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## **New Caledonia**

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He was nominated in September 2019 as an expert Member of the IPBES Capacity Building Task Force

He holds a Bachelor of Laws, two Masters in English Literature, Political Science (University of Paris-X Nanterre) and a Masters in Legal Anthropology (University of New Caledonia). He already has a significant number of publications and participation in scientific conferences to his credit.

He is currently responsible for the scientific project in support of the participatory development of the Environmental Code of the Loyalty Islands province and of a feasibility study for the recognition of the Pacific Ocean as a legal entity with rights of her own.

## 1. Statement on context – the local history as relevant to the current legal system.

New Caledonia is an archipelagic French overseas territory in the south-west Pacific Ocean, in the North-East of Australia, consisting of a large main island, called *Grande Terre*, (400 km long and 40km wide), the Loyalty Islands archipelago, low-lying coral atolls and numerous other small islands. The total land area of New Caledonia is 19,100 km<sup>2</sup>. New Caledonia's Exclusive Economic Zone (EEZ) covers 1,740,000 km<sup>2</sup> (672,000 square miles) of ocean, representing 16% of France's EEZ.

New Caledonia was first settled about 4,000 years ago by the ancestors of the Melanesian inhabitants, the *Kanak*. It was annexed by France in 1853, as part of the “second French colonial Empire”. The status of colony of New Caledonia persisted, virtually unchanged, until after World War II, when New Caledonia became an overseas territory (*territoire d'outre-mer* or 'TOM') within the French Constitution of 1946. From then on, the Kanak as well as immigrant workers were gradually granted the right to vote. Kanak then became increasingly involved in local politics.

In 1956, a large autonomy was granted to New Caledonia, like to most French overseas territories. Nevertheless, since then, French governments seemed unable to maintain this autonomy and during the 1960s, the State went back on its word and reduced the autonomy of New Caledonia, particularly with regard to the management of mineral resources, thereby reducing the potential financial self-sufficiency of the territory.

As a result, from the end of the 1960s, Kanak started formulating demands for a greater autonomy from France. Facing France's refusal to return to the previously granted autonomy, the political claim progressively turned to a Kanak independence movement. Under the pressure of this sovereigntist movement, New Caledonia experienced during a period of about 20 years a dozen of different statutes that granted or withdrew various degrees of autonomy, very well summarised by Professor G. Agniel with the figurative expression “institutional yo-yo”.

The independence struggle led to a near-civil war situation during the 1980s, the paroxysm of which was reached in 1988 with a hostage-taking in a cave in the island of Ouvéa which ended with the death of more than 20 people. To get out of the crisis, an agreement was concluded between the French State and the leaders of the loyalist and independence movements, leading to the Matignon Agreements paving the way for a return to civil peace, pending the holding of a self-determination referendum scheduled for 1998. Nevertheless, following a consensus among local political leaders, a new agreement, the Noumea Accord, was finally concluded in May 1998, extending the self-determination deadline by 20 years.

The current New Caledonia institutional organisation is the result of this statutory evolution that led this overseas territory to become an extremely original self-governed entity within the French Constitution, which needed to be amended in order to allow a large institutional and normative autonomy.

This exceptional legal and political framework is guided by a logic of progressive emancipation, New Caledonia being inscribed by the United Nations on its list of Non-Self-Governing Territories yet to be decolonised. The Nouméa Accord therefore provided for a

twenty-year cycle that is currently coming to an end with the organisation of possibly three successive referendum on self-determination.

On November 4, 2018, occurred the first consultation when the “concerned populations” (an electoral body restricted to indigenous Kanak people and citizens from other ethnic groups justifying permanent residency before December 1994) of New Caledonia were asked if they wanted “*New Caledonia to access to full sovereignty and become independent*”. As 56.67% of voters answered “No” to this question, and in accordance with the Nouméa Accord, a second referendum on the same question will be organised on September 6<sup>th</sup>, 2020. If the answer is still negative, a third and last consultation should take place, at the latest in 2022.

The self-determination process as stated by the Nouméa Accord will then be over and the Caledonian people will have made their choice between remaining as a non-sovereign island jurisdiction within the French Republic or becoming an independent State.

## **National Legislation**

French Constitution of October 4, 1958 (in English)

[https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank\\_mm/anglais/constiution\\_anglais\\_oct2009.pdf](https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/constiution_anglais_oct2009.pdf)

Nouméa Agreement

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000555817&categorieLien=id>

New Caledonia Act, March 19, 1999

[https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=83FFF4A06E61AC43A9777089BA206B6E.tplgfr30s\\_1?cidTexte=JORFTEXT000000393606&dateTexte=20180106](https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=83FFF4A06E61AC43A9777089BA206B6E.tplgfr30s_1?cidTexte=JORFTEXT000000393606&dateTexte=20180106)

## 2. Sources of law and explore each of them as relevant in the particular legal system

The presentation of the sources of law is an opportunity to highlight the legal pluralism existing in New Caledonia. Due to its societal composition, customs of indigenous populations are an additional source besides “formal law”, especially regarding civil law. The autonomy of New Caledonia within the French Republic is also an explanation of the originality of New Caledonia sources of law, allowing a mix of national and local regulations even though France is a unitary State.

The New Caledonia Act of March 19, 1999 (Loi organique modifiée 99-209 relative à la Nouvelle-Calédonie) provides the current legal framework of the institutional functioning of the territory.

Most sources of law applicable in New Caledonia are of “formal law”, that is to say the law produced by the so-called "republican" institutions, whether at State or local level.

Among these, the constitutional source constitutes the primary source of law in New Caledonia. Almost all the French “block of constitutionality” (i.e. French Constitution, French Declaration of Human and Civic Rights of 26 August 1789, Preamble to the Constitution of October 27th 1946, the Charter for the Environment of 2004 and all the principles and objectives established by the Constitutional Council) is applicable in New Caledonia. Some derogations were nonetheless granted to New Caledonia. We can mention in this regard the right to vote in local elections (reserved to Caledonian citizens and excluding 30.000 to 40.000 French citizens of the electoral body), the access to local employment (priority of access is granted to people residing for a period up to at least 10 years in New Caledonia) or the attribution of a legislative power to the local Parliament when the National Parliament normally has the monopoly of legislative power as it is usually the case in a unitary State.

International sources of law are also important, but they are quite significantly different from the national level. On the one hand, since New Caledonia has the status of an OCT of the European Union, European Union law does not apply there. On the other, most of the international conventions ratified by France are applicable in New Caledonia, unless otherwise provided by the French State at the time of negotiation of the convention when the State issues a reservation of territorial applicability. Finally, some regional conventions are also applicable, like the Nouméa Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (1986) or the Apia Convention on Conservation of Nature in the South Pacific (1979).

The legislative source is shared between the French Parliament and the Congress of New Caledonia in their respective areas of power as specified in Sections 21, 22 and 99 of the 1999 New Caledonia Act. Legislative Acts and regulations adopted by French national authorities even in matters specified in Section 21 are enforceable in New Caledonia only if they expressly say so. Statutes (*Lois du pays*) adopted by the local parliament have the same authority as those passed by the national parliament. Currently and after progressive devolution of powers from the national to the local level during the 20 years of application of Nouméa Agreement (1998-2018), the local legislative field includes matters such as civil law, commercial law, tax law, labor and social security law or even mining law, public property law or the law relating to Kanak identity.

The case-law source is on the contrary exclusively of state origin, justice being a competence still fully exercised by the State, both at the national and local level. The judicial system is nevertheless organized in order to take into account local specificities. It is especially interesting to highlight the creation of customary assessors before the civil courts. Indeed, when a dispute involves matters relating to persons and property as well as customary land law, the role of the assessor is to inform the judge about the customary rules and practices in order to allow the magistrate to apply the traditional rules. Customary assessors are lay judges and they form the customary civil chamber which is presided over by a professional magistrate. The ordinance n ° 82-877 of October 15, 1982 creating the customary assessors gave birth to this judicial institution, unique in the Pacific which demonstrate an interesting accommodation of the judicial system in its daily operation to the legal otherness from non-Western systems of thought.

Finally, the regulatory source is shared between the State (central and local authorities), New Caledonia (Congress and Government of New Caledonia), the provinces (New Caledonia is divided into three provinces) and the municipalities.

Beyond “formal law”, enacted by Republican institutions, the situation of persons of customary civil status are governed by their customs regarding matters of law of person and customary land law, thus reflecting the legal pluralism in force in New Caledonia. The application of customary rules and practices is the responsibility of the customary authorities and governs the daily life of people of Kanak customary status.

In addition, the Customary Senate, either a consultative authority or co-legislator (in the fields related to custom and Kanak identity), intervenes in decision-making processes to innervate Caledonian law of Melanesian customary values. This hybridization of the regulations enacted in New Caledonia remains however extremely limited, with the exception of the regulations of the province of the Loyalty Islands (whose population is 97% Kanak), in particular in its Environmental Code.

### **Main institutions in New Caledonia**

- Congrès de la Nouvelle-Calédonie : [www.congres.nc](http://www.congres.nc)
- Gouvernement de la Nouvelle-Calédonie : [www.gouv.nc](http://www.gouv.nc)
- Haut-commissariat en Nouvelle-Calédonie : [www.nouvelle-caledonie.gouv.fr](http://www.nouvelle-caledonie.gouv.fr)
- Cour d’appel de Nouméa : <https://www.cours-appel.justice.fr/noumea>

### **National & New Caledonia Legal ressources**

- National databank : [www.legifrance.gouv.fr](http://www.legifrance.gouv.fr)
- New Caledonia databank : [www.juridoc.gouv.nc](http://www.juridoc.gouv.nc)

### **3. Constitutional law: the constitution, the legislature, the judiciary, and constitutional offices and entities, the law profession, court procedure, and dispute resolution.**

New Caledonia is an autonomous French overseas territory in the process of emancipation whose institutional organization has been the subject of successive developments according to independence claims and the balance of power between secessionists and supporters of maintaining the territory in the French Republic.

The 1958 French Constitution and all the fundamental guarantees that derive from it are fully applicable in New Caledonia. Any local legislative Act or regulation that does not abide by it can be considered as unconstitutional by courts if they are seized.

Otherwise, except for a restricted number of matters that are usually considered as being sovereign powers of the State (national defence, currency, justice, diplomacy etc.) that are still exercised by the national government most of matters that need normative intervention are attributed to New Caledonia's local authorities.

Since the 1980s, the intensification of the independence movement has led to an increasing territorial division of New Caledonia. The creation of the "pays" by the Lemoine statute in 1984, then of the "regions" by the Fabius Pisani statute in 1985 mark indeed the awareness of the need for a sharing of political power on a territorial basis to take into account the demographic distribution of population.

In this context, the provincialization of the archipelago initiated by the Matignon-Oudinot agreements in 1988 and confirmed by the Noumea agreement in 1998 constitutes a key element of the political system put in place to operate a lasting return to civil peace. Indeed, the geographic division of the territory has been used as a tool of territorial federalism allowing each political group to gain power over the parts of territory where it enjoys majority representation. The provinces have broad powers and significant financial means.

The same logic governs the composition of territorial institutions.

First, the local executive is no longer the "Haut-Commissaire", representative of the French State, but the Government of New Caledonia, an offshoot of the local assembly. Indeed, executive power is vested in the Government of New Caledonia including its President who represents the territory.

The method of appointment of its members is a specificity of the Government of New Caledonia. Its uniqueness remains in the fact that it is one the extremely rare example of a multi-party government that really works. Elected by the Congress of New Caledonia through proportional representation, the local executive thus reflects the different main political trends of the Parliament. As a consequence, parliamentary majorities and minorities coexist within the Government. Required by the Noumea Accord and answering to a consociational logic, the heterogeneous composition of the Government reflects the need to build a common destiny for the various components of the Caledonian society. By requiring the majority to discuss with representatives of minority tendencies, the structure of government is truly original even if similar approaches can be found in The Good Friday Agreement in Northern Ireland or in the 1997 Fiji Constitution but as we mentioned did not last long.

After their election by the Congress, members of the Government appoint their president and vice president and proceed by consensus with the distribution of areas of intervention of each member.

In this context, the High Commissioner, representative of the French state plays a more limited role than in the previous status, which shows the evolution towards autonomy desired by the negotiators of the Noumea Accord. He is the representative of State and, more importantly, ensures regular exercise of their powers by the institutions of New Caledonia, including through the review of legality.

The legislative power in New Caledonia is exercised by a partial bicameral Parliament. The Congress intervenes in all areas. The second chamber, the Customary Senate, for its part, is involved in the legislative process only as it concerns matters of Kanak identity and custom.

The members of the Congress of New Caledonia are elected for five years. It is actually an offshoot of the provincial assemblies. The local territorial assembly is composed of 7 of the 14 members of the Loyalty Islands Province assembly, 15 of the 22 councillors of the Northern Province and 32 of the 40 elected members of the Southern Province. Each province thus forms a constituency for the designation of members of the Congress of New Caledonia.

The election takes place with a party-list proportional representation system. The seating is in the order of presentation of each list. However, there is a hurdle and the lists which do not obtain 5% of registered voters do not participate in the distribution of seats.

Congress has two main roles: the first of these functions is to adopt, within its areas of competence, various regulations that are binding on Caledonians. These take the form of regulatory power and – a major innovation of the New Caledonia Act 1999 – a legislative power. The second of these functions is to elect the government of New Caledonia, and possibly to question its responsibility by voting a no-confidence motion.

In support of specific institutions, the Noumea Accord recognizes the pre-existence of the Kanak people because of their presence in 1853 before annexation by France. It decided as well to grant traditional organs the rank of republican institutions in order to offer Kanak people some rehabilitation of their social and cultural identity, which they use as a bulwark against Westernization at the same time as they regain their dignity and their freedom. This explains the creation and role of the customary Senate in the procedure of adoption of the local statutes.

In this context, while Congress is in principle the only assembly to approve bills, an intervention of the Customary Senate is expected through the legislative procedure, for matters relating to custom.

The Customary Senate is composed of sixteen members appointed through the traditional practices of each customary area, with two representatives from each customary area of New Caledonia.

### **Nouméa Agreement**

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000555817&categorieLien=id>

**New Caledonia Act, March 19, 1999**



[https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=83FFF4A06E61AC43A9777089BA206B6E.tplgfr30s\\_1?cidTexte=JORFTEXT000000393606&dateTexte=20180106](https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=83FFF4A06E61AC43A9777089BA206B6E.tplgfr30s_1?cidTexte=JORFTEXT000000393606&dateTexte=20180106)

#### **4. The law of persons (which will include marriage, divorce, adoption, children)**

In 1887, indigenous people throughout the French colonial Empire became subject to the *Code de l'indigénat*, a statute that imposed restrictions on movement, summary punishments and an authoritarian system of local governance on indigenous population and immigrant workers. The Indigenous Code distinguished two categories of citizens: French citizens (of metropolitan origin) and French subjects, i.e. Melanesians as well as immigrant workers. These populations were deprived of their entire identity. The Indigenous Code was abolished by a law of April 7, 1946.

Since 1946, the law of persons in New Caledonia is characterised by a new form of legal pluralism: the inhabitants of New Caledonia come under either "ordinary" civil status or a customary - Kanak, Wallisian or Futunian - status.

People of ordinary civil status are subject to the Napoleonian Civil Code, that is to say the rules of French law. Indeed, even if normative power over civil law was transferred from France to New Caledonia authorities on July 1<sup>st</sup>, 2013, all rules applicable to New Caledonia residents belonging to this category still remain identical to metropolitan rules, no statutes having been enacted since then. Nevertheless, a differentiation between the two laws will operate gradually, as each of the legislators will reform its civil law.

Some aspects of civil law were nonetheless not transferred to New Caledonia. The transfer extends to the matters covered by the first four parts of the Civil Code (law of persons, property law, right of ownership and personal property security law) as well as other matters which, by their object, are related in civil law, such as co-ownership, residential or professional leases, rural leases, literary and artistic property or land advertising for example.

However, were excluded from the scope of the transfer the provisions on nationality, as well as article 9 of the Code on the protection of privacy, the principles relating to the respect of human body, the provisions of articles 544 and 545 on the fundamental character of property rights. Were also excluded the provisions which ensure respect for freedom of marriage and, finally, the rules on freedom of association. All these fields remain in the hands of the national Parliament. For example, it is not possible for the Congress of New Caledonia to reconsider the same-sex marriage.

The laws of persons will also have to comply not only to the constitutionality block but also to the international commitments of France, at the forefront of which is the European Convention on Human Rights.

According to Section 7 of the 1999 New Caledonia Act (NCA), people under customary civil status are governed by their customs for all matters related to civil status, i.e. filiation, marriage, adoption, divorce, inheritance and matrimonial property regimes. The legal regime applicable to persons falling under this status therefore differs according to the customary rules existing within their clan, their tribe or their customary area, as New Caledonia is divided in eight customary areas, each one consisting of several districts where tribes, subdivided in clans, live.

According to Section 19 of the 1999 NCA, in the event of litigation related to civil status between persons of customary law, if the conflict cannot be settled by the customary authorities, it will be by the civil courts, in a panel comprising customary assessors, who must indicate to the judge the customary rules involved. If the dispute involves a common law person and a person with customary civil status, the formal law will apply.

## **National legislation**

### **Code Civil :**

<https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070721&dateTexte=20200209>

### **New Caledonia Legislation**

[https://juridoc.gouv.nc/JuriDoc/JdCodes.nsf/\(mesX-FTP\)?SearchView&query=\[Ms\\_Cat\]=CL&SearchOrder=4&MaxResults=3000&Start=1&Count=500&Th=CL](https://juridoc.gouv.nc/JuriDoc/JdCodes.nsf/(mesX-FTP)?SearchView&query=[Ms_Cat]=CL&SearchOrder=4&MaxResults=3000&Start=1&Count=500&Th=CL)

## 5. Discussion of the nature of the law and obligations: torts, contract, restitution

Even though New Caledonia is in charge of normative power in civil law, we can say that the law of obligations in the Territory is still quite entirely governed by French law. Indeed, the transfer of this power having only taken place on July 1<sup>st</sup>, 2013, the provisions applicable in contract law and law of obligations are still quite close to French law.

However, in 2016, an important reform of torts and contract law took place in metropolitan France, thus after the transfer of power of civil law to Caledonian authorities, opening a gap between the two legal systems. However, substantial work to transcribe this reform into Caledonian law is being prepared, revealing the difficulties of emancipation for Caledonian law, in a newly transferred matter. This lack of audacity and this latency in the emancipation of the law can quite commonly be observed during the years following the transfer of powers from the French State to New Caledonia authorities. Thus, the emancipation of labor law for example took nearly a dozen years to become really effective.

Inspired from a tradition of Romano-Germanic law, the French law of obligations is based on the rules fixed in the Napoleonic Code of 1804, nourished by case-law that contribute to the modernisation of this law.

It nevertheless remained faithful to classical theory and the obligation remains a personal and subjective right. However, over time, a more economical approach of the obligation has emerged, particularly in the area of the circulation of claims. In this regard, the reform brought about by the ordinance of February 10, 2016, and which might be soon transposed by the Caledonian legislator, only confirms this modern approach.

Any obligation is today conceived both as a legal link between two people and as a link between two heritages. There is therefore a unique concept of obligation since all obligations can be defined in the same way as a legal relationship between two people and two heritage, even if this relationship is split depending on whether one takes into account the subjective aspect of the obligation (link between two people) or the objective one (relationship between two heritages).

Any legal obligation, whatever its source can indeed be, is defined as a legal bond uniting the creditor and the debtor by virtue of which the first (creditor) can obtain from the other the performance of a service, if necessary by coercion and using public force. The civil obligation is therefore characterized by the possibility of applying to the state courts to obtain the debtor's conviction for execution, and the use of measures of forced execution thereafter.

There are, however, different kinds of obligations. They have different characteristics and are subject to classifications. According to the drafters of the Civil Code, there were five main sources of obligations (sections 1101 and 1370) which led to the distinction between conventional and non-conventional sources.

Among the conventional sources, of course, is the contract, which is defined as an agreement of will, mainly to create obligations. It is defined by the Civil Code as "an agreement by which one or more persons are bound towards one or more others, to give, to do or not to do something" (C. civ., Art. 1101). The contract is therefore a mechanism intended to create obligations, which constitute the promise of services. As such, it is the instrument of economic exchanges.

Among the non-conventional sources, there is the quasi-contract which is a lawful fact which is similar to the contract but which is imposed on the debtor beyond his will (art. 1371, eg business management). There is also the tort (“*délit*”) which is an intentional fault (the author has the will to harm and cause damage) and a wrongful act engaging the civil liability of its author (former art. 1382). Another kind of tort, called “*quasi-délit*”, is an unintentional wrongful act, a recklessness or a negligence, also engaging the tort liability of its author (former art. 1383).

In addition, the law gives rise to obligations beyond any private will, such as for example support obligations between parents and children, obligations towards the tutor, obligations between spouses...

The 2016 ordinance, if transposed into Caledonian law, would establish the modern distinction of legal acts and facts by distinguishing between obligations arising from legal acts, legal facts or the rule of law or even, as it is recognized at the national level, the natural obligation, since it is specified, in section 1100 paragraph 2 of the Civil Code that the obligations “*may arise from the voluntary performance or from the promise to perform a duty of conscience towards others*”.

#### **National legislation :**

Ordonnance n° 2016-131 du 10 février 2016 portant réforme du droit des contrats, du régime général et de la preuve des obligations  
<https://www.legifrance.gouv.fr/eli/ordonnance/2016/2/10/2016-131/jo/texte>

Code Civil :

<https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070721&dateTexte=20200209>

#### **New Caledonia Legislation**

Code civil

[https://juridoc.gouv.nc/JuriDoc/JdCodes.nsf/\(mesX-FTP\)?SearchView&query=\[Ms\\_Cat\]=CL&SearchOrder=4&MaxResults=3000&Start=1&Count=500&Th=CL](https://juridoc.gouv.nc/JuriDoc/JdCodes.nsf/(mesX-FTP)?SearchView&query=[Ms_Cat]=CL&SearchOrder=4&MaxResults=3000&Start=1&Count=500&Th=CL)

## 6. The laws relating to land; the laws relating to tangible and intangible property, and to cultural protection

Before colonisation land law was endogenous. Customary rules defined how Melanesian families (clans), through migration and matrimonial alliances, occupied – rather than owned – land. Although property lines were not properly mapped out, spatial reference points related to livelihoods and natural features, covering inhabited or not areas, did exist and delimited usage rights on land and water. After the French took possession of the archipelago in 1853 and in particular *the Grande Terre*, they introduced French land law. Based on still prevailing 19<sup>th</sup> century European distinctions between civilised and non-civilised nations in colonial contexts, French authorities exercised their “right to extinguish primitive titles” to land. They initially restricted the indigenous peoples’ land rights to cultivated areas, wrongly assuming that fallow lands and hunting and gathering zones were *vacant* territories to be annexed to the colony’s public domain. In the second half of the 19<sup>th</sup> century, colonial authorities progressively confiscated most of the Melanesians’ lands, forcing them out of their ancestral settlements into reserves, handing out thousands of seized hectares of lands to settlers, ranchers and miners. French authorities also replaced the clans customary land rights with French land property rights but for governance purposes aggregated clans into administrative tribes that were themselves gathered into districts.

Ever since they were forced to live in reserves sometimes far from their initial homes, the indigenous people constantly fought colonial authorities in order to get their lands back. Since it lost its official colony status in 1946 to become an overseas territory, a large part of New Caledonia’s conflictual history between the indigenous peoples, the settlers’ descendants and the French State is about fight for the evolution of applicable land law and the restitution of dispossessed territories. A struggle that became synonymous with the Kanak people’s struggle for independence since the 1970s. The long-awaited evolution started with the Dijoud (from the French Minister’s name) *réforme foncière* of 1978 with the official aim of settling “*the land problem with a view to respecting the historic rights of the Melanesian communities*” and eventually led to the current legal status of land rights in New Caledonia.

The basic principle of the current land law of New Caledonia is to be found in Section 6 of the 1999 New Caledonia Act (*Loi n° 99-209 du 19 mars 1999*) that states that there are three different regimes of land ownership in New Caledonia : beside “classic” private property and public property, a third regime is that of customary lands (*terres coutumières*).

Relevant legal rules on private property which is guaranteed by the French Constitution law are to be found in the *Code Civil* applicable to New Caledonia. Normative power in civil law was transferred from the French State to the Congress and Govt. of New Caledonia in July 2013. These institutions have full power to modify the French Civil Code to their will.

Public property rules depend on which level of government we are referring to. Public domain pertaining to the French State (courts, national defence infrastructures etc.) are governed by national rules adopted by the French govt. They can be found in the French *Code Général de la Propriété des Personnes Publiques* (CG3P Section L2111.1). New Caledonia’s public domain is governed by Acts of the Congress of New Caledonia (*Lois du*

pays) and local govt. regulations. The three Provinces' public domain rules are also fixed by Acts of Congress. Municipalities' public property rules are fixed by the national government in the *Code Général des Collectivités Territoriales (CGCT)*.

Section 18 of the 1999 New Caledonia Act states that Customary lands and all goods situated on them and belonging to persons of customary civil status in New Caledonia are regulated by customary law.

Customary lands are inalienable, non-transferable, non-exchangeable and unseizable

### **Principal legal rules:**

- New Caledonia Public Domain : Section 44 - Loi n° 99-209 du 19 mars 1999
- Customary Lands : Section 18 - Loi n° 99-209 du 19 mars 1999
- Maritime Public domain of provinces : Sections 45 & 46 - Loi n° 99-209 du 19 mars 1999 and the Loi du pays du 11 janvier 2002 sur le domaine public maritime
- Rural Lands : Code Agricole et Pastoral en Nouvelle-Calédonie

All legal texts can be found at the following websites

- National legislation :
  - <https://www.legifrance.gouv.fr/>
  - <https://www.collectivites-locales.gouv.fr/biens-relevant-domaine-public-biens-relevant-domaine-prive>
- New Caledonia and provinces
  - <https://juridoc.gouv.nc/JuriDoc/JdWebE.nsf/Juristart?openpage>
  - The Agence de développement rural et d'aménagement foncier (ADRAF)'s website is a very useful resource on land law in New Caledonia : <http://www.adraf.nc/>

## **7. Key points of the commercial law, eg company law, partnership, securities, insolvency, carriage by air and sea, banking**

As it was the case with civil law, commercial law in New Caledonia became a local competence on July 1<sup>st</sup>, 2013 and was therefore little different from French law until recently.

An obvious characteristic of commercial law in New Caledonia is its excessive complexity. Based on French Law, it suffers from the same defects. It is then not surprising that the national parliament has been recently multiplying “simplification laws” like the Covenant Act of May 22, 2019, or the Company Law Simplification Act of July 19, 2019. Some measures taken by the government of New Caledonia to lighten the burden of administrative formalities for companies reveal the same concern.

New Caledonian commercial law is complex for several reasons.

First, it seems obvious that national commercial law is not suitable for a small island territory, facing different issues and thus needs.

Secondly, the absence of conflict solving rules - with rare exceptions - in the event of disputes that may fall under both Caledonian and national law, aggravates the situation.

A third element of complexity is generated by the existence of customary law, which raises difficult questions of delimitation and articulation with formal law. Indeed, the influence of custom in commercial law, and more generally in corporate law, is often underestimated because the statutory New Caledonia Act of March 19, 1999 extends its application to all relations "under civil law" between people of customary status. But very special issues arise about customary land, which imposes specific conventions to develop entrepreneurial activities and poses difficulties in terms of access to credit and business transfer. The law of property, the law of persons, the law of matrimonial property regimes, the law of obligations, which all come under "civil law", play an essential role in the functioning of businesses. Finally, the originality of corporate law in a customary environment is also marked by the existence of the “*Groupement de Droit Particulier Local*” (GDPL), original legal structures whose primary vocation of management of customary land is today largely supplanted by its use for entrepreneurial purposes. Once again, it appears that legal pluralism leads to a complexification of the law applicable in New Caledonia.

To demonstrate the complexity of commercial law, an example can be useful. Today, there are four main categories of independent professions working in the economic field: farmers, liberal professions, craftsmen and traders. For each of these professions, the legislator has differentiated the rules applicable to them, naturally resulting in a proliferation of regulations, the knowledge and implementation of which prove to be complex.

Another example is worth mentioning : New Caledonia, by virtue of the continuity of laws inherited from French commercial law, has a very large number of company types: civil companies, general partnerships (SNC), limited liability companies (SARL), limited companies (SA), companies by simplified actions (SAS), but also simple limited partnerships (SCS) or joint stock companies (SCA), non-trading companies (société civile de moyens (SCM), professional partnership companies (SCP), liberal practice companies (SEL) and limited liberal practice companies (SELARL), cooperative societies, farms with limited liability (EARL), joint farming partnership (GAEC), agricultural land grouping (GFA), etc... If the advisability of such a vast choice can be questioned at the national (continental level), it appears to be ridiculous in New Caledonia.



The most recent statistical data reveals that in June 2019, there were 9,904 SARLs (including 711 SELARL and 1 EARL), 9,537 civil societies (including 6,950 real estate civil societies, 75 SCM, 19 SCP and 522 civil societies d farm), 160 limited companies with boards of directors, 589 SAS and 169 SNC. There are no limited partnerships, no public limited companies with management boards, no GFAs, and no GAECs.

This excess of complexity has proven to be a major obstacle to economic development in New Caledonia. This is why the Congress of New Caledonia adopted legal provisions in a Support the Growth of the Caledonian Economy Act of January 20, 2020. It includes 4 dimensions:

- **Modernization and simplification:** the statute aims at modernising and simplifying the relations between entrepreneurs and the administration. Two objectives are pursued: to position the administration to be more supportive for economic development and to simplify the life cycle of businesses. A dozen measures are enacted, such as the creation of a right to tax error, new tools to improve the payment terms of the administration - which will have an observatory - or the launch, mid-2020, of [www.entreprises.nc](http://www.entreprises.nc) website to allow the creation of a business in a few clicks.

- **Economic recovery:** The second axis of the law concerns support for the economy and entrepreneurship. Eight measures aim at improving the cash flow of companies and their self-financing capacity in order to allow them to invest, in particular thanks to the early repayment of taxes on stocks or even to the improvement of the remuneration of the accounts of associates. Moreover, building and automobile sectors, which are really important sectors for New Caledonia economy, benefit of specific provisions.

- **Boosting purchasing power:** Purchasing power, consumer protection and competition are the subject of the third part of the law. To fight against expensive living and continuously rising cost of life, while bringing competition, the “price-quality shield” introduced in 2019 will be perpetuated. The economic recovery through consumption will go benefit from a boost to the purchasing power of Caledonians via the exemption from income tax on overtime of employees (up to AU\$ 7 000 per year) and the possibility given to employers to pay their employees an exceptional bonus. At the same time, consumer protection is concerned by provisions which seeks to improve the efficiency of the New Caledonia Competition Authority and a consumer code would also be drawn up.

- **Transformation and diversification of the economy:** The fourth and last part of this law finally proposes new tax systems in favour of innovation and rebalancing in order to stimulate the transformation and diversification of the Caledonian economy. Three tools are offered: free zones to encourage companies to set up where economic activity is poorly developed, a tax reduction to allow companies to finance research and innovation (30% of spending in the limit of 5 million francs (about AU\$ 70 000 per year) and a tax credit for crowdfunding of businesses to support investments in the local economy (25% of payments with a ceiling of 500,000 francs (about AU\$ 7 000 per year).

#### **National legislation :**

<https://www.legifrance.gouv.fr/>

A list of types commercial companies with their description in French can be found at :  
<https://business.lesechos.fr/outils-et-services/guides/guide-de-la-creation/1417/1423-6-les-differents-types-de-societes-24609.php>

## **New Caledonia**

Code de Commerce :

<https://juridoc.gouv.nc/JuriDoc/JdCodes.nsf/tree2?OpenPage&code=CO>

Loi du pays n° 2020-2 du 20 janvier 2020 de soutien à la croissance de l'économie calédonienne : [https://juridoc.gouv.nc/juridoc/jdtextes.nsf/\(web-All\)/F497B9131DEDA3D64B258504001B6904/\\$File/Loi-du-pays\\_2020-2\\_du\\_20-01-2020\\_ChG.pdf?OpenElement#search=%22croissance%22](https://juridoc.gouv.nc/juridoc/jdtextes.nsf/(web-All)/F497B9131DEDA3D64B258504001B6904/$File/Loi-du-pays_2020-2_du_20-01-2020_ChG.pdf?OpenElement#search=%22croissance%22)

## 8. Environmental law including natural resources and responses to climate change

The archipelago of New Caledonia, thanks to its geological history, is one of the world's biodiversity hotspots, which means it shelters exceptional species of which more than 75% are endemic, facing varieties of man-made and natural threats, aggravated in the past decades by global environmental change. Strong legal protection is therefore needed to ensure a sustainable future for the terrestrial and marine biodiversity which in turn provide for the livelihoods of New Caledonians.

Yet, despite this well-recognised need for a robust legal framework, environmental law in New Caledonia is all but simple. To understand why, it is necessary to keep in mind that power-sharing institutional design has led to a federalist architecture of the territory. Relations between the French State and the Pacific island territory are federal like. The territory of New Caledonia itself is divided into three provinces on a federal basis.

In the progressive decolonization process which started with the Matignon Agreements and that was added to the institutional autonomy existing since 1957, the current organisation deriving from the 1998 Nouméa Agreement and the 1999 New Caledonia Act (1999 NCA) has led to a devolution of powers on a subject-matter basis among the four different levels of jurisdiction : French State, New Caledonia, Provinces (Loyalty Islands, North & South) and municipalities. It happens that all these levels are entitled to produce legal rules regarding the environment.

The State has jurisdiction over constitutional rights related to the environment which are part of the 2005 Constitutional Charter for the Environment (<https://www.conseil-constitutionnel.fr/en/charter-for-the-environment>). Various fundamental rights and principles are enumerated in the Charter.

The State also deals with international matters such as Multilateral Environmental Agreements (MEAs). Unless specifically stated (which is the case for the Aarhus Convention for instance), most of MEAs ratified by France are applicable in New Caledonia. The 1992 Rio Conventions, The Nagoya Protocol and the Paris Agreement on Climate Change are among them.

Environmental NGOs are regulated by French national rules.

New Caledonia enacts rules related to energy production, water, air, mining as well as all including environment-related fiscal rules.

Since 2000, New Caledonia has adopted several master management plans (*Schémas Directeurs*) in various fields such as mining, energy production and water. A mining Code was also enacted to fix the rules for the sustainable exploitation the Grande Terre's mineral resources including 25% of world reserves of nickel. It has also jurisdiction on exploration, exploitation and management of naturel resources (including genetic resources) in its Exclusive Economic Zone (EEZ) and decided in 2014 that the entirety of the EEZ (1.4 million KM<sup>2</sup>) will be part of the "Coral Sea Natural Park" (*Parc Naturel de la Mer de Corail*) that will incorporate Marine Protected Areas, no-take zones and other sustainably managed areas that will allow various kind of activities in line with the "Blue Economy".

Municipalities decide on waste collection, drinking water distribution system, sewerage systems and electric energy distribution companies.

According to Section 20 of the 1999 NCA, all matters that are not expressly attributed to the three above-listed levels, fall into of each the three provinces' competence. Environment is one of them.

Today each Province has its own Environmental Code that deal in three different ways the management of natural resources (except mining and water). The three Environmental Codes have adopted a similar structure but they may differ in content. One can find environmental protection principles such as the right to information and participation in decision-making on environmental matters. Provincial Codes include rules related to environment management administrative structures, environmental impact assessments, to protected areas and protected species, invasive species, management of fishing, hunting, forestry, access and benefit-sharing related to genetic resources, quarries, to the *Installations classées pour la protection de l'environnement (ICPE)* (any facility – most often industrial or agricultural but not only – that require specific assessments and preventive measures for identified risks to the natural environment, human and animal health etc., akin to SEVESO classification in European law), waste management and prevention of natural disasters and pollutions.

Regarding climate change responses, because New Caledonia has an important mining and industrial activity, it chose to focus on sustainable use of fossile energies and the transition renewable energies as much as possible. It has adopted a master plan that covers the 2020 decade called “*Schéma pour la transition énergétique (STENC)*”. It has yet to develop a more comprehensive climate change adaptation as such.

### **Principal legal rules**

MEAs : the Regional Cooperation Service (*Service de la Coopération Régionale et des Relations Extérieures de Nouvelle-Calédonie*) keeps a regularly updated list of MEAs applicable in New Caledonia.

*All legal texts can be found at the following websites*

*National legislation :*

<https://www.legifrance.gouv.fr/>

*New Caledonia and provinces*

<https://juridoc.gouv.nc/JuriDoc/JdWebE.nsf/Juristart?openpage>

### **Other relevant documents and links**

*New Caledonia*

- Mining Master Plan : Schéma de mise en valeur des richesses minières  
[https://dimenc.gouv.nc/sites/default/files/download/2009-05\\_schema\\_mise\\_en\\_valeur\\_des\\_richesses\\_minieres\\_nc.pdf](https://dimenc.gouv.nc/sites/default/files/download/2009-05_schema_mise_en_valeur_des_richesses_minieres_nc.pdf)
- Mining Code (Code Minier)  
[https://dimenc.gouv.nc/sites/default/files/download/code\\_minier\\_de\\_la\\_nc\\_pl\\_chg\\_05-02-2019.pdf](https://dimenc.gouv.nc/sites/default/files/download/code_minier_de_la_nc_pl_chg_05-02-2019.pdf)  
[https://dimenc.gouv.nc/sites/default/files/download/code\\_minier\\_de\\_la\\_nc\\_pr\\_chg\\_30-04-2019.pdf](https://dimenc.gouv.nc/sites/default/files/download/code_minier_de_la_nc_pr_chg_30-04-2019.pdf)
- Energy : Le schéma pour la transition énergétique (STENC)  
[https://gouv.nc/sites/default/files/atoms/files/2016.06.23\\_schema\\_trantion\\_energetique\\_stenc.pdf](https://gouv.nc/sites/default/files/atoms/files/2016.06.23_schema_trantion_energetique_stenc.pdf)

- Water : « Schéma d'orientation de la Politique de l'Eau Partagée (PEP)  
[https://davar.gouv.nc/sites/default/files/atoms/files/pep -  
\\_schema\\_dorientation\\_pour\\_une\\_politique\\_de\\_leau\\_partagee\\_de\\_la\\_nouvelle-caledonie.pdf](https://davar.gouv.nc/sites/default/files/atoms/files/pep_-_schema_dorientation_pour_une_politique_de_leau_partagee_de_la_nouvelle-caledonie.pdf)

**Provincial Codes :**

South Province : Code de l'environnement de la province sud (CEPS)

<https://www.province-sud.nc/publication/code-lenvironnement-2019>

North Province : Code de l'environnement de la province nord (CEPN) (2018 edition)

[https://www.province-  
nord.nc/sites/default/files/parutions/code\\_de\\_lenvironnement\\_mis\\_a\\_jour\\_le\\_16-02-18\\_.pdf](https://www.province-nord.nc/sites/default/files/parutions/code_de_lenvironnement_mis_a_jour_le_16-02-18_.pdf)

Loyalty Islands Province : Code de l'environnement de la province des îles loyauté (CEPIL)

<https://www.province-iles.nc/sites/default/files/2019-03/19-033-Code-de-l-environnement-PIL.pdf>

## 9. The key features and sources of criminal law

The exercise of normative power in criminal law is quite complex in New Caledonia.

First of all, we must highlight the fact that criminal procedure is the exclusive competence of the French State. As it involves guarantees of fundamental rights, the Constitutional Council prohibits any intervention by a local authority in this field, whatever its autonomy may be.

As far as criminal law is concerned, there is a division of powers between the French State and the local authorities.

The French Criminal Code is applicable in New Caledonia. This means that criminal law relating to damages to persons and property remains under the jurisdiction of the State. The same rule is applicable to criminal provisions attached to powers which are still exercised by the State.

If Section 73 of the Constitution says that criminal law and criminal procedure law are outside the scope of devolution from the State to local governments, local authorities, however, are competent to impose criminal sanctions to the regulations they issue. This is the case, for example, in New Caledonia regarding criminal labor law or criminal tax law or for the provinces in the area of criminal environmental law.

The criminal jurisdiction of local authorities is nevertheless limited by two rules.

First of all, the Congress of New Caledonia and provincial assemblies can impose fines on offenses against local regulations, which respect the national classification of offenses and do not exceed the maximum sanctions provided for offenses of the same nature by the laws and regulations of the Republic. They may attach these offenses to additional penalties provided for offenses of the same nature by the laws and regulations of the Republic.

In addition, conditioned by the homologation of their local laws by the national Parliament, the Congress of New Caledonia and the provincial assemblies may enact imprisonment measures. Nevertheless, these measures must respect the classification of crimes in force at national level and should not exceed the maximum provided for offenses of the same kind by the laws and regulations of the Republic. Until the entry into force of the homologation law, only fines and additional penalties that may be provided for by local laws are applicable.

These rules are restricting the exercise of local authorities' power by preventing them, for example, from initiating a more repressive policy than the one existing in mainland France. This has been criticized in particular for environmental matters. On the other hand, they do not allow local authorities to innovate in terms of criminalization insofar as the additional penalties they can provide must be similar to those provided at national level. This means that they can neither use different complementary sanctions nor create new types of complementary penalties if they do not exist at national level. Here again, the provinces, that have jurisdiction in environmental law, have regretted on several occasions the weak degree of autonomy to issue innovative and educational penalties since they do not exist at the national level.

The Congress of New Caledonia and provincial assemblies may also provide for administrative sanctions in all matters. The fines collected in application of these provisions are paid into the budget of New Caledonia.

Sworn administrative officers of New Caledonia, provinces and municipalities may observe breaches of the respective regulations.

The claims in the context of the future statute of New Caledonia in the event that the overseas territory does not become independent in the next few years express the need for an emancipation of local authorities in criminal matters in order to have complete latitude in the areas under their jurisdiction.

## 10. The role of international law and treaties (including comment on trade and human rights treaties)

New Caledonia being an overseas autonomous Territory within the French Republic, it is not an international subject of law. International Treaties and conventions are signed by France as a Party to these international legal agreements and for most of them are applicable in New Caledonia. For example, nearly all multilateral agreements on the environment ratified by France like CITES, UNFCCC or CBD are applicable in New Caledonia.

However, in the on-going decolonisation process started in 1988 and confirmed with the 1998 Nouméa Agreement negotiated between the French State, Independentists and Loyalists leaders, New Caledonia has gained some visibility on the international scene. As part of what is termed in the 1998 agreement as “sovereignty sharing” (between France and New Caledonia) to boost the Pacific Territory’s autonomy, New Caledonia has its say regarding to its own engagement in international treaties signed by France. It can ask to be left out of a treaty (as allowed by international law) or on the contrary ask expressly to be part of it, as was the case with the 2015 Paris Agreement on Climate.

Two situations are to be considered. As mentioned in another section of this chapter, the French State has transferred its normative jurisdiction in several subject-matters to New Caledonia (Section 22, 1999 New Caledonia Act - NCA hereafter) and to its three provinces (Section 20, 1999 NCA), keeping under its own jurisdiction certain matters (Section 21, 1999 NCA) that are usually accepted as attributes of State sovereignty (fundamental rights, justice, diplomacy, currency, national defence, citizenship, criminal law...) or matters that need high skills and technicity not yet available locally like university education, radio and tv broadcasting rights, etc.

First, in the subject-matters that are still within the French State’s jurisdiction, Section 28 of the 1999 NCA says that the national government “may entrust to the President of the Government [of New Caledonia] the powers allowing him to negotiate and sign agreements with one or more States, territories or regional organizations of the Pacific and with regional organizations depending on the specialized agencies of the United Nations.”

This provision is to be linked to Section 89, 1999 NCA which adds that the Congress of New Caledonia “is consulted by the High Commissioner on bills authorizing the ratification or approval of treaties or agreements which fall within the competence of the State and are intended to apply in New Caledonia.”

Secondly, sovereignty sharing in foreign relations takes well into account the decolonisation roadmap. Section 29 introduced, in the matters of New Caledonia’s competence, the possibility for the Congress to “authorize by deliberation the President of the government to negotiate, in the respect of the international commitments of the Republic, agreements with one or more States, territories or regional organizations of the Pacific and with regional bodies dependent on the specialized agencies of the United Nations”.

The French authorities are *informed* of the authorization to negotiate and, at their request, are represented in the negotiation *within the delegation of New Caledonia*. This can be considered as a big change of situation.

Section 31, 1999 NCA states that New Caledonia may, with the agreement of French authorities, be a member, associate member of international organizations or an observer with them.



As a matter of fact, New Caledonia today is a full member of regional organisations such as the Pacific Community (SPC), the Regional Programme for the Environment (SPREP), the Pacific Islands Forum (PIF). It is also an associate member of UN ESCAP (Economic and Social Commission for the Asia- Pacific) and a non-voting member of WHO Western Pacific Region. New Caledonia is a Participating Territory of the Western and Central Pacific Fisheries Commission, France being a Party to the Convention.

Section 32 states that New Caledonia can have a representation (in the sense of the Vienna convention of April 18, 1961) in the States or Territories of the Pacific and at the European Community. The authorities of the Republic are informed of the States and territories in which New Caledonia is represented.

The Congress of New Caledonia created in 2017 the legal status of Delegates for New Caledonia. Today, there are five Delegates in place, one each in Australia, Fiji, New Zealand, Papua New Guinea and Vanuatu.

Though distinct from international Law, New Caledonia's relations with the European Union need a special mention as, following Brexit, France is now the only EU Member in the Pacific. New Caledonia is not part of the territory of the European Union and EU Law is not applicable in New Caledonia. However, it has the status of Overseas Country and Territory (OCT) attached to France within the European Union. EU-New Caledonia relations are defined as is the case for all other OCTs in the 2014 Overseas Association Decision.

The Congress of New Caledonia is also consulted by the French Minister for Overseas Territories on the projects and proposals for acts of the European Union and the European Community relating to the association of the overseas countries and territories with European Union and the European Community.

Section 33 introduces decentralized cooperation agreements for New Caledonia and its provinces. "The president of the government in matters coming under the jurisdiction of New Caledonia, or the president of the provincial assembly in matters coming under the jurisdiction of the province, negotiates and signs, respecting the international commitments of the Republic , decentralized cooperation agreements with French or foreign local authorities, their groups or public establishments."

Although the opening of New Caledonia to international law is limited to neighbouring Pacific countries and UN agencies, it is a real progress in terms of autonomous regional diplomacy.

All legal texts can be found at the following websites:

National legislation:

- French Constitution: Sections 53, 76 and 77
- Loi organique modifiée 99-209 du 19 mars 1999 relative à la Nouvelle-Calédonie (1999 New Caledonia Act)

<https://www.legifrance.gouv.fr/>

[New Caledonia legislation](#)

- [New Caledonia Delegates:](#)

- Loi du pays n° 2017-9 du 30 mars 2017 relative aux délégués pour la Nouvelle-Calédonie : [https://juridoc.gouv.nc/juridoc/jdtextes.nsf/\(web-All\)/C83159B06E7BF93D4B25811D0025FDA3/\\$File/Loi-du-pays\\_2017-9\\_du\\_30-03-2017\\_ChG.pdf?OpenElement#search=%22d%C3%A9%C3%A9gu%C3%A9s%22](https://juridoc.gouv.nc/juridoc/jdtextes.nsf/(web-All)/C83159B06E7BF93D4B25811D0025FDA3/$File/Loi-du-pays_2017-9_du_30-03-2017_ChG.pdf?OpenElement#search=%22d%C3%A9%C3%A9gu%C3%A9s%22)
- Délibération n° 84/CP du 16 mai 2017 portant dispositions relatives aux délégués pour la Nouvelle-Calédonie : [https://juridoc.gouv.nc/juridoc/jdtextes.nsf/\(web-All\)/9F6C768C865979504B2581540073C0D9/\\$File/D%C3%A9lib%C3%A9rationN%C2%B0\\_2084-CP\\_du\\_16-05-2017\\_ChG.pdf?OpenElement#search=%22d%C3%A9%C3%A9gu%C3%A9s%22](https://juridoc.gouv.nc/juridoc/jdtextes.nsf/(web-All)/9F6C768C865979504B2581540073C0D9/$File/D%C3%A9lib%C3%A9rationN%C2%B0_2084-CP_du_16-05-2017_ChG.pdf?OpenElement#search=%22d%C3%A9%C3%A9gu%C3%A9s%22)

EU-New Caledonia relations :

- 2014 Overseas Association Decision : [http://www.octassociation.org/IMG/pdf/oj\\_jol\\_2013\\_344\\_r\\_0001\\_01\\_en\\_txt.pdf](http://www.octassociation.org/IMG/pdf/oj_jol_2013_344_r_0001_01_en_txt.pdf)

## 11. Civil society organisations, eg Churches, trade unions

New Caledonia has a rich tradition of trade unionism.

Not surprisingly, union ideologies and the system of representativeness bring the Caledonian union landscape closer to the French landscape. The main unions are the USOENC, which defines its action as a demand and social management unionism (close to the French CFDT). The USTKE, on the contrary, would be closer to the logic of the CGT at the national level, with which it has links and leads a protest unionism. Other unions represent alternatives to these two extremes.

As in France too, there are two large employers' organizations: Medef and CGPME. Medef is the most representative organization of employers in terms of companies' size, activity sectors and salaried employment in general. The CGPME rather represents small and medium-sized enterprises.

Globally, trade unions in NC are militant and thus industrial relations are highly politicized. This politicization can be explained in particular by Kanak militancy and its anti-colonial engagement set up within the framework of the policy of "common destiny" emanating from the Noumea agreement. More broadly, it can be explained by the persistence of strong inequalities and the demands for economic and social rebalancing and the fight against high prices.

At the religious level, New Caledonia, like mainland France, protects freedom of religion and benefits from laws that ensure the separation of churches and the State. Therefore, there is no official religion. New Caledonia is governed, in matters of religion, by the Georges Mandel decrees of January 16 and December 6, 1939, which slightly modify for some overseas territories the law of separation of the Churches and the State of 1905.

If the Kanak people have a cultural base of animist origin, today they are mostly Christians. One could say it is even a strong identity component for Kanak society and culture as well as for the other Oceanian populations present in New Caledonia as it is the case in other Pacific islands.

The majority of cults in New Caledonia are Christians, especially Catholics, but also a large number of Protestants or Pentecostals in particular within the Melanesian and Tahitian populations, due to the presence from the beginning of the XIXth century, and even before the takeover by France, of evangelization missions like the London Missionary School.

Other minority cults are present. Islam in particular, both through members of the community of Indonesian origin and the descendants of former Algerian deportees who arrived in the second half of the XIXth century. The latter are mainly grouped in the Bourail region. Judaism is also present with a community of a few hundred members. There is a strong Vietnamese community who practices Buddhism, mostly present in Noumea.

Finally, New Caledonia knows an abundant associative life. It is even, according to a study conducted at the end of 2014, the "French region" where the most associations are created each year, after the Paris region. Open-air centers, sports, cultural, charitable associations, specialized aid, environmental and consumers defense: The goals are varied, and the structures are present even in isolated places. They bring together all ethnic groups in New

Caledonia. They even carry out certain missions of general interest, making up for the lack of private supply and public services.

The right of association that was established by a 1901 Act of the French Parliament has been recognized as a constitutionally guaranteed right since a judgement of the Constitutional Council in 1971.

However, the associative fabric has experienced serious difficulties in recent years due to the current economic crisis in New Caledonia which has led to significant cuts in public funding, which is essential for maintaining the dynamism of associations.

#### National legislation

- Religion
  - **Loi du 9 décembre 1905 concernant la séparation des Eglises et de l'Etat.**  
<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000508749>
- Association
  - **Loi du 1er juillet 1901 relative au contrat d'association**  
<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069570>

#### New Caledonia legislation

- Trade-Unions
  - [Loi du pays n° 2006-4 du 14 avril 2006 relative à la représentativité des organisations syndicales de salariés](#)
  - [Loi du pays n° 2010-1 du 12 janvier 2010 portant diverses dispositions relatives au droit du travail en Nouvelle-Calédonie.](#)
  - [Loi du pays n° 2010-13 du 31 décembre 2010 relative au conseil du dialogue social](#)