



Charter of the Kanak People

Common Basis of the Fundamental Values
and Principles of the Kanak Civilisation

English version





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THE CHARTER of the KANAK PEOPLE
Regarding the Common Basis of the Values and Fundamental
principles of the Kanak Civilisation

THE CHARTER is the melting pot of the Kanak civilisation's sacred values

It comprises:

A report and a preamble, outlining the history of the autochthonous Kanak people and the connection of its millennial history with the 160 years of French colonisation. Thus, it demonstrates the populating of the mainland and the surrounding Islands, the shock of colonisation and the evangelisation, the despoliation of lands, the breakdown of Kanak's social structures, its reconstruction and the need for its reorganisation in a new framework and its role in the project for a new society.

Chapter I introduces the 18 values of the Kanak Society: It is possible to differentiate values which are specifically Kanak, such as the tie to the land, history, respect, solidarity and consensus, as well as values of the universal characteristics of humanity, such as freedom, dignity and equality.

Chapter II covers the general principles of the Kanak civilisation.

Several sections compose this chapter:

- about the "word of the hut" or "word of the eldest" or "the philosophical vision and occupation of space";
- about the social organisation, with customary structures;
- about the cycle of life, and of a person;
- about the land and resources;
- traditional knowledge, culture and education;
- conflicts and jurisdiction;

Chapter III covers the exercise of the right to self-determination of the Kanak people

International law recognises two types of sovereignty and the right to self-determination: right and sovereignty of the autochthonous people to live freely with their rights and their custom within a State and the right to self-determination given to colonised peoples on a territory dominated by an administrative colonial power.

These two types of sovereignty are found in New Caledonia.

External sovereignty concerns the link with France. It is discussed at political groups' level.

The internal sovereignty of the Kanak people is represented by the Customary Senate,

the Customary Councils and the Assembly of the Kanak people. It is a matter of determining the place of customary law and the customary legitimacy in the management of the country's affairs.

1) Adoption and proclamation on 26 April, 2014- The Charter was passed by 262 Chieftainships (78 %) and 56 regions (95 %) of New Caledonia's 8 Customary Councils, and proclaimed on 26 April, 2014, in Noumea. Since then, it was published in the local Gazette, and was the object of a presentation campaign to institutions, the French State, in schools, and to the population. This campaign was planned over a period of one year.

2) An essential and necessary work with regard to the Noumea Accord

The Charter is an essential and necessary work with regard to the method of recognition of the Kanak Identity covered in the "Matignon Accord", which was subsequently backed up by the "Noumea Accord" with Title 1 of the orientations listed in Chapter XIII of the Constitution. Through the acceptance of the Charter, the Assembly of the Kanak people gave societal contents to the Kanak Identity.

3) An essential and necessary work for the young Kanak people, for clans-families, and Chieftainships. Values and customary principles are diluting and getting lost in modern society. It is necessary to give again a sense to custom so that there will be men and women standing up.

4) An essential and necessary work to succeed in re-positioning a Kanak society which is facing the modern world and have two systems, which exclude each other, live together.

It is essential and necessary, otherwise how can we defend a system of values of our custom if the customary authorities and the Kanak population do not give to this system a common and collective formulation to all the 8 Kanak Customary Councils?!

How can we let live and develop the Kanak society without having defined in anticipation the values and basic principles of our custom? Finally, how can we succeed having two systems of society living together in an institutional and constitutional pluralism?

AN ORIGINAL DECOLONISATION PROCESS

Decolonisation is not only a matter of transferring powers between the colonising State and the country to be decolonised. It is also, and above all, a matter of readjusting the society, with a true recognition of our custom's values and the rights of the autochthonous people.

5) An expertise and a 30 years experience since the recognition in 1989 of the customary authorities with the setting up of customary institutions.

It took 30 years to the customary institutions to understand the place of custom in the stakes of the project for a new society. Nobody told them or explained the given chance to create customary institutions.

It is through trials and errors and the will to move forward that the issues became clearer. Since then, the result is that there are two societies which are living together and excluding each other at all levels; that there is incomprehension between both systems, and that the western world rights dominate inevitably customary law; it is difficult in these conditions to build a common destiny.

6) Overcome internal and external blockages.

The approach is new in a decolonisation process. It was necessary to overcome all internal and external blockages. The most difficult was to understand that the autochthonous approach must be autonomous and sovereign compared to the European vision. The customary authorities have to assert their positions better and then determine the conditions of co-habitation and the harmony with the rules of the Western society, generally considered to be a benchmark.

7) The approach? Introspection and extraction of the system of Kanak values!

The task consisted in:

- organising a work of introspection of the Kanak people with its strength, that is to know where it comes from, what constitutes the foundations of the Kanak civilisation in philosophical terms, also in terms of relations and the taking over of nature, in terms of social organisation and life in the society.
 - establishing the model of evolution of an autochthonous society confronted to Western society;
 - in the end, extract from customary practices, the system of values and the basic principles of custom.

8) The method? The Customary Senate and the Customary Councils organised a major task of consulting the populations through the implementation of a participative and transparent program, with the mobilisation of persons with resources (activities committee and piloting committee) and the decentralisation of meetings with General States, seminars and the journey of the symbolic 3 dugout canoes, East, West and the Islands.

QUESTIONS AND SIMPLE ANSWERS

9) The common basis of Kanak values, what it is?

These are values which are a part of our custom; a Kanak differs from a European, a Vietnamese, or an Arab, because it has a different custom and a different way of life.

10) Kanak Custom, what it is?

It is the action that we do in life on specific occasions (birth, death, marriage, etc). It is also our way to see things and the values that we are giving to these things.

11) To do a customary gesture?

In a gesture, there is the “given sense of the gesture” which refers to the system of values, and there is the way to do it, or the protocol, linked to a particular context with the attending people.

CUSTOMARY CONFLICTS

12) What are the conflicts between the autochthonous Kanak people today? There are a lot of conflicts which burst out in the Kanak world: in families, in clans in Chieftainships; about lands, names, marriages?

These conflicts are more and more often settled by the French justice, but we realise that it changes nothing; after the decision of justice, it is often worse than before.

Nobody can be satisfied with the current situation and it is necessary to make some changes, but how?

WHAT ARE THE POSSIBLE CHOICES TO BRING SOME CHANGES IN THE SOCIETY?

13) Codify custom, it will mean that each Customary Council must write the rules to be followed and what is forbidden in each region, in each Customary Council. It is not possible and shared customary values would be lost.

Furthermore, to codify custom region by region / Customary Council by Customary Council, would take years. For example France has a civil law written during dozens of decades before being issued by Napoleon in 1804.

The Napoleon civil law was issued in New Caledonia in 1860 to rule upon the rights of the “civilised people” in the colony.

To codify custom, would mean to go from an oral culture to a written culture where the weight of words is going to change and will be frozen.



THE CHARTER, A WRITING TO SERVE A NEW LEGAL SYSTEM

14) The co-operative legal pluralism: The solution retained by the Kanak people is to set it up through writing, and adopt the common system of Kanak values, then to register it in a system of co-operative legal pluralism where coexist together, on the same level of equality, common law and customary law.

The customary legal system should be more flexible and more pragmatic, because it will be a matter of respecting principles and not written codified rules.

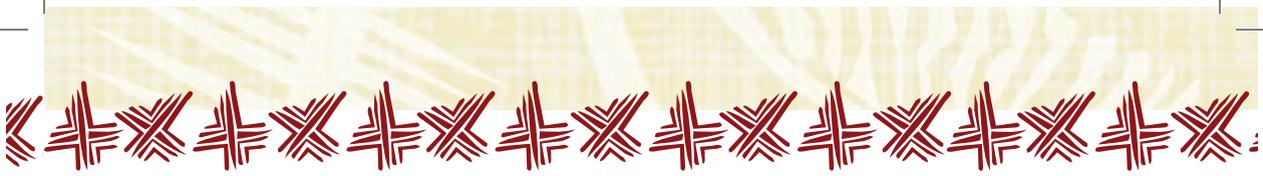
THE CUSTOMARY LEGAL SYSTEM

15) The Kanak customary law? It is a written law. It includes, on the one hand, the principles of the customary law (accepted by every Kanak) and on the other hand, the writing of customary deeds. The sources of the customary law originate from the Charter of the Kanak people (system of values and basic principles), the customary deeds and the case law.

• Advantages?

The written system of the customary law proposed can help us to keep our custom alive, evolving with society? This legal system is not new and many countries in the world practice it.

16) OBJECTIVE: It is a matter of correctly setting up the rights of the autochthonous Kanak here in the country. At the level of the project for a new society, the new modern society must respect diversity by accepting the rights of the autochthonous people and it will have to spread out in all the branches of the organisation of the new modern society. It will be possible to call it, a societal readjustment of the systems of values.



The Kanak People is the autochthonous people of New Caledonia FOR THE RECORD



Melanesian populations, as well as the other autochthonous peoples in the world, have a vision of the universe, a connection with the earth, a social organisation and customary practices which strive for a permanent search of balance and harmony. It is this dialectical vision, lived each time in special conditions all over the world, which autochthonous peoples pass on from generation to generation. It is that vision which is giving them infinite capacities of adaptation and strength, as reveals the Kanak Society in New Caledonia.

Melanesians, as a civilised group have been present in New Caledonia for over 4000 years, which is confirmed by archaeological researches on the territory, especially with Lapita crockery manufactured by our Austronesian Ancestors.

Melanesian populations are disseminated throughout the South Pacific over a large area named “The Melanesian Arc” includes New Caledonia, Fiji, Vanuatu, Salomon Islands and Papua New Guinea. They share common cultural characteristics, and especially on the surrounding islands of New Caledonia and the Islands close to the Province of Tafea, in the South of Vanuatu.

The populating of New Caledonia’s mainland and its surrounding islands was naturally done during the course of the past three millenniums. The memory of this history and the particular conditions of the appearance of the first Ancestor were transmitted in an uninterrupted manner to each Clan, through stories, tales and legends. The history, told by large groups of Melanesian populations, offers a common nature and identity.

In the course of this history and on the territory of New Caledonia, Kanak Clans scattered throughout the centre of the North and towards the South and the Islands surrounding New Caledonia.

As for most regions in Oceania, the first history of Kanak Clans and their travelling through the land was completely upset by colonisation and the arrival of religion in the middle of the XIXth Century. The annexation of New Caledonia by France proclaimed at “Ballade” on 24 September, 1853 will mark a new step for the Kanak People and its destiny.

Colonisation established new borders in this French colony of the antipodes, from which the population will be legally and artificially separated from the Melanesian world.

Colonisation hits all the Chieftainships in the Kanak country. In practically all the regions on the mainland, the violence of colonisation created the disappearance of Clans and Chieftainships, the displacement of all, or part of, tribes, and entire regions. These acts of violence resulted in long term traumas affecting both customary structures, and humans living hereabouts.

On the Loyalty Islands, the history of Clans and Chieftainships was even more marked by the settling of Catholic and Anglican religions, both at the same time. This history did not fundamentally disturb the established social organisation but new balances of power arose between, or within, Chieftainships, depending upon

the choice of one religion or the other.

The setting up of reservations, during the period of time called the “Indigénat” (native population) was an instrument of segregation and control of the Kanak People, while favouring land grabbing for colonisation. At the same time, the creation of Christian missions allowed, to some extent, to by-pass colonial oppression and favoured the reconstruction of tribes and the re-establishment of a new customary order.

To resist the colonial undertaking of despoliation and annihilation, the Kanak people main asset was, on the one hand, the autonomy of each Chieftainship, which allowed them to avoid a frontal colonial war, and, on the other hand, the capacity of the Kanak civilisation to fit in by leaning through established customary values. These values which remain today, hospitality, generosity, respect at all levels, dignity, work, strengthened by the power of relations and social organisation between Chieftainships, carried strong internal dynamics, which in turn allowed the Kanak people to adapt and accept newcomers.

Moreover, Christian values and belief in an almighty God transformed the mind of the Kanak men and women without putting into question their own spiritual vision of “being” and nature, the reference to the spirit of the Ancestor as well as the foundations of Custom.

Kanak and Christian spiritualities have for basis the same belief in a “Supreme Being” – “A supreme divine Spirit”. For a Kanak, to believe in God is the extension of the belief in the spirit of its Ancestors. Hence, was accomplished the original setting up of Christendom in the Kanak world.

During the dark years of its history and up to this day, the Kanak People never gave up, neither its memory, nor its link to the land, nor its cultural and social identity and it kept an unflinching will to support and to restore its sovereignty.

On 5 May, 1946, further to the implementation of the French Act abrogating the “Regime de l’indigénat” (native population regime) and granting the French citizenship to autochthonous people in the French colonies overseas, among which the Kanak people; on 13 April, 1949, the first “Civil leaders Council” and then the “Caledonian Union” were created by the “Association of the New Caledonian



Autochthonous people, Friends of Liberty in an Orderly manner” (UICALO), and “Association of the New Caledonian and Loyaltiens Autochthonous people” (AICLF), respectively of Anglican and Catholic obedience.

On 23 June, 1956, an outline law opened the way to some form of autonomy with the creation of a Territorial Assembly.

But in front of the forces of Kanak majority, France will abolish this autonomous regime, which will subsequently give birth to the “Kanak Nationalist Movement” in favour of independence. This will mark the beginning of the stepping up of both political trends “loyal supporters of France” and “Kanak freedom fighters”.

In 1975, the Kanak People will assert its identity as a people coming from the land of Melanesia during the Melanesian Arts Festival, “Melanesia 2000”, going into a dynamic of political emancipation.

The period from 1984 till 1988 known as the “events-uprising” will be marked by the Kanak Nationalist mobilisation, which will lead to the signing of the “Accord de Matignon” by the FLNKS (Kanak freedom fighters), the RPCR (French loyalists) and the French State. In 1998, the “Noumea Accord”, signed by the same partners, will succeed to the previous “Matignon Accord”.

The “Noumea Accord” states that: *“the colonisation of New Caledonia is a part of a large historical movement where the countries of Europe imposed their domination on the rest of the world ...”*

The preamble of the “Noumea Accord” recalls the unilateral character of the annexation of New Caledonia and the presence on its soil of a sovereign autochthonous people.

In the logic of this context and according to International law, the “Noumea Accord” declares that: *“decolonisation is the mean to rebuild lasting social ties between the communities which live today in New Caledonia, by allowing the Kanak people to establish new relations with France corresponding to nowadays realities. The past was the time of colonisation. The present is the time of sharing through readjustments. The future must be the time for a common identity, in a common destiny ...”*



PREAMBLE

Considering that the clash of colonisation is a clash of civilisation confronting two visions of the Human being, two visions of Nature, two visions of the world;

Considering that the conciliation and symbiosis of these two visions, as part of a common destiny, requires a mutual understanding, a form of intelligence of oneself and others that can only drive to relations based on respect and good faith and, as such, that can only work toward everyone's lighting up and toward a long lasting social peace;

Taking note that the objective of a common identity in a common destiny begins with the definition of the Kanak Identity, of its founder principles and values, and with their intelligibility either by the Kanak themselves and by the other non autochthonous citizens;

Taking note that twenty-six years after the signing of the “Accord de Matignon” and sixteen years after the signing of the “Noumea Accord”, the formal recognition of the Kanak Identity was not translated into an implementation, in good faith, of the provisions of the “Noumea Accord” nor into the implementation of the internationally recognised Rights of autochthonous peoples;

Taking note that in spite of the tremendous economic development created by the “Noumea Accord”, inequalities and discriminations towards the Kanak populations on social, economic, cultural, educational matters, as well as in terms of the training of Kanak Executives and access to positions of responsibility, are surviving in new ways of exclusion;

Considering in this respect that the Kanak People has been kept at all levels in subjection;

Considering the millennium history of the Kanak civilisation which forged and transmitted throughout time a vision of Human being and Nature as well as important archaeological relics;

Guided by the objectives and principles listed in the Charter of the United Nations and by the Declaration of the United Nations on the Rights of Autochthonous People adopted on 13 September, 2007, during the General Assembly of the United Nations with the approval of the French Republic;

Affirming that autochthonous peoples are equal to all other peoples, while recognising the right of all peoples to be different, to consider as being different, and to be respected as such, affirming also that all peoples contribute to the diversity and richness of civilisations and cultures, which constitute the common heritage of humankind.

Considering that respect for autochthonous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper

management of the environment.

Considering in particular the right of autochthonous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the Rights of the Child.

Convinced that the recognition of the rights of the Kanak people will encourage, within the State, harmonious relations and cooperation with other local populations in New Caledonia, founded on the principles of justice, democracy, respect of human rights, non discrimination and good faith;

Considering that the decolonisation process initiated in 1988 with the “Matignon Accords” and the “Oudinot Accord”, comforted in 1998 by the “Noumea Accord”, must from now on logically bring to double implementation either of the right to self-determination of the Kanak People as colonised autochthonous people, and of the right of self determination of New Caledonia as a non autonomous territory to be decolonised in accordance with resolution 1514 of the U.N.;

Considering the infringements carried out against Custom and social practices of the Kanak world that is facing since seven generations, the both systems of values, carried by Christian religions, on one hand, and, by colonial and the Republican State, on the other hand;

With regards to the 2001 report of the Customary Senate pertaining to the situation of the Kanak people, the autochthonous people of New Caledonia;

With regards to the report of the United Nations A / HRC / 18 / 35 / Add.6 on “The situation of the Kanak people of New Caledonia (France)”, presented in the Council of Human Rights in its eighteenth session, on 14 September, 2011;

With regards to the French Constitution and in particular its chapter XIII pertaining to transitional provisions applicable to New Caledonia;

With regards to the unanimous adoption by the Congress of New Caledonia of a “wish” in August, 2012 concerning the implementation of the Declaration of the United Nations on the Rights of the Autochthonous People;

With regards to the work done during the general records on the Common Basis

of Kanak Values during 2013, which allowed a common reflexion associating all the representatives of the Kanak Society - youth, old people, men and women - associations, churches, political parties and customary authorities;

Considering that only the Kanak People, through its traditional representatives, is competent to remind and define the fundamental values and general principles which govern the Kanak civilisation;

We, the customary authorities, Great Chiefs, Chiefs, Presidents of Customary Councils, and Presidents of Council of Clan Chiefs, sole traditional and legitimate representatives of the Kanak People of New Caledonia,

Acting on behalf of the autochthonous population, Chieftainships and Clans,

Determined to safeguard and promote the values and fundamental principles of the Kanak civilisation, and to carry them forward to build, in New Caledonia, a society finally liberated from any form of colonial grasp;

United, we decided to adopt the present Charter to endow the Kanak People with a legal frame, embracing a historical, a de facto reality, and guaranteeing its unity and the expression of its inherent sovereignty.

Therefore, we solemnly commit ourselves from this day on,

To join our efforts and our collective energy to implement and to promote at all levels what constitutes from now on the “Common Basis of the Values and Fundamental Principles of the Kanak Civilisation”;

To endeavour to affirm a co-operative and balanced legal pluralism allowing the Values and Principles of the present Charter founded on Kanak / Oceania humanism, to be declined in the different sectors and domains of our Society, as well as in the whole of the institutions of the Territory or of the State;

This step being a priority and an unavoidable contribution to build of a common destiny,

For the present and the future, we solemnly declare what follows:

CHAPTER I

FUNDAMENTAL VALUES OF THE KANAK CIVILISATION

1 - LIFE is sacred. The **BLOOD**, source of life which runs in the veins of an individual, comes from the **UTERINE UNCLE**, which gives it the responsibility to follow the man/woman and to look over his/her journey through life from birth to death.

2 - THE NAME, given in Kanak language, links the person to its Clan and to the land. It describes the history of the Clan in the generational cycle of life in space and time.

3 - THE SPOKEN WORD issued from the spirit of the Ancestor and from custom is sacred. It sanctifies and feeds the different stages of a person's life, as well as the sociocultural and natural relations between the components of the Kanak Society. The spoken word expressed during a customary ceremony gives a sense and a meaning.

4 - THE LINK TO THE LAND relates to the carnal and spiritual relation of a Clan with the natural space where its original hillock is located and where the Ancestor which first appeared and the successive natural land all along the Clan's history. Broadly, the tie to the land reflects the affective relation binding a family/Clan to the land;

5 - THE CUSTOMARY SPEECH is the expression of the customary word sanctified by all parties during a ceremony on the occasion of a specific and planned event.

6 - THE GENEALOGICAL SPEECH locates the history of Clans in time and space. It is recited in specific conditions by the beholders of this word through an irremovable definition.

7 - THE CUSTOMARY PATH or **PATH OF THE STRAW** is the mean, and the tool, of communication used by the Clans or Chieftainships to send a message to other Clans and Chieftainships. For the Chieftainships, it is materialised by

people on a given journey set in advance by alliances and by bordering “houses” set up to be used as an “entrance door”.

8 - The values of COHESION, HARMONY and CONSENSUS imply the permanent research of the BALANCE between a man, being a part of his group (family - Clan), his social group, Society and the surrounding nature.

9 - The values of RESPECT, HUMILITY and PRIDE allow each individual, each family, each Clan, each chieftainship to be inside this group, within the maternal and paternal relational system, in its chieftainships and the intergenerational and genealogical speech.

10 - BELONGING and RELATIONSHIP are the fundamental data of the Kanak person who is always referenced within its social group. Each person is always in the centre of two relational systems, maternal and paternal,

11 - CUSTOMARY RELATIONSHIP implies necessarily a customary exchange which is expressed during each customary event. The structuring of relationships is established through alliances. A customary gesture done in a particular sense necessarily implies a reciprocal customary gesture in return and at a given time. It is the rule of RECIPROCITY which is applied in customary relationships.

12 - DIGNITY marks the respect for the human being in touch with its condition as a man, a child, a woman, an elderly person, member of its Clan, a member of Society in touch with customary ethic;

13 - The YAM and TARO are the symbols of the Kanak custom. Their presences in customary ceremonies mark the anchoring of Clans on their lands; the same applies with the PINE TREE and the COCONUT TREE which are the borders of the Clan’s hillocks and customary zones.

14 - “Ädi”, “Môô”, “bié“, “Mieû”, or “Hâgi” (Kanak currency) in its composition represents the man. It carries and crystallises the spoken words in every kind of ceremony. It is a determinative value in all the customs done on the mainland.

15 - SOLIDARITY and SHARING, as well as WELCOMING and HOSPITALITY, are marking the sociocultural relations and give a generous vision, opened

and smiling, to a family / Clan, and the Chieftainship.

16 - The **WORK** in the sense of productive traditional activities, in the sense of fulfilling the needs of a family, of the Clan, and lets a person takes its own responsibilities and fulfils its **DUTIES** within the social structure.

17 - **CUSTOMARY FORGIVING** is a process with aiming at a **RECONCILIATION** which involves two or more parties in a conflict. The starting point is the will expressed by the parties to re-weave the broken bonds which started the conflict. The Custom of forgiving is a reciprocal act ratified by all the groups or parties involved in the conflict.

18 - The search for **CONSENSUS**, the practice of the **COUNTER POWER**, of **FORGIVENESS** and the search for the **TRUTH** with the expression of **SINCERITY** and **GOODWILL** feeds the functioning of customary authorities. These values must be respected and developed by the natives living in Society.

All these humanist values must be respected and developed, individually and collectively, while living in Society.

Beyond the Kanak sphere, these values have a universal meaning and express the notions of Peace, Brotherhood, Solidarity, Justice, Respect, Humility, Responsibility and Honour.

CHAPTER II

GENERAL PRINCIPLES OF THE KANAK CIVILISATION

PRELIMINARY SECTION: THE WORD IN THE HUT OR WORD OF THE ELDERS A THE FEET OF PINE AND COCONUT TREES:

A - PHILOSOPHICAL VISION

19 - The myth of “Téa Kanaké”, the myth of “Soüma” as well as all other Kanak myths ab19 - The myth of “Téa Kanaké”, the myth of “Soüma” as well as all other Kanak myths about the first appearance of Man on the Land determines from the beginning, the position of man and woman in relation with the natural elements.

20 - The spirit of the Ancestor carries the creative word of the human being.

21 - Kanak has belonged to this land for over 4000 years. The Kanak civilisation, also called the “Yam civilisation”, tamed in an uninterrupted way the natural areas, from the mountain to the sea, and beyond the horizon. It is the spirit of the Ancestor that organises and feeds the spiritual connection of the Clan and its members with Nature.

B – THE USE OF THE SPACE

22 - Clans populated the country through customary pathways, natural disasters, wars, a social organisation and the mastering of agricultural, horticultural, fishing and navigating techniques. The archaeological relics attest the existence of an important population before the arrival of the first European.

23 - Migrants from Melanesia and Polynesia were welcomed according to the

rules of customary hospitality and the land given to newcomers was granted according to customary rules which applied at the time in each region.

24 - Land use in the Kanak Society expresses the existence of recognised Clan's hillocks and through the work done in this natural area, particularly with huts and cultures. This is expressed in toponymy, in genealogical speeches and in war stories.

25 - The cohabitation of Clans on a given land is a result of alliances, preserving rules of life, solidarity and cohesion. The welcoming of Clans on a given territory is done according to the rules of hospitality, Clans' affinities, and social organisation based on complementarity. Tales, legends and myths are telling about wars between Clans which also marked the history of territories with conflicts of power or sovereignty.

26 - The social organisation is based on the respect of the Ancestors' spirit in a given territory, on the management of the natural environment, on Clans' complementarity and solidarity. The eldest man will always remain the elder successor of the Ancestor who first appeared in the given territory.

SECTION 1: SOCIAL ORGANISATION:

A - ABOUT CUSTOMARY STRUCTURES AND THE INDIVIDUAL:

27 - The Word coming from the Spirit of the Ancestor settles the Clan on the territory where it set its Clan's hillock. The relation which connects a Clan / its Ancestor's Spirit to a given natural area marks intrinsically the identity of a Clan and the individuals in it.

28 - The Clan regroups all the descendants claiming a common Ancestor's Spirit. The speech about the Clan's myth locates the moment in space where the Ancestor first appeared.

29 - The Chieftainship is in a given territory, the regrouping - under the authority of a central post called "the elder" or "elder brother" - of all the descendants of the same Ancestor or of Clans with complementary functions. It is the comple-

ted form of the sociocultural and political Kanak organisation. The Chieftainship holds, in the history of Kanak tradition, the essential elements of autochthonous sovereignty, which are: a territory, people and an authority exercising its power over all the attributes in relation with the aforementioned sovereignty.

30 - Each individual is determined through his paternal Clan and with his maternal Clan. The child, at birth, accepts the breath of life from his maternal uncle. It also includes the spirit of the Ancestor before accepting later its name from the maternal or paternal Clan. At its death, the person decomposes into a spirit and a rotting body. The spirit of the deceased joins the spirit of its Ancestors.

31 - The natural cycle of life connects the individual to its Ancestor's Spirit, to the universe and nature. The different stages of this cycle are the conception of a child and the pregnancy, in the world of darkness or domain of the Ancestors, then birth or the irruption into daylight, synonymous of reincarnation, then the adolescence, adult life and old age with the deterioration of the body and the preparing of the spirit to follow the continuing cycle of life.

32 - The status of common customary law is obtained from the father in reference to his Clan and the mother in connection with her maternal uncle in conditions previously set out.

33 - Any Kanak has the status of citizen, and the citizenship applicable in New Caledonia, but, it is also attached to its family by nature, a house and a Clan. As such, it has rights and duties.

34 - Kanak individuals live their individual rights respecting principles and collective rights carried by their Clans and Chieftainship with a sound knowledge of their foundations.

B - THE SPOKEN WORD

35 - The Kanak Spoken Word is firstly the spiritual and sacred word coming from the Ancestor which appears in the visible world with the prime mission to organise the land and establish relations. It is also the Word which brings out the

awareness to exist and to occupy a defined space.

36 - The power of the oral character in Custom is a product of the uninterrupted and repeated practice of customary speeches during ceremonies, as well as tales, lullabies, songs “Aé, Aé” and dances. It constitutes an important element of the customary rituals, forging tirelessly mentalities and practices from generation to generation.

37 - The Spoken Word of the elders is an immaterial oral heritage which is kept in each Clan and each Chieftainship, and which they have to maintain and perpetuate.

The oral character of Custom is maintained and preserved.

C - SOCIAL ORGANISATION AND CHIEFTAINSHIPS

38 - The Kanak Society is a multi levelled organisation:

a) A family and intra-Clan customary level comprises two to three generations: the grandfather, the father and the grandson. It is the place where life begins, the intimate connection with nature, the place where life nurses us, a place of tenderness. It is the land where we discover, where we learn, the roots of our life, the cement and backbones of the Kanak Society,

b) The Clan level regroups branches and Houses beyond the third generation and with reference to the common Ancestor.

c) The inter-Clan level, or Chieftainship, regroups Clans according to their affinity and functions within the social organisation of the Chieftainship, or of the Great Chieftainship.

d) The inter-Chieftainship level corresponds to alliances between surrounding Chieftainships in a given region. The pivotal or footbridges Clans play a leading role in these relations.

39 - The Clan and its internal elements (sub-Clans, branches, and Houses) is the basis of the Kanak social organisation.

40 - In the social organisation, the Clan holds a rank and functions in relation

to its history and its own identity. Inside a Clan, as inside a branch / home or a family, each man holds a defined position with specific functions, from the eldest to the youngest to the grandson. In specific conditions, the elder girl can be led to hold traditional positions normally devolved to a man.

41 - In Kanak concept, the relations between the elder members, younger and youngest sons are founded on the values of respect for hierarchy, cohesion, complementarity and solidarity. These principles are inseparable. The notion of opposition in decision-making is a part of the procedure and duties of the elder and the youngest son.

42 - These principles apply to all levels of the social organisation: in the Clan's branch, in the Clan, in the Great Clan, in Chieftainships and Great Chieftainships.

43 - In the Clan's branch or in a family, the roles of the elder, the younger and the last born resemble the human body: the head of the elder, the arms of the younger, the feet of last born, the latter one is in connection with the land and therefore with the memory of the father and the grandfather. The body is made out of the elder and the youngest.

44 - The notion of the Clan, due to colonial history, was diluted and corrupted. There are two approaches about a Clan to consider in order to finding their complementarities:

- The Clan is referenced to a common Ancestor.

- A Clan in reconstruction with another Clan in a definite social organisation; an element of the Chieftainship, it is sometimes called "Great Clan" in the social organisation or in cultural or customary events. So it is possible to find the Great Clan of the Chieftainship, the Great Clan of the sea, the Great Clan of the land, the Great warring (and spokesperson) Clan, etc.

45 - Today, the Chieftainship holds the customary authority on a given territory. Its essential components are: a population organised in Clans, a power exercised by the Chief and its advisory council, known today as "Council of Clan Chiefs", and a territory, also called a tribe. The Chieftainship holds every attributes of the Kanak autochthonous sovereignty.

46 - The Clan of the Chieftainship constitutes the central post of the Great hut. The Chief is customarily the older man of the eldest branch of the Clan. On the Loyalty Islands, the function of Chief and Great Chief is passed on hereditarily.

In general, and in any case, the nomination in fine of a Chief must be subjected to a consensus, particularly through discussions among Clans whose function it is to do so. This process also goes through the respect for particular procedures which are specific to each customary region and each Chieftainship.

47 - Under the authority of the Clan Chief and the Houses' Chiefs, the Clan decides upon the appointment of the members of the Clan, respecting the social cohesion of the Chieftainship.

48 - A Clan, considering its complex history can be linked by its branches to more than one Chieftainship. Each branch exercises its rights and its duties in the Chieftainship from which it historically originates.

49 - The social organisation of the Chieftainship is based on the traditional and spiritual role of each Clan forged by history.

50 - The principle of the functioning of customary structures is based on the Word, complementarity, hierarchy, and consensus. The notion of opposition in decision-making is comforted by the mechanisms of decisions made by the Clans in charge of that mission.

51 - The values in the social organisation are respect, humility, and solidarity, pride, sense of duty in relation to others and to the land. Consensus is the mode of decision-making. Generally, it is implemented under the authority of the eldest, of the senior or the Chief in reference to their respective function of custom's guardians; they are keepers of the word of the Ancestors and the guarantors of the group's cohesion.

52 - For information only, in the Great Chieftainships of the Loyalty Islands and in some Chieftainships on the mainland, we can observe the following structures of the supreme power held by the Great Chief; the function of spokesperson is exercised by a Clan which can also be the guardian of the Clan; counselling is exercised by allied Clans; opposition to decision-making is exercised by the land-downing Clans. The decision-making of the Chieftainship is based on a principle of consensus and the prior consent of the Clans.

53 - At the time of the "Régime de l'indigénat" (native population), administrative Chiefs were placed by the Colonial Governor at the head of the populations in reservations to be of use as liaison officers with the colonial power. These Chiefs, imposed by the colonial power, were sometimes customarily sitting down

next to traditional customary Chiefs. But, in the social Kanak organisation, there is only one single Chief. On the basis of the history of Clans and by respecting history and shared living on the same territory, solutions are searched to allow a constructive repositioning of Clans.

54 - Roles and functions

The customary Chief of the Clan is the older of the eldest branch. It looks after the sharing of responsibilities within the Clan, assures the cohesion of the group as legitimate authority. It vouches for the management of the Clan's patrimony.

The Chief of each Clan branch or Home is the eldest of each branch or Home.

The eldest of a family is a part of the hierarchy of births in the biological family.

The Chief and the Great Chief, in the Loyalty Islands, is the direct descendant of the sovereign Ancestor. Its word is sacred, that is why it seldom speaks. Its spokesperson expresses its word when required. It vouches for internal social cohesion and intervenes only as a last resort.

On the mainland, the Chief and/or the Great Chief, is either the direct descendant of the sovereign Ancestor of the Clan, or a member of a Clan from the same descendants. It can also be a descendant through alliance. The Chief must be a man of compromise and consensus. The Chief or the Great Chief has the final word on internal disputes after consulting the "Council of Clan Chiefs".

The President of the "Council of Clans Chiefs" (formerly known as Council of the Seniors) supervises the work of the council; and its office organises the functioning of the tribe.

55 - Kanak customary legitimacy is anterior to the democratic legitimacy which appeared with the political State instituted in France, then implemented in New Caledonia in 1853. Customary legitimacy has existed without discontinuity for over 4000 years throughout the entire country. Such legitimacy must find ways to be expressed in all the institutions of the Territory and of the State to speak out of wisdom, spirit of responsibility and Kanak spirituality and morality.

SECTION 2: THE CYCLE OF LIFE AND OF A PERSON:

56 - The Kanak Society is a patriarchal Society. Its social system is based on the transmission of rights, powers and responsibilities to the man.

57 - The eldest of a Clan, when it is a woman, is a decisive element of reference in a Clan when it faces difficulties. Women are called upon to serve in other Clans.

58 - Individual rights are expressed in collective rights of the group (family / Clan). This is due to the fact that a person is admitted in a family and in a Clan so that it can develop with others members of that Clan.

59 - Solidarity, respect for hierarchy and complementarity are the mainstream of the group's cohesion. Humility impregnates the individual and each one knows its place within the group. Pride encourages each one to do its job well and stimulates confidence. One carries the pride of the Clan and the uterine uncles.

60 - A girl or a woman has a vegetable and natural symbol, the water taro, the coconut tree and the water. She is the source of life and fertility. She is the source of new covenants and ties between Clans and between generations. She is the absolute value for peace and prosperity.

61 - A Man has power over the land. A boy or a man has the assegai as a symbol, the Ostentatious axe, the pine tree, the yam.... He assures his descent and the perpetuation of his name as well as his social function. He is, and takes the responsibility for the honour of the Clan.

62 - The birth of a baby is an act of faith for the future of the Clan and its destiny. The birth of a baby implies the acknowledgment from all that it has the same blood as the maternal uncle.

63 - The father gives the name to the child. It is the responsibility of the father and the paternal Clan to support the child, to keep him in good physical and mental health, to give him clothes, feed him, educate him, and to give him a place in Society.

64 - To give to a baby the first name and the family name of an Ancestor requires

the permission of the elder or of the eldest of the Clan.

65 - To give to a baby girl the mother's maiden name, requires the consent of the uterine uncle which will have to take the responsibility of the child's future.

66 - The customary adoption or donation of a child corresponds in general to a gesture of harmony, a renewal of alliance or a fair return for past services. This act is made under the authority of the parents and of the leaders of the house / Clan. In the case of an adoption, the customary name given allows the transmission of all the rights of the person wishing to adopt since all the conditions are met.

67 - Clans are perpetuated and assure their posterity through alliances or marriages which are customary swapping from a family / Clan to another, regardless of the Chieftainship or the Kanak country. It is the Clan of the man that organises the marriage and accepts the Clan of the woman.

68 - During the wedding, the alliance between both Clans is celebrated in the presence of the maternal uncle. These alliances between Clans respect and reinforce the principles of non-consanguinity. The man has authority over the land and the woman over the children, their education and family life. The woman is the sacred being who gives life and must be respected as such. She has a central role in the family and a role of social cohesion in the family and the Clan.

69 - Customary marriage is, today, a choice made by a man and a woman. In the tradition, for a Clan, a marriage has for purpose to ensure prosperity, to perpetuate the name of the family, of the house, the Clan, the Chieftainship. So customary wedding is reinforced by the birth of the first child and the first son.

70 - When one of the spouses is away or dies, the other one must stand in to replace and fulfil its duties, respecting custom; and with the support of the husband's Clan.

71 - The separation intervening in a couple united by Custom is not likely to raise questions about the alliance concluded between Clans, and especially when there are children.

72 - The grandparents are the beholders of the family's history and of the imma-

terial heritage of the Clan. The children and grandchildren take care of the grandparents in recognition for their past deeds, and with respect for the Ancestors.

SECTION 3: LANDS AND RESOURCES:

A - LAND RIGHTS:

73 - Colonial history positioned, within a restrained space (reservations), the original Clans, as well as the Clans and families displaced because of colonisation. In the course of this history, the situation of the “original” Clans and “sat” Clans evolved with new alliances, donations, and the evolution of family ties and the disappearance of some Clans. Reconstructions appeared, sometimes helped by a demography often differentiated by the Clans. In these conditions, new social and customary equilibriums were established and consolidated four to six generations of common life later.

74 - Within tribes and “reservations”, the use of the land is done by transfer (donations, exchanges), by alliances, for past services, through work (first ploughing and land clearing), within the respect of the principle of inalienability and of the rights of the original Clans which were the original landowners.

75 - The use and occupancy of a territory, respecting rules and predefined customary conditions, confers to the Clans and interested families a customary protection.

76 - The land reform introduced in 1978 by the French government allowed certain of Clans to recover their ancestral lands, such reform, due to a lack of clarity and to a lack of explanations, created a great deal of incomprehension between Clans inside the reservations. Outside the reservations, a great deal of land claims from Clans was crisscrossed, mixed up due to a lack of customary, genealogical historical or anthropological explanations. In such situations, customary authorities have to find a way to solve land claims.

77 - The settlement of land claims goes through a process of recognition of the Chieftainships zones of customary influence, and with a historical and anthropo-

logical work on the history of the territories (since 1853). It also goes together with the implementation of land notebooks on Chieftainships, which would set on maps, after the approval of the groups concerned, the borders of the plots of the Clans. The settlement of lands claims has to take into account past and present history of the plots in areas where there are land claims, as well as the solidarity that exists in the Word of the elders.

78 - Clans having recovered their ancestral lands settled there and developed them. They had to ensure to maintain the solidarity and the harmony with clans based there at the time of colonisation. They also had to establish new relations with the new closest Chieftainship.

79 - Clans despoiled by colonisation carried on with the support of all the components of the Kanak People, their quest for justice and the claiming of their ancestral land heritage. The date of reference of these claims is the date of the annexation by France and the objective remains the rehabilitation of people's rights which were despoiled through colonisation.

B - SOVEREIGNTY ON NATURE AND RESOURCES

80 - Lands, resources and natural areas, as well as material and immaterial traditional knowledge constitute the natural heritage of the Kanak people, who is its protector for future generations.

81 - The natural sovereignty of Chieftainships and their Clans exert over their own traditional territory, delimited sometimes by the summits of mountains, rivers, sometimes by a rock, a sound, a reef or the sea horizon. This natural and human demarcation allows the co-habitation of Chieftainships as, autonomous autochthonous social entities. The sovereignty of the autochthonous Kanak People demonstrates the global sovereignty of Chieftainships and their Clans.

82 - Lands and natural resources (minerals, plants, animals and knowledge of the cultural heritage in relation to the Country) constitute the material and immaterial heritage of the Kanak People. Chieftainships and Clans exercise in the name of

their Ancestors, their uninterrupted presence - and in spite of the colonial fact - their sovereignty over their traditional or customary territory, whatever the legal status of this territory may be.

83 - The land is first part of cultural heritage before being an economic lever.

84 - Autochthonous economic and social development correspond to a sustainable development, united and common, which privileges a collective interest, while respecting private and individual initiatives.

85 - Facing large projects, developments and infrastructures, the Kanak Society still finds the means to preserve and promote Kanak values, particularly as far as native languages are concerned, customary practices, the culture of the yam and the taro, as well as cultural gatherings. This process goes through the restructuring and strengthening of families, Clans and Chieftainships (customary authorities) and through a moderate use of modern development and communication tools. To be a part of the development implies a way to be in a position to guarantee the protection and the promotion of the values of the Kanak Society.

86 - The economic development as a whole and mining activity in particular, must respect the lands and the remains of the ancestral Kanak heritage. The free prior and informed consent must be obtained from the relevant Chieftainship and its Clans before any development or country planning project can start.

87 - The free prior informed consent of the relevant Chieftainship and its Clans is required; whatever is the legal status of the land. This right is connected to the zone of customary influence, which delimits on a map the land under the direct influence of Chieftainship and its Clans.

88 - For any land planning or development project, the free prior informed consent will only be granted on the basis of a pertinent assessment of all the environmental and socio cultural impacts, and of the respect of human rights.

89 - The loss of natural heritage and the alternative solutions for compensation and protection of any given area will have to be considered by the leader of the project, and will be taken into account in the granting of the prior consent.

90 - The free prior informed consent will be determined by the setting up of compensatory measures as far as environmental, patrimonial and sociocultural aspects could be concerned.

91 - These requirements are in force whatever the applicable provincial, territorial or national law is.

C - TRADITIONAL KNOWLEDGE

92 - Traditional knowledge and knowledge in relation to plants, minerals, seasons (season of rains, humidity, heat), of the stars and the land, maritime areas are the immaterial heritage of the Kanak people because they are the fruits of a history and a common civilisation. Each Clan is the keeper according to an inheritance passed on from generation to generation.

93 - The rights in connection with traditional knowledge; and knowledge in relation to plants are recognized to depository Clan, Chieftainship and to the Kanak People.

94 - No legal provision, either legislative or statutory, allowing the exploitation or development of these resources and/or knowledge could legitimately be adopted or empowered without having beforehand been approved in all its terms by the customary representatives of the Kanak people according to the present Charter.

SECTION 4: CULTURE AND EDUCATION

95 - Customary authorities are united so that families and Clans can implement the Common Base of Kanak Values and speak about it during customary gatherings.

96 - Languages and culture are the vectors and the expression of the Kanak civilisation, of its philosophy and Custom. The diversity of languages expresses the wealth of this culture. It is a unique heritage which cannot disappear and the members of each Clan are the keepers of this inheritance as well as the Kanak People.

97 - All the Kanak languages must be safeguarded and promoted. The practice of the language must be encouraged in tribes and in Chieftainships. The teaching of Kanak languages and culture must be fulfilled by the parents.

98 - It is necessary to create in tribe premises for the teaching of customary life, and Kanak languages for the children.

99 - The rights of the autochthonous child must be taken into account and supported by the public education system, and in particular, in civic education programs, especially in nurseries and primary schools. The recognition of Kanak languages must effective in public and private schools.

SECTION 5: CONFLICTS AND JURISDICTION

100 - The management of conflicts between natives, or with regards to customary lands falls under jurisdiction of the customary authorities which have to implement the means for customary mediation at the level of the Clan and at the level of the Chieftainship before going through civil customary Courts or common law.

101 - The customary authority, protector of customary public order, applies to anyone living on customary lands and to all the members of the customary community wherever they are.

Such authority also extends to the land and maritime public areas over the entire zone of customary influence.

102 - The system of customary sanctions is graduated in accordance to the nature of the offences and crimes.

We can distinguish wrong doings being the concern of the education system, of the respect for customary public order and customary morality. The system of sanctions and compensations aims to re-establish the equilibrium as it was prior to the offence or crime.

103 - The Territory of New Caledonia must be managed by institutions based on a co-operative legal pluralism. In this sense, proposals will be made to include

the Kanak autochthonous vision of a customary public order into a system of management of Justice that is not divided up to ensure the development in good harmony of the principles and practices of a judicial right for everything that has to do with custom and customary matters.

104 - As a general concern about the good administration of New Caledonia, the coexistence and acceptance of both sovereign systems for the administration of Justice, one customary, one national, must be organised.

SECTION 6: RELATIONS WITH OTHER PEOPLES:

105 - The Kanak People is sovereign in its relations with other autochthonous peoples and their customary authorities in the South Pacific and in the world. It is sovereign in its relations with non-autochthonous populations, particularly in New Caledonia, as well as in its relations with the national and New Caledonian authorities.

106 - It must exercise its welcoming and hospitality rights in conditions fitting to the system of values and the basic principles of custom as set out in the present Charter.

CHAPTER III

EMPOWERMENT OF THE RIGHT TO SELF-DETERMINATION OF THE KANAK PEOPLE

107 - The sovereignty of the Kanak people is inherent and the control of its own destiny derives from its Natural and Inalienable Rights.

108 - The sovereignty of the Kanak people derives from the authority of all the Chieftainships considered as a whole.

109 - The sovereignty of each Chieftainship, regrouping all the Clans, exercise over each parcel of the territory concerned. .

110 - The right to self-determination of the Kanak People is understood in the meaning of International Law on Autochthonous People, as well as at the internal level. It is complementary to the right of people to self determination.

111 - It is based on the principle of a common and shared sovereignty and does not infringe with the territorial integrity of the State in any way.

112 - The sovereignty of the Kanak people expresses itself in all the fields of the Kanak social organisation, and especially, according to the dispositions listed in the present Charter.

113 - The Kanak people, its customary authorities and its institutions determine freely the level of their participation and contribution in the management of the institutions of the State and of the Territory as well as the degree of their cooperation with the aforementioned institutions.

114 - Each Kanak individual determines freely the level of its participation within the institutions of the State through its rights as a citizen.

115 - Herein, we assert that any participation or cooperation of the Kanak people and its components will not exist from now on without institutions being respectful of the principles and values listed in the present Charter and on the basis of

relations freed from any form of discrimination or subjection.

In witness whereof:

Considering that the Customary Senate of New Caledonia is the deliberative assembly of the Kanak Country in charge, in the actual conditions, to represent the autochthonous legitimacy at the head of the republican institutions of the State;

Considering that the Customary Senate has full competence over customary law;

Considering that the Customary Senate, an institution of the French Republic, has not less inherited the battle for the emancipation of the Kanak people and is motivated in its endeavours by the values and principles which founded the Kanak Identity;

Convinced that the Kanak People must set up reliable institutions for self governance and unite its rights;

Bearing in mind that the sovereignty of the Kanak People must exert through an authority which is the emanation of all the Chieftainships on the mainland and surrounding islands and demonstrates its legitimacy through custom and the Word;

We customary authorities, Great Chiefs, Chiefs, Presidents of Customary Councils, and Presidents of Chiefs of Clans Councils, the only traditional and legitimate representatives of the Kanak People in New Caledonia, constitute, according to the terms of the present Charter, THE ASSEMBLY OF THE KANAK PEOPLE

The ASSEMBLY OF THE KANAK PEOPLE regroups all the Chieftainships and the Customary Councils of the 8 Countries as well as their nominated representatives.

The ASSEMBLY OF THE KANAK PEOPLE is in charge to implement and represent the Kanak autochthonous sovereignty, until a new Social Contract is established with the other components of New Caledonia.

Any institution of the State or the Territory involved with the management of the Kanak Custom and Identity will necessarily have to derive from Chieftainships, hence from The ASSEMBLY OF THE KANAK PEOPLE;

This is the case today with the Customary Senate and the 8 Customary Councils;

Wherefore, The ASSEMBLY OF THE KANAK PEOPLE determines from now on to entrust the Customary Senate with a conventional mission in order to be able, as soon as possible, on the one hand, to organise and reinforce the sovereignty of the Kanak People and, on the other hand, to redefine a mutually accepted framework of the relations between the Kanak People, the State and the Territory of New Caledonia whatever its future may be.

Having read, signed and adopted the present Charter regarding the Common Basis of the Values and Fundamental Principles of the Kanak Civilisation,

We, Chieftainships and customary authorities, composing the ASSEMBLY OF THE KANAK PEOPLE

Are proclaiming the present Charter for all legal intents and purposes,

we urge our populations to respect it, and promote it,

we invite all the authorities of the State and the Territory to implement it and we are calling upon the international Community, and in particular the Countries and People of the South Pacific, for their support in our endeavours,

we will diffuse this Charter as a contribution for a common destiny, and to work for transparency, dialogue and humanity.

CHIEFTAINSHIPS

HOOT MY WHAAP Country

PAICI-CAMUKI Country

AJIE-ARHO Country

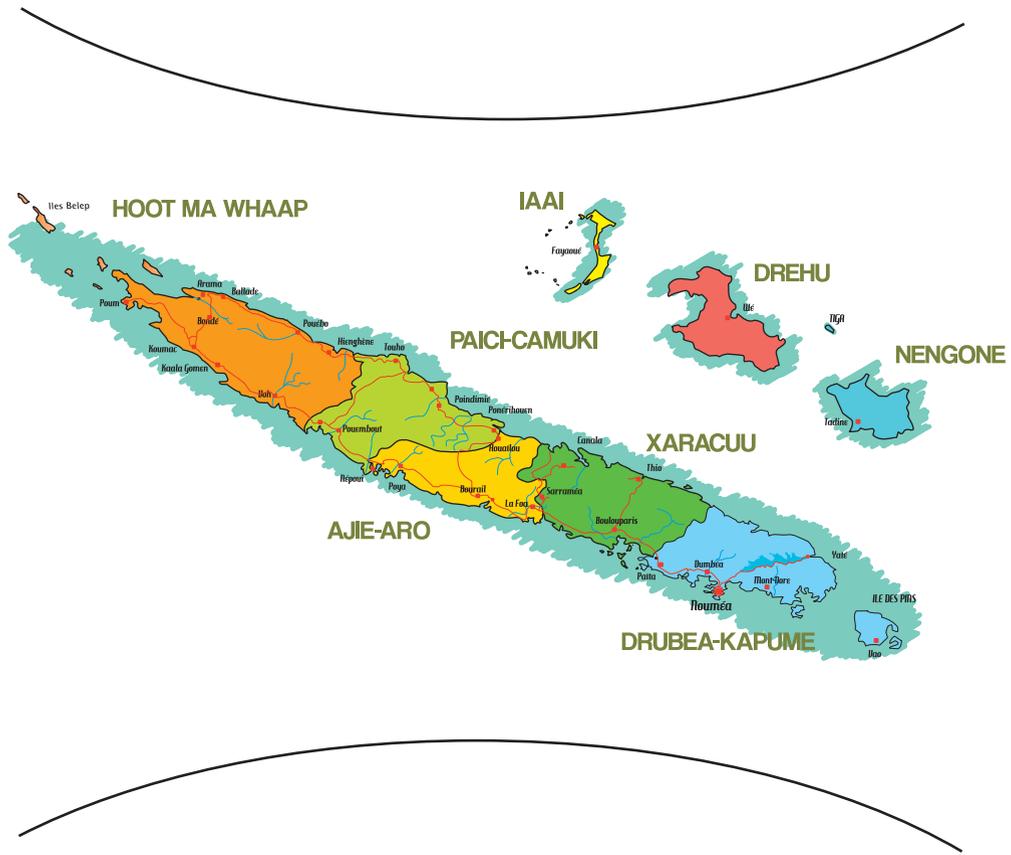
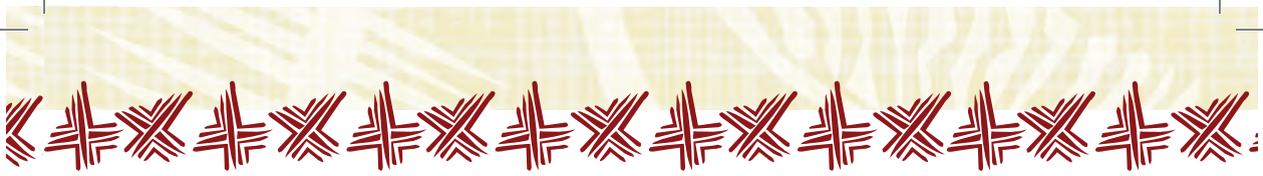
XARACUU Country

DRUBEA KAPÜME Country

NENGONE Country

DREHU Country

ĪAAĪ Country





Overview of the yam's fa





's fair at Kowe-Kara







ASSEMBLÉE DU PEUPLE KANAK





SÉNAT COUTUMIER
DE LA NOUVELLE-CALÉDONIE

