



POLICY BRIEF

Advancing Transaction Tools for Conservation and Climate Resilience in New Caledonia

Land and land-rights transaction tools are important elements of the global toolkit for achieving conservation and climate resilience objectives, but remain underutilized throughout Pacific Island Countries and Territories. This brief considers prospects for expanded use of such tools in New Caledonia.

The Objective: Expanding Terrestrial Area under Protection or Conservation Management

Although New Caledonia enjoys a significant degree of autonomy from France, including in its environmental policy and actions, compliance with international conventions such as the Convention on Biological Diversity (CBD) and its Aichi Target 11 for terrestrial conservation rests principally with France. France is committed to achieving the CBD targets, including in its overseas territories.

About 4% of New Caledonia's main island of Grande Terre was under some form of protected status as of 2015. Of a total of 71 terrestrial Protected Areas in New Caledonia, 54 were in the Southern Province. The Ecosystem Profile conducted by Conservation International in 2016 identified specific sites within dry forest ecosystems that merit protection, with a goal of doubling area under protection and connecting forest fragments, including high altitude patches.

Transaction Tools

Transaction tools involve exchanges between willing buyers and willing sellers for land or specific rights attached to a parcel of land. Three tools are of particular interest as means to advance conservation and climate resilience in New Caledonia:

- i. Outright purchase, 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. Easements, in which landowners irrevocably relinquish partial rights over property or accept restrictions on certain activities on the property, but not ownership of the property itself.
- iii. Leases, in which landowners relinquish use-rights for a defined period of time without 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.

These tools are 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 programmes). That said, these measures may complement a transaction as when a purchase leads to formal protected area designation or a lease is accompanied by livelihood investments.

Transaction Tools in New Caledonia

Leases and more or less formal conservation agreements have been the most frequently used transaction or transaction-like tools in New Caledonia. The major entities using these tools are the Conservatoire d'Espaces Naturels – New Caledonia (CEN) and the Southern and Northern Provincial administrations. CEN has partnered both with the Provinces and with private landowners. Its main focus to date has been to protect dry forest on the main island. Purchases are less common, particularly in recent years due to rising land prices and relative scarcity of available and biologically valuable parcels.

The government is also somewhat active in the use of transaction tools, predominantly through leases on public land intended to provide farmers with long-term (generally over 30 years) security at a low cost. The New Caledonia government owns almost 50% of the land in the territory, while land under Provincial ownership amounts to about 8%.

On customary land (about 28% of land overall in New Caledonia, bearing in mind that all land in the Loyalty Islands Province is customary land), leases have been widely used for housing and agricultural purposes. Indeed, as of 2014, lease agreements were in use in all municipalities harbouring customary land on the main island, numbering 260 leases for a total of 14,000 hectares, mostly (61%) in the Northern Province. Many leases were signed with GDPLs (*Groupement de Droit Particulier Local*), Kanak community-run entities designed to promote economic empowerment. The duration of rural leases is generally around 15 years while leases to non-Kanak people usually are set for 10-12 years. The possibility of 99-year leases has been discussed but is not yet in common use.

The use of easements has been limited to rights of way arrangements (with a track record of limited enforcement) as current legislation does not accommodate broader use for conservation purposes.

Key Feasibility Considerations

The following factors influence the feasibility of expanding use of transaction tools for conservation and climate resilience in New Caledonia:

Identification of priorities: As noted above, the area under protection on New Caledonia's main island amounted to about 4% of its surface in 2015 with a total of 71 terrestrial Protected Areas. However, knowledge gaps persist about biodiversity value and richness, particularly on customary land. Moreover, the 2016 Ecosystem Profile pointed to significant threats, particularly to dry forest (only 2% of original area remains) and to dense humid forest. A framework document called "NC 2025" was adopted by the Government in 2013 and currently serves as a master plan for the whole of New Caledonia.

Policy context: Responsibility for environmental policy has been delegated by the New Caledonia government to the three Provinces. The Provincial environment departments have regulatory tools at their disposal to protect biodiversity and can readily amend provincial environmental codes. This explains doubts among some departmental staff regarding the need for transaction tools. More broadly, consistent government emphasis on productive activities (particularly mining) represents a source of pressure on the environment. The notion of "productive use" of customary land remains very sensitive politically for historical reasons, which can lead to inaction.

Legal context: On public and private land, there are no legal obstacles to conservation purchases or leases. Legislation governing customary land precludes land purchases, though leases are possible. Easements currently are limited because of existing legislation: their application is narrow in scope (mostly for right of way arrangements).

Social and cultural context: New Caledonia is still dealing with its colonial heritage and land was central to that history. Kanak communities were displaced and moved to reserves, many of which still constitute their homes today. However, the past thirty years have seen much progress in resolving land issues with the involvement of various stakeholders (the French state, territorial government, Kanak communities, mining companies, etc.). The stereotype of widespread conflicts over contracts on customary land is a common perception, but evidence points to the contrary.

Implementation capacity and long-term management solutions: CEN and the Southern and Northern Provinces will be major actors in future use of transaction tools. They have considerable expertise and significant capacity; their principal constraint is available funding. The Loyalty Islands' provincial environment department routinely experiments with innovative conservation concepts, which could generate new options. WWF and Conservation International are well-established international conservation organizations that can channel financial and technical support to build the capacity of smaller local organizations. One example of such collaboration is work with the Dayu Biik organization, now a conservation leader in the Mont Panié area. Smaller community organizations represent significant potential that could be cultivated with experience and know-how of the larger NGOs.

Financing options: Public funding (from the French state, the New Caledonia government, AFD, the French Agency for Biodiversity recently created in 2017, and the EU) accounts for most of the financial resources for conservation and climate resilience in New Caledonia. This is consistent with the large role played by the government and provincial administrations in environmental activities and channeling funds to organizations to carry out such activities. The amount of private funding flowing to conservation or climate change resilience is unclear but appears limited, including from the mining industry. However, the evolution of biodiversity offset mechanisms could yield new financing strategies. The establishment of a conservation trust fund for New Caledonia as a whole or some of its priority conservation areas could be tested, as it has proved to be an effective funding solution in a number of developing and emerging countries.

SYNTHESIS OF FEASIBILITY CONSIDERATIONS FOR NEW CALEDONIA^{*, **}

	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.

Recommendations

CEN commissioned a legal review of its mechanisms in 2016 that could boost the use of new as well as existing transaction tools.¹ The review strongly recommended that CEN consider the full “toolbox” of mechanisms at its disposal to tailor interventions to specific site contexts. Passage of a law expanding the use of easements and permitting their application to conservation purposes would also further the use of transaction tools, though buy-in for such an approach from the relevant stakeholders remains to be verified. A source of uncertainty is the 10-year mandate provided by the statute that established CEN, which ends in 2021; sustained future action would benefit from making this mandate permanent.

Following the legal review, CEN formed a working group that in mid-2018 selected 20 dry forest sites on the basis of biological, vulnerability, and management criteria for a so-called “monitoring-action-land

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

management” intervention (veille-animation-maîtrise foncière). Eight of these sites were identified as suitable for comprehensive intervention, the remainder were deemed suitable for monitoring only or action only. Since this early selection effort, the working group shifted its focus to other issues. As prioritization is ongoing, any party with an interest in supporting expanded use of transaction tools should liaise with the group to jointly determine which sites might be suitable for experimentation and demonstrations. In addition to the abovementioned criteria, demonstrations of transaction tools could also consider criteria related to climate change resilience and habitat connectivity.

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

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 the Economic, Social, and Environmental Council (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 partners such as the working group established by CEN, for example.
- Explore the potential and feasibility of a New Caledonia-wide conservation trust fund mechanism, building on lessons learned by the Northern Province in the course of examining similar financing options.