes; conservation outcomes; cost-effectiveness; and concrete benefits to landowners.

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137 “Etude juridique pour l'amélioration de la maîtrise foncière des forêts sèches en Nouvelle Calédonie”, GIP-CEN, prepared by Cabinet Plaisant (2016)

138 Nouméa workshop, June 2018.

A well-developed demonstration of a conservation lease will help local environmental non-profit organizations lead the way and inspire other smaller organizations on customary land to engage in conservation and sustainable development work. Similar to the current collaboration between Dayu Biik and the Northern Province around the extension of Mont Panié, more efforts in partnership between local non-profit organizations and Provinces owning or historically managing land could take place on customary land and result in new conservation transactions that advance both environmental and socio-economic goals.

In sum, recommended steps to expand use of transaction tools in New Caledonia include support for:

- Capacity-building assistance to smaller environmental non-profit organizations to enhance their technical expertise (in fields such as conservation management, sustainable development, community-based initiatives, spatial planning, and financing solutions), potentially through work with larger NGOs such as WWF and CI.
- A survey of relevant stakeholders (CEN, Provinces, non-profit organizations, government departments) about their perception of the value of a new law enabling the use of conservation easements, and if consensus is in favour, engagement of CESE, government agencies with conservation and land management remits, and the legislature to introduce the law in partnership with stakeholders.
- Identification of demonstration sites on public, private, and customary lands where transaction tools could be expanded in a way that promotes conservation and climate resilience, through cooperation with, for example, partners such as the working group established by CEN.
- Explore the potential and feasibility of a country-wide conservation trust fund mechanism, building on lessons learned by the Northern Province in the course of examining similar financing options.

## **FRENCH POLYNESIA RECOMMENDATIONS**

The prospects for broader use of purchases, easements and leases for conservation and climate resilience purposes are mixed in French Polynesia. The policy context is characterized by the absence of framework documents for conservation strategies, and by somewhat stretched resources for the country's administrative departments whose work affects the state of the environment. Despite considerable quality and expertise on the part of these departments' staff, the policy and resource limitations constrain the scope for advancing use of transaction tools. Moreover, a strong government emphasis on economic development goals means that any environmental or conservation actions must be integrated into wider policy objectives to have a chance of success.

French Polynesia attempted twice to create a CEN such as those that exist in New Caledonia and metropolitan France, without success. Ultimately, there was insufficient political will, funding and mobilization for such an entity to get off the ground. Given the accomplishments of the CEN in New Caledonia, the absence of a CEN represents a missed opportunity for French Polynesia to have an organization that focuses on conservation and that can build significant experience using the transaction tools at its disposal. The establishment of a CEN in French Polynesia would facilitate the expansion of existing tools as well as the introduction of new ones.

With respect to all three transaction tools, the limited amount of available land due mostly to unresolved joint ownership situations is a constraint. However, entire valleys remain untouched in the interior of some French Polynesian islands. By cultivating community support and addressing ambiguities in

land ownership, the supply of parcels of potential value to conservation could expand significantly for transactions in an area that has known little economic activity to date. Some of these parcels could prove to be good demonstration or pilot sites, as would the two sites already working with RESCCUE located in Moorea and the Gambier archipelago.

Easements have had some application linked to conservation in French Polynesia, but mostly in the form of informal rights-of-way agreements that have suffered from poor enforcement. A country-level law (*Loi du Pays*) would be needed for easements to see their current definition broadened and enable application to area-based conservation. However, an obstacle to future application of conservation easements may be a lack of buy-in, as suggested by significant scepticism expressed by a wide range of stakeholders in interviews and workshop discussions resulting from the permanent and abiding nature of easements. This pushback and the concerns behind it should be verified and analyzed through a targeted effort including a survey of stakeholders, in order to decide whether to advocate for a new *Loi du Pays* that would enable broader use of conservation easements in the territory. This effort can be informed by the evolving situation in New Caledonia where a country-level law around conservation easements might be introduced in the near future.

The landscape of conservation institutions and stakeholders includes the country-level government, municipalities, and the non-profit sector. The government's departments whose work influences conservation (i.e. Environment, Land, Agriculture, Land Use & Urbanism, Marine Resources, Tourism, Culture & Heritage) have the required expertise but are somewhat under-resourced. Department heads tend to emphasize better enforcement of the regulatory tools at their disposal rather than development or use of new tools, including transactions or incentive-based approaches. Municipalities generally are managed conservatively, thus the introduction of new tools and mechanisms may take considerable time. However, some individual mayors exhibit more risk-tolerant and pragmatic perspectives and may be open to applying new tools or experiments at pilot sites in their municipalities.

Environmental non-profit organizations, mostly small and local, are represented by their federation (FAPE) that could coordinate organizational and technical capacity-building actions with the help of larger non-profits experienced in conservation agreements and leases, such as SOP Manu.

In such an institutional context, partnership between the government, municipalities, and environmental non-profits offers the greatest prospects for significant impact. These various actors should come together to design the most suitable conservation and economic development strategy, depending on an area's specific land tenure situation and biodiversity status. Some combination of regulatory and transaction tools is likely to offer the best strategy, drawing on extensive historical use of regulatory tools for land use and the introduction or expansion of transaction tools when applicable. As a first step towards this scenario, a few sites characterized by a good working relationship between central and municipal government and an active environmental non-profit could be selected to test this collaborative approach (such sites have yet to be identified).

Additional funding for the use of transaction tools could come from international philanthropy that has remained very limited for an area of the world much sought after by the wealthy. More financial partnerships with tourism and cruise operators looking to reduce their environmental footprint and improve their image could generate more funding as well. Thus, the potential for new sources of funding in French Polynesia exists. There could be a concerted strategy designed by the territory's government, non-profits, the Tourism Board, and the Chamber of Commerce for example to solicit financial support for conservation, including outreach to current and new tourism and cruise operators. International philanthropy also could be mobilized around specific and sizeable projects undertaken in French Polynesia and championed by dedicated coalitions of stakeholders.



In sum, recommended steps to expand use of transaction tools in French Polynesia include support for:

- The formation of a CEN-French Polynesia that would become the central actor in the use of transaction tools in partnership with public and private landowners, drawing on lessons from the past two unsuccessful establishment attempts (e.g. taking specific steps to cultivate the requisite political will, such as exchanges with CEN-New Caledonia to learn about both their establishment process and their accomplishments).
- Exploring the potential for a country-wide conservation trust fund mechanism, (not necessarily limited to terrestrial conservation), with institutional linkage to the formation of a CEN-French Polynesia and an explicit mandate to catalyze conservation and climate change activities of government and civil society.
- Formulation of a conservation outreach and fundraising strategy that coordinates government, civil society and private sector stakeholders, with an emphasis on tourism and the cruise industry, to support efforts of both relevant government departments (e.g. Environment, Land Use & Urbanism, Marine Resources, Tourism, Culture & Heritage) and civil society (coordinated through FAPE).
- A survey of relevant stakeholders to assess perspectives on desirability and prospects of advancing legislation to enable wider use of conservation easements (including identification of potential demonstration sites), focused on further identifying acceptability and appetite within government as well as among landowners.
- Selection of several sites through a consultative multi-stakeholder process, where collaboration between government, municipalities, and non-profit organizations permits testing of transaction tools for conservation – in particular, in areas with limited historical economic activity, and taking into consideration enabling conditions that have benefited from RESCCUE investment. One possible site for consideration is the private island of Kamaka in the Gambier archipelago, given ecological value, the threat of invasive species, an existing relationship with SOP Manu, and, crucially, indications of owner interest in pursuing creative solutions.



*Photo by user Adam Reeder on Flickr, 2016*