



Development of Tribes' Commons in New Caledonia. Negotiation Over Kanak Land for Urbanization

REVIEW ARTICLE

CÉLINE CASSOURRET 

IRÈNE SALENSON

*Author affiliations can be found in the back matter of this article

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ABSTRACT

New Caledonian customary land is an exception within the French land tenure system. Its legal framework warrants a specific collective management of land resources.

Since the disruption sustained during colonization (expropriation, population displacement, etc.), contemporary Kanak struggles have focused on land issues. In 1978, what later became a large-scale land reform began, mainly in favour of the Kanak community; in 1998, the Noumea Agreement acknowledged that the Kanak identity was structured by a specific link to land. Three types of land were subsequently defined: private land, public land, and customary land. However, the land breakdown reproduces the social inequalities already existing between communities. Furthermore, the development of customary lands is hampered by the inadequacy of the ordinary tools of urban planning.

Consequently, since the 2000s, public, private, and customary stakeholders have innovated, setting up mechanisms and tools for the development of Kanak lands that respect their legal status and governance system. A first practice centred on addressing the critical dwelling needs of Kanak communities. With a second practice, Kanak communities provided to other users' temporary provision of land with a fixed-term agreement, without transferring full ownership to users or authorization to implement development projects within their influence zone. As compensation, they benefited from funding and support for the residential development of their retroceded land. A third practice focused on economic and commercial development beyond the typical agricultural and livestock sectors.

These current development practices are creating bridges between ordinary law and customary practices. Kanak communities seek innovative mechanisms to guarantee the representation of customary bodies and to steer development. Legal and judicial tools specific to New Caledonia are also being created. However, some difficulties are arising. These new kinds of operations have emerged in very specific land pressure contexts. Thus, the sustainability of the land agreements is uncertain, in terms of transmission through generations, as well as for the use of amenities after land retrocessions.

Today, the main challenges in New Caledonia are to build a land policy encompassing the different land status and to balance between communities' aspirations for autonomy and public authorities' roles in assuring social and spatial balance and the public interest.

CORRESPONDING AUTHOR:

Céline Cassourret

Délégation interministérielle à l'hébergement et à l'accès au logement (Dihal), France

celine.cassourret@sciencespo.fr

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The analysis of New Caledonian customary lands developments can feed the discussion on urban land commons (Simonneau, 2018). Although modern market mechanisms are usually not part of a traditional system, here, community (Kanak tribe or clan) management of the common resource (land) persists, serving its interests (in this case, housing or financial resources).^{*} Furthermore, these innovations are helping redefine notions of land security, urban inclusion, and participatory democracy. However, although the process is meant to be inclusive, some risks have appeared relative to agreement transmission and sustainability.

^{*}This case study shows a remarkable search of balance between customary management and economic development, a conciliation between a legal and cultural framework. It traces over the long term the history of power struggles and conciliations building the “common”.

INTRODUCTION

“Within the Melanesian world, space is not just the motherland or the land holding the history of a clan. It is one of the main components of the wider society” (Tjibaou, 1978).¹

Land appropriation elicits issues of wealth and power distribution, of history and values, thus revealing that land is a key element within the construction of a nation (Shipton et al., 1992). In New Caledonia, distribution, development, and use of land have been major political issues during recent decades.

Since the disruption sustained during colonization (expropriation, population displacement, etc.), contemporary Kanak struggles have focused on land issues such as the preservation of the land’s customary value and claims for land restitution. In 1978, a large-scale land redistribution began, mainly in favour of the Kanak community; in 1998, the Noumea Agreement acknowledged that the Kanak identity was structured by a specific link to land. Three types of land were subsequently defined: private land, public land, and customary land, an exception in the French legal system. The customary designation allows for the existence of alternative collective forms of land tenure that guarantee the social function of land and limit commodification and speculation. After 1998, Kanak communities continued collectively managing land according to the rules of custom, as applied for traditional “land-based commons”,² but started to combine this land management with the French urban development legal framework.

This normative pluralism leads to the coexistence of various legal, economic, political, cultural, and citizen approaches for the same space. As a result, competition occurs around land development at the expense of customary lands. Moreover, while land reform has been largely implemented, socio-spatial inequalities between

communities,³ especially Melanesian and European, remain. Claims for customary land redistribution give way to claims for customary land development, and thus, some initiatives try to set up planning processes and practices consistent with customary rules.

In 2021, customary lands covered nearly one third of New Caledonia’s area (see Figure 1) and were exclusively managed by indigenous populations, i.e., 40% of the population (see Figure 2). According to the independence referendums’ results of 2018 and 2020 regarding the accession of New Caledonia to full sovereignty, customary lands encompass a critical role of balance within New Caledonia society: vote mapping shows the persistence of division, despite the predominant refusal of New Caledonia’s independence (see Figure 3).⁴ Customary lands are likely to contribute to the design of the New Caledonian “common future” as mentioned within the Noumea Agreement (signed in 1998), which aimed at conciliating the aspirations of the various population groups living on the archipelago.

These elements call into question the impact of the legal recognition of customary land management over New Caledonia development, the impact of this unprecedented juxtaposition of lands in the French system and the confrontation between customary land management and planning operations. How does these lead to new urban development practices, new partnerships, and new legal, financial, and economic tools? Are these mechanisms sustainable? The hybridization between custom and ordinary law, sometimes with a profitable goal for example, ultimately questions the potential operation of urban commons within a mixed legal and cultural framework.

Customary land in New Caledonia can be considered as a “common natural resource” but the custom, as collective organization of Kanak society, and specifically the land management practices, also meets the notion of “commons” as promoted by Elinor Ostrom. Her empirical work shows that communities can organize themselves by

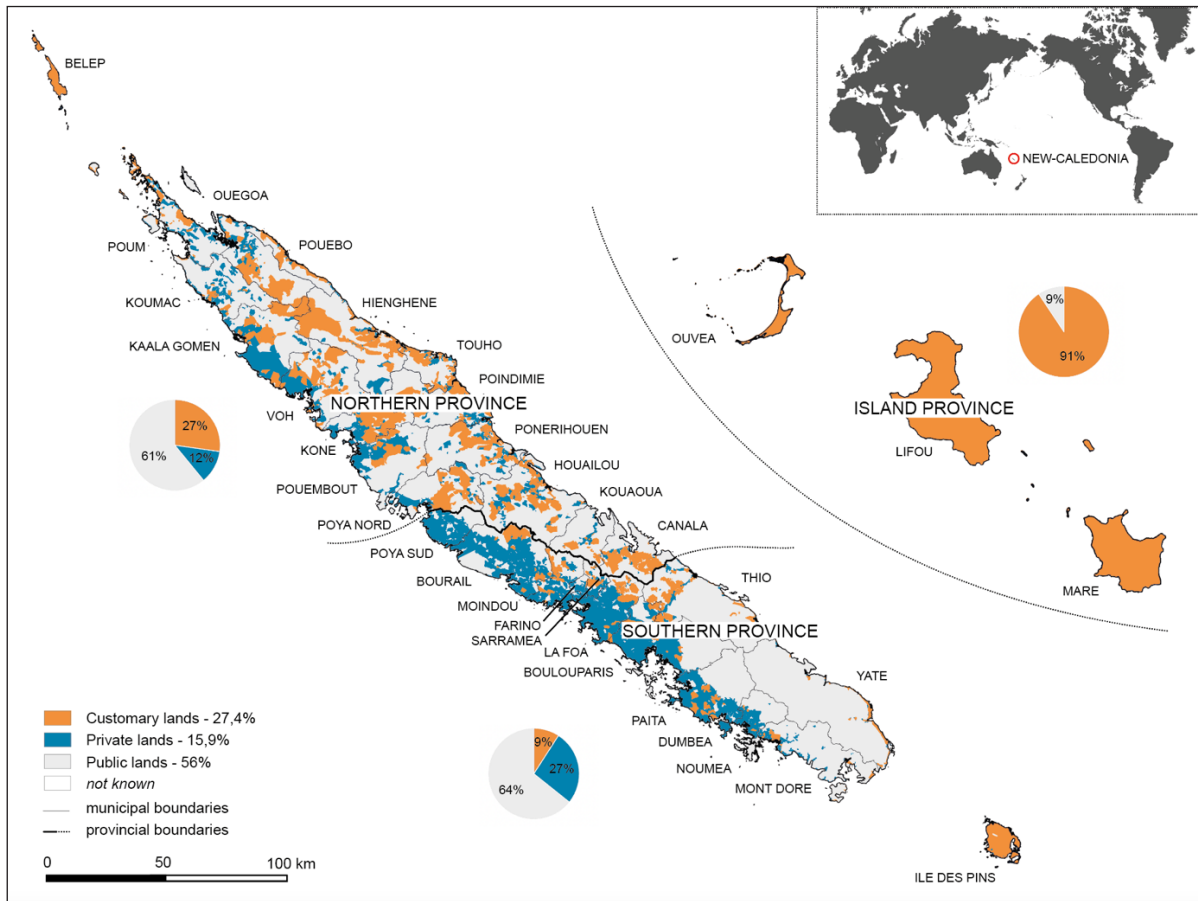


Figure 1 Land repartition in New Caledonia: a specific tripartition between customary, private, and public lands.
 Infographic: Céline Cassouret – Data source: ADRAF – 2020.

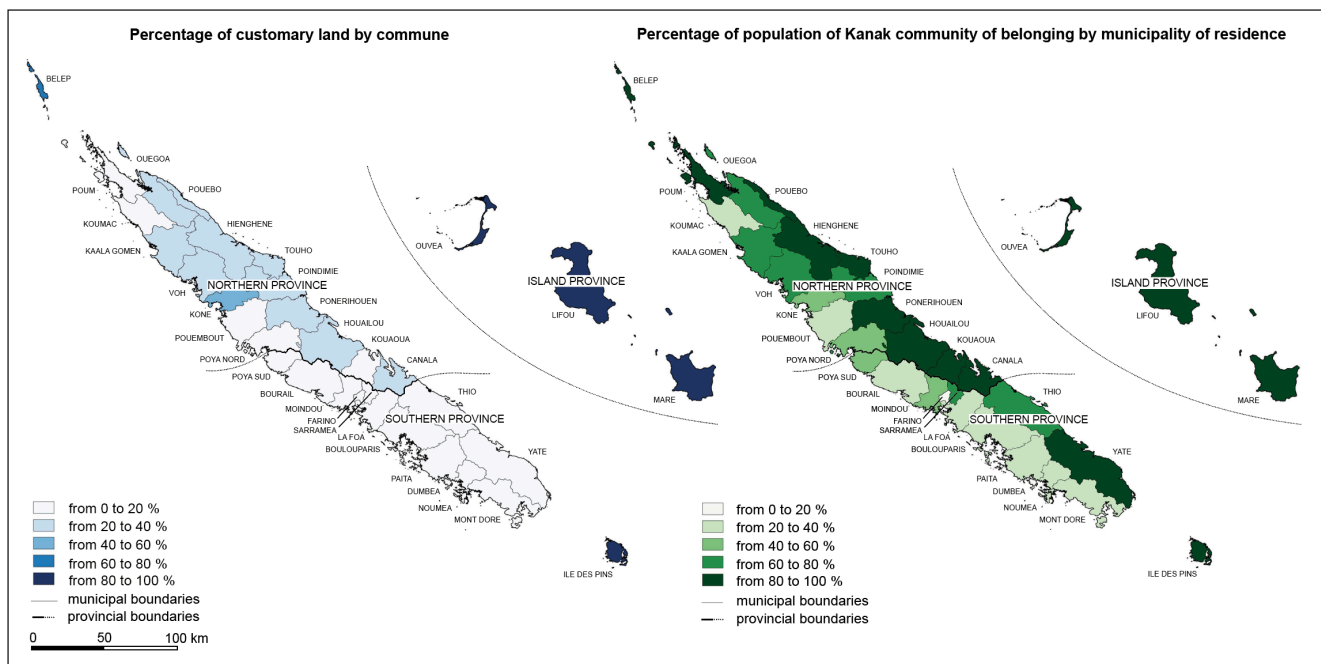


Figure 2 Percentage of customary land by commune and percentage of population of Kanak community of belonging by municipality of residence.
 Infographic: Céline Cassouret – Data source: ADRAF – 2018 and INSEE-ISEE – Population censuses – 2019.

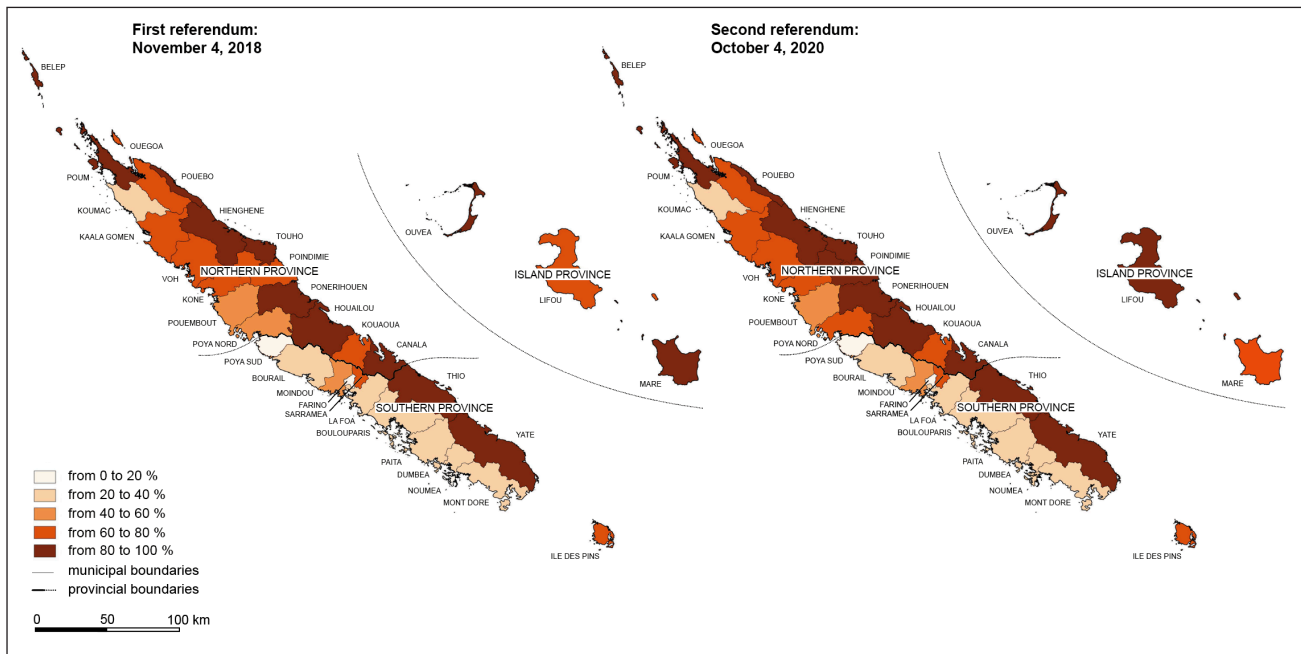


Figure 3 Percentage of positive responses in the referendums: “Do you want New Caledonia to gain full sovereignty and become independent?”.

Infographic: Céline Cassouret.

Data source: High Commission of the Republic in New Caledonia – 2018 and 2020.

setting ad hoc rules in order to avoid the depletion of natural resources they need for their livelihood (Schlager, Ostrom, 1992). This also aligns with the analytical framework set up by David Bollier: a self-organized, resilient and heterogeneous social functioning, whose use of resources is built to protect the community identity and principles.

In our case study in New Caledonia, benefits are shared among community members; transmission to future generations is central; and the community has regulated interaction with the State and with the market (Bollier, 2014). Even if part of New Caledonian customary lands is located within touristic or urban development areas, with high potential for profit, Kanak communities are seeking a balance in the use of customary lands between the long-term collective interest and the immediate individual interest of the entitled persons. This case study shows a remarkable search of balance between customary management and economic development and a conciliation between a legal and cultural framework resulting from colonization and a customary legacy. This case traces over the long term the history of power struggles and conciliations building the “common”. It goes beyond usual dichotomies between tradition and modernity, rural and urban interests, North and Global South challenges. Apart from private and states appropriation, customary lands become political spaces as defined by Pierre Dardot and Christian Laval (Dardot, Laval, 2014).

To explore this unique case, the paper is composed as follows. First, it provides a definition of customary

land and of its issues and the perceived obstacles to its development. The second part of the paper focuses on recent experiments of urban development on customary land, identifying the recently established mechanisms and coalitions of actors, as well as their effects on the collective management of this resource. The third part explores the hybridization between custom and ordinary law, and the wider spatial policy encompassing land designation.

This case study is mainly based on empirical research conducted in 2018. The initial objectives of this research were to study a specific land designation linked to a community and to traditional modus operandi similar to commons; to analyse the objectives, obstacles, and effects of urban development operations on said land; and to explore interaction between stakeholders in New Caledonia.

The study is based on the analysis and cross-referencing of three kinds of material: interviews, development projects, and a literature review. A large part of this material was collected by a group of young researchers from the Urban Planning School of Sciences-Po Paris, in the context of a research commissioned by the French Development Agency (AFD). Its ambition was to feed the research program “Land-based Urban Commons” launched in 2017 by AFD’s research department and implemented by the research centre of Paris 1 University and CNRS “Géographie-Cités.” Preliminary research was carried out by Céline Cassouret (coordinator), Camille Sachot, Juliette Hebenstreit and

Valentin Napoli, led by Louis-Valère Marielle (Sciences Po Paris) and Irène Salenson (AFD). Additional research work was later carried out by Céline Cassouret to produce the present paper.

Forty-three semi-structured interviews were conducted, involving sixty-four people: researchers, politicians, State agents, planners, social housing landlords, customary chiefs, and citizens. Nineteen development operations were studied, thirteen were visited, and eight were analysed in detail. They were selected for their diverse social, spatial, and operational challenges and objectives. Finally, this work combines various scientific sources and is inspired by studies carried out by and for the Rural Development and Land Development Agency (ADRAF), a key player within the New Caledonian land field.

CUSTOMARY LAND TENURE, A CRITICAL ISSUE FOR THE NEW CALEDONIAN FUTURE

Colonization (1853–1946), by imposing individual private ownership, disrupted the pre-existing social organization whereby custom governed the distribution of land use among families (Dauphiné, 1987). Thus, pro-independence claim emerged in the late 1960s and Kanak communities began calling for the recognition of the customary use of land. Intense political and ethnic tensions between 1984 and 1988 led to the acknowledgement that “the identity of each Kanak is defined first and foremost in reference to a land”, written in the Noumea Agreements in 1998. The land issue gradually became critical for the design of a sustainable and balanced New Caledonian future.

FROM COLONIAL SPOILIATIONS TO LAND REFORM

As for other colonies, French ambitions for New Caledonia from the 19th century onwards expressed themselves through land conquest and occupation and forced displacement of indigenous communities. The trajectory of the colonial land and indigenous policy was winding (Dauphiné, 1987). The Decree of October 5, 1862 stated that “each land that was not taken over by the French government until this day will be considered as belonging the French State”. In 1867, the colonial administration went on to formalize the definition of “land reserves”, “tribes” and then “districts”, officially to define to the areas belonging to perceived “high chiefdoms.” In 1887, the Colonial Act (*Régime de l'Indigénat*) forced the Kanak community to live within the land reserves, linked to so-called “tribes”. Thus, the majority of New Caledonian land became public land. Consequently, the Kanak populations

occupy State lands over which they only have a usufruct right (Merle, 1999).

Because of occupation permits, delimitations, cantonnement, and spoliation orders, the Kanak land heritage was eventually, by the beginning of the 20th century, reduced to 8% of the New Caledonia territory. Europeans, despite being a population five times smaller, owned three times more land. These “spatial amputations” were reinforced by the quality of the dispossessed land: fertile, easily accessible lands were attributed to Europeans while Kanak reserves were made up of mostly infertile land. The latter were located on isolated and steep lands on the northern and eastern part of the main island (Grande Terre) and across the entire Loyalty Islands (Dauphiné, 1989).

The reserve lands originally held a public land designation. However, the colonial administration witnessed contradiction between classic land designation and customary practices; therefore, the French authorities changed in 1868 the reserve lands designation to include inalienable and collective ownership rights. This designation, designed to generate confidence by recognising native tradition, simultaneously prevented resales. The State conceived the effort as a first step towards regularising private property, giving New Caledonians time to “understand the benefit of private property” so that they could later claim it (Saussol, 1979). These policies of racial and spatial segregation dislocated the Kanak community organization resulting in the partial collapse of its social order and spatial ties, especially on the main island more affected by population displacements. This may lead to lasting divisions for the future New Caledonian society.

After the abolition of the Colonial Act in 1946, and in the wake of rising Kanak political movements during the 1970s, claims for land restitution emerged. A land reform was initiated in 1978 with the Dijoud Plan. The land attribution was initially subject to a conditionality of economic development. Said land reform was then redesigned at each step during contemporary New Caledonian history, including within the Matignon-Oudinot Agreements in 1988 and Noumea Agreements in 1998, to be eventually formalized through the Organic Act, promulgated in 1999. In an international context conducive to the recognition of the rights of indigenous and local communities, these texts established the principle of restitution of land to the Kanak community and acknowledged the right to adopt a customary way of life. The French government set up an institutional framework with three dimensions: (i) land, through the creation of a “customary land designation;” (ii) entitled community, with a specific civil status for Kanak citizens; (iii) indigenous administrative organization, including the Customary Assessors in Court⁵ or the Customary Senate (Naepels, 2006). It thus recognized

the existence of an “indigenous” identity associated with specific rights as an exception to the French Constitution principle of indivisibility⁶ (Lafargue, 2013). New Caledonia’s land tenure system is therefore unique in the French context; three types of land are recognized—public domain, private ownership, and customary land—as well as two systems of social organization—the ordinary codified law applicable throughout French territory and the customary law mainly based on orality.

In 2020, New Caledonia land consisted mainly of public domain. Customary land represented only 27% of the territory, and 16% private ownership. However, customary lands were not homogeneous, despite their shared designation. Questions about the forms of collective ownership persist: “some advocate the return to clan ownership perceived as traditional, others wonder about the forms of individual appropriation that exist in the Kanak world or on the creation of hybrid formulas between French law and customary law” (Merle, 1999). The various stages of land reform generated various types of governance bodies in charge of land management, blurring the understanding of customary legitimacies for external stakeholders.

LAND REFORM AND THE GOVERNANCE OF KANAK LANDS

Distribution and governance of customary land changed many times during the implementation of the land reform, which started in 1978. First administered by the “Territoire,” then the Land Office, then the local Rural Development and Land Use Planning (ADRAF), finally a new ADRAF, directly managed by the French government, was made responsible for—after investigation—purchasing land and returning it to the customary rights holders claiming it.⁷ The new State ADRAF according to the initial goals of Dijoud Plan, was intended to “restore to the clans, as far as possible, the traditional space without which they cannot live fully according to custom and to promote the development of the redistributed land”.

Each institution in its turn defined various rules for redistribution. The land restitution initially consisted of reserve expansions and land allocations to clans, conditional on an economic development project. A new public policy modified this for a short period towards individual allocations, conceived to promote economic development of individual farms. From 1986 to 1988, almost all redistributed plots were allocated according to individual ownership, two-thirds of them allocated to non-Kanak individuals. From 1989 onwards, the process accelerated and recovered the mission of reallocation of customary land to Kanak communities to rebalance the land distribution among New Caledonian communities. Plots were reallocated to tribes or Kanak communities, individuals with customary

civil status who organized themselves by Specific Local Right Group (*Groupements de droit particulier local* [GDPL]). GDPL, civil society organizations specific to New Caledonia, were introduced in 1982 and later (by State ADRAF) used as part of the reform, specifically for bridging gaps between custom and development. Flexible enough to combine the requirements of ordinary law and the traditional customary system, this designation was put in use in the 1990’s under the new State ADRAF. GDPLs represent one or more clans or tribes and replaced Economic Interest Groups (*Groupement d’intérêt économique* [GIE]) which were mainly set up for economic purposes. Finally, the organic law of 1999 created both the Customary Senate and eight Customary areas whose boundaries follow those of the eight most common languages.

The attribution process changed several times. Furthermore, the analysis of land attribution shows conciliation between a logic of proved historical legitimacy and a political negotiation, taking into account various criteria: clan demography, past displacements, political activism, local relations (Le Meur, 2022). Beyond their legal status, customary lands thus represent different histories and processes. The traditional social cohesion among areas, tribes, clans, economic, and civil legal structures was redrawn, particularly on the main island (Grande Terre), where Kanak communities were submitted to massive population displacements during colonial times. Today, the various Kanak communities acknowledge the legitimacy of these various levels of decision-making—be they official according to ordinary law, or traditional according to custom—to different extents. The “tribe” entity, despite its colonial foundation, holds a central position within the Kanak social organization, especially as concerns land management. The polymorphic GDPLs have also become important customary bodies.

As the mechanisms of redistribution cannot reflect the multiplicity of legitimacies, it led to numerous land disputes between the Kanak communities. The disputes were the result of a tension between the recognition of an “owner group” in the logic of French law and the recognition of the multiplicity of rights in the customary Kanak logic (Naepels, 2006). They were also the consequence of partnerships, between entitled groups—hastily organised to claim land—with the obligation between 1989 and 1999 to define an economic project for the development of the land when submitting the application for the allocation.

The definition of a special status for New Caledonia expresses the acknowledgment of rights that pre-existed colonization. However, it generates a political challenge for New Caledonia government, which must find a balance in a dualistic system of land law where land use planning must consider the dynamics of Kanak spatiality.

KANAK SPATIALITY: CUSTOM, SOCIAL ORGANIZATION, AND SPACE

The system's basic principle is that the group prevails over the individual. The community is bound to the land, is its guardian, and is responsible for its transmission to future generations. From this basic premise, rules administrate Kanak spatiality. However, the customary dynamic is not static given that certain of its pre-colonial forms have been adapted according to the changing context. These rules are briefly presented here according to information collected from literature (Bensa, 1992; Naepels, 1998; Monnerie, 2003) and from the interviews.

First, oral transmission and sacred rules govern the custom system: as land registration and written law do not traditionally exist, the symbolic value of places constitutes the common territory. Boundaries follow natural geographical demarcations and some areas, considered “taboo” cannot be transformed and must be respected. Between, paths converge towards an “original mound”, form the customary spatial and social structure and symbolise a set of lineages (Bensa, 1992). The definition of land uses must result in a consensus among the community, acted by a collective decision process. Financial transactions over land do not traditionally exist, instead communities set specific rules for land appropriation. For example, people from outside the community can benefit from land rights but must “do (follow) the custom” to establish relations and get the approval from customary authorities, thus passing through “customary gates”. This “customary path” is a conceptualization of the relationships and hierarchies within a given customary configuration (Monnerie, 2003).

Secondly, specific rules define the entitled community. Social order is intimately linked to the land; anteriority provides legitimacy, the first clan to settle in a place, lords over it. This landlord thus “humanizes” the place, that is to say institutes the constitution of a political space within a natural space—one defined by its appropriation and its nomination (Naepels, 2006). Political order is based on the control of land as territory, habitat, and expression of sovereignty (Bensa, 1992). Kanak society is thus organized around the clan cell, which is a social and spatial unit. Gathering several family units descended from a common ancestor, each clan occupies and extends its influence over an area (its influence zone), which constitutes its living environment and over which it exercises rights, although this is not unchangeable. Newly arising factors, such as chosen or forced population mobility, integration, or eviction of some members can reset this land allocation. Clans are either *firstcomer clans*—or “land-based clans”—or *latercomer clans*—beneficiaries of a set of rights over the land area. The various clans gather around

common culture and language, and around chiefdoms of varying sizes.

Customary authorities (chiefdoms, clans, and families) frame and distribute land use rights, and secure administrative rights for either individual or collective stakeholders. They are thus governing bundles of rights over land. The high chiefdoms—the districts—and the chiefdoms—the tribes—are responsible for ritual matters and arbitration between Kanak communities (see Figure 4). The district and tribe chiefs have customary legitimacy while theoretically having no direct rights to land in order to remain neutral. They must arbitrate in the light of custom.

At a lower level, clans hold land management rights, such as transmission rights, members' inclusion and exclusion, and allocation of use rights to clan households, but also to external stakeholders.⁸ At the lowest level, households hold land use rights such as housing, hunting, fishing, cultivation rights, etc. Each member of the group has a role within the community which can be renegotiated.

Customary land management aims at preserving social cohesion (Pantz, 2017). Decision making is subject to customary consensus. These two features of governance have persisted and are now legally recognized even if disputes over claims can reveal various ambiguities, particularly regarding the relevant social unit for the application of the principles of custom (Naepels, 1998). The “customary land” designation attempts to translate customary functioning into a legal formalization, the so-called “4i”⁹ rule: customary lands are inalienable, unseizable, unchangeable, and non-transferable; private ownership does not exist. Customary lands cannot change hands, either deliberately (sale, exchange, donation, etc.) or by force (seizure, expropriation, prescription, etc.). They do not have monetary value and they cannot be mortgaged, but they can be rented.¹⁰ These land securities represent an expression of custom, yet are often perceived as an obstacle to economic development.

Finally, customary land excludes individual landownership monetization. It guarantees inclusion for each community's members and even integration of exogenous populations. Indeed, each member can take part in the decision-making process as regards land use (with different levels of bargaining power due to customary hierarchies) and the community must strive to ensure that each member has land on which to live. For example, each year in Lifou, during the Yam festival, the head of the Wettr district ensures that each young person from the community is awarded access to a plot of land to avoid generating “rootless” people. This inclusive principle of customary land thus provides each member of the entitled community free land access; however, access to land does not ensure quality housing and amenities.

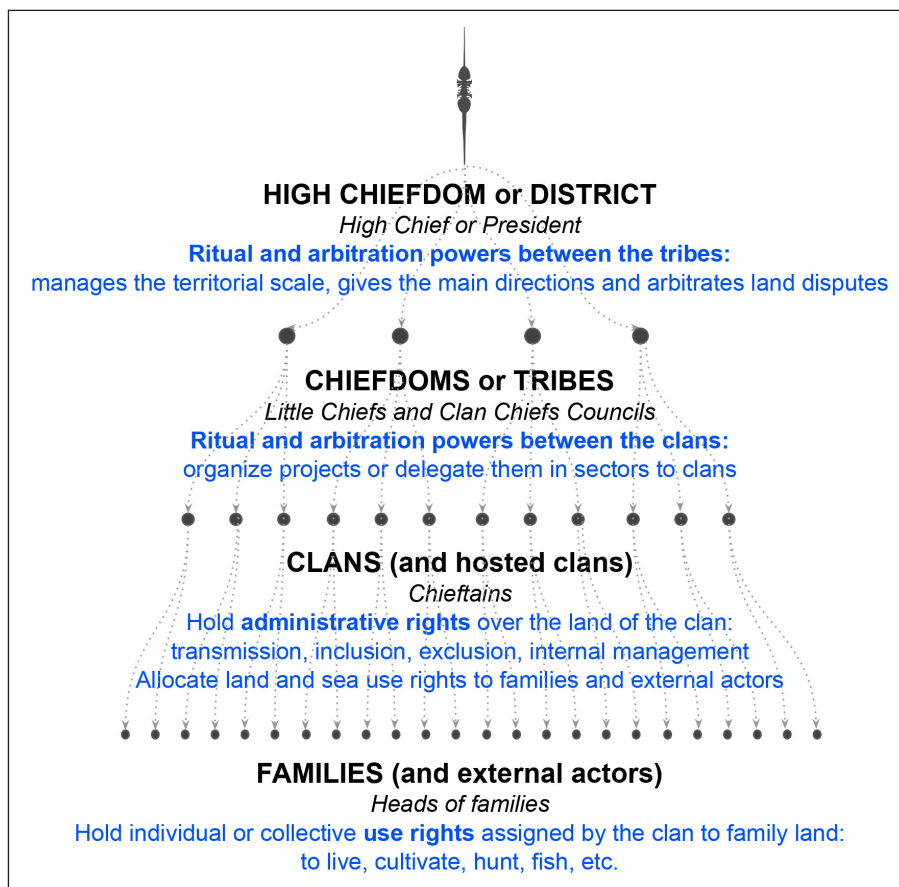


Figure 4 The bundles of customary rights: a distribution of rights of arbitration, administration, and land use between recognized customary bodies.

Infographic: Céline Cassouret, Juliette Hebenstreit, Valentin Napoli, Camille Sachot.

Data sources: Interviews conducted by the authors (2018), ADRAF (2014).

OBSTACLES TO DEVELOPMENT ON CUSTOMARY LAND RESULT IN PERSISTENCE OF SOCIO-ETHNIC INEQUALITIES

Customary areas differ from regular private and public land and are sometimes isolated and constrained. Their functioning diverges sharply from the current financial and temporal mechanisms of urban land development (Herrenschmidt, Le Meur, 2016): the rules of customary land do not fit easily with the conventional processes. These lands cannot be part of enforceable planning documents and therefore cannot be included in ordinary local urban plans. Moreover, they do not allow for conventional financial and legal guarantees under ordinary law, such as mortgages or emphyteutic leases. Customary stakeholders therefore have limited access to loans and investors face obstacles: agreements concerning the distribution of uses can be reconsidered over time by the entitled community, jeopardizing investments and weakening development and construction projects.

Yet, the local Law no. 2006–15 of January 15, 2007 created new legal tools. First, the Customary Public

Officer position was created. These officers are in charge of establishing Customary Acts (also known as Palaver Reports), which formalize decisions taken by the community and testify that a consensus has been reached. The law also instated Customary Courts procedures for land dispute arbitration. Customary Courts are composed of a professional magistrate and Customary Assessors appointed by customary area councils— usually influential people considered as legitimate. Despite these tools, customary land uses remain controlled by custom. This framework does not prevent legitimacy conflicts: conflicts around land use agreements can arise within the customary sphere.

The Noumea agreement provides a definition of leases on customary land, but without any specific regime. Current leases are governed by their own contractual provisions with the law applicable to the contract (either ordinary law or customary law) determined according to the civil status of the tenant. In 2021, 273 leases were recorded on customary land. Among them, 156 tenants were members of a GDPL with formal rights to the land, 43 were tenants coming from an ally clan to the one holding land rights, and 74 were

tenants with no connection to lessors and not necessarily from the Kanak community. Of these 273 leases, 136 were for residential use while only 18 were for tourism, industrial, or commercial investments (ADRAF, 2014).

According to a recent study, users of customary lands think that in the event of conflict, court procedure would be ineffective: it would too strongly affect the relationship between landlord and tenant (ADRAF, 2014). In addition, depending on whether the tenant is outside the entitled community or not, his confidence and his appreciation of the role of the lease may differ. External tenants often think that a lease has little value as opposed to political decisions taken by the clan or tribe: if their land occupation is contested, they do not feel protected. In contrast, local tenants instead see the lease as a reassuring interface with external actors and, in particular, administrations (Herrenschmidt, Le Meur, 2016). The social landlords and notaries interviewed confirm these uncertainties and share the apprehensions over a certain degree of risk in each project.

Indeed, although agreements are based on customary acts framed by the 2007 law, there is still no jurisprudence. Written act can be effective in preventing conflicts of use between two potential users of land but much less in preventing conflicts of authority. As customary rules remain the basis of governance, sufficient legal guarantees are non-existent and thus access to a financial guarantee is rare. In 2016, the senatorial delegation for overseas pointed out the prevalence of informal contracts and out-of-court settlement of lease disputes and, consequently, the increasingly strong demand from local ordinary stakeholders to secure individual rights to customary land (Mohamed-Soilihi, 2016).

The weak level of investment reflects a mistrust of land lease security and sustainability. Moreover, most of the banks will not provide guarantees. In order to mitigate the low level of housing production on customary land, in 2011 the Caledonian government created a guarantee fund for customary land. Its purpose was to secure investments on customary lands by offering financial guarantees to donors, particularly credit institutions. It has mainly been used in the context of individual housing projects. However, in 2016, the Housing Forum noted that its equity fund was too small to guarantee large-scale developments on customary land.

This discrepancy between customary functioning and development tools comes in addition to an unequal distribution of land. To date, land reform has resulted in the redistribution of 16,000 ha, or 10% of the area of the main island. The proportion of customary land in New Caledonia has thus increased to 27%, compared to 16% private ownership and 56% public domain. However, a large part of these lands cannot be easily farmed nor

developed. Indeed, 33% have a steep slope while lands in the western plains and in urban areas were excluded from redistribution for two reasons: first, an Ordinance from October 15, 1982 excluded land redistribution within urban areas; and second, land was costly to purchase within these areas. Thus, in 2021, most of the current customary lands were located outside economic development zones. They experience development issues and are sometimes submitted to marked natural hazards, such as the deadly floods and landslides in Houailou in November 2016. The disparities are also social: the poverty rate is 46% in tribal areas compared to 7% in urban areas; more than 60% of inadequately equipped housing is located within tribal areas (ISEE, 2015).

The development gap is generating increasing movement among Kanak communities (See Figure 5). Migration occurs mainly between the eastern coast and the Loyalty Islands on one side and the western urban centres on the other, structuring New Caledonian territory. However, this connecting mobility is characterized by multi-residentiality (Geronimi et al., 2016), is multi-factorial and goes beyond tribe and Noumea areas goings and comings. Being part of large families or clan offers opportunities and social networks sustaining both temporary and long-term migration: the link to the customary land remains. Thus, many Kanaks living or working on private lands are regularly visiting their group's customary lands to fulfil their duties and maintain their rights. These links can be seen as a development opportunity; this multi-residentiality can allow the creation of a way of living "where individuals can live, practice, inhabit and belong to several places/territories at the same time" (Pestaña et al., 2016). However, the links might also cause devitalization of the tribal areas of the east coast and generate fear of a rural exodus among customary actors.

In this context, the demand for land redistribution is gradually giving way to a demand for balanced land use planning, as well as for the creation of financial and operational mechanisms enabling Kanak communities to create quality housing and facilities, and to boost economic development within their area. This shift marks a turning point in the history of New Caledonia. In this sense, experiments are being carried out.

This claim meets a dynamic linked to the growing lack of land suitable for urban development. Customary lands increasingly attract various development and planning stakeholders, however the impossibility of reproducing the standard arrangements used in the context of classic property (purchase, rental, loan, mortgage...), leads to hybridizations. A question comes up in this context of territorial planning: will custom disappear with modern development? (Bensa et al., 1994).

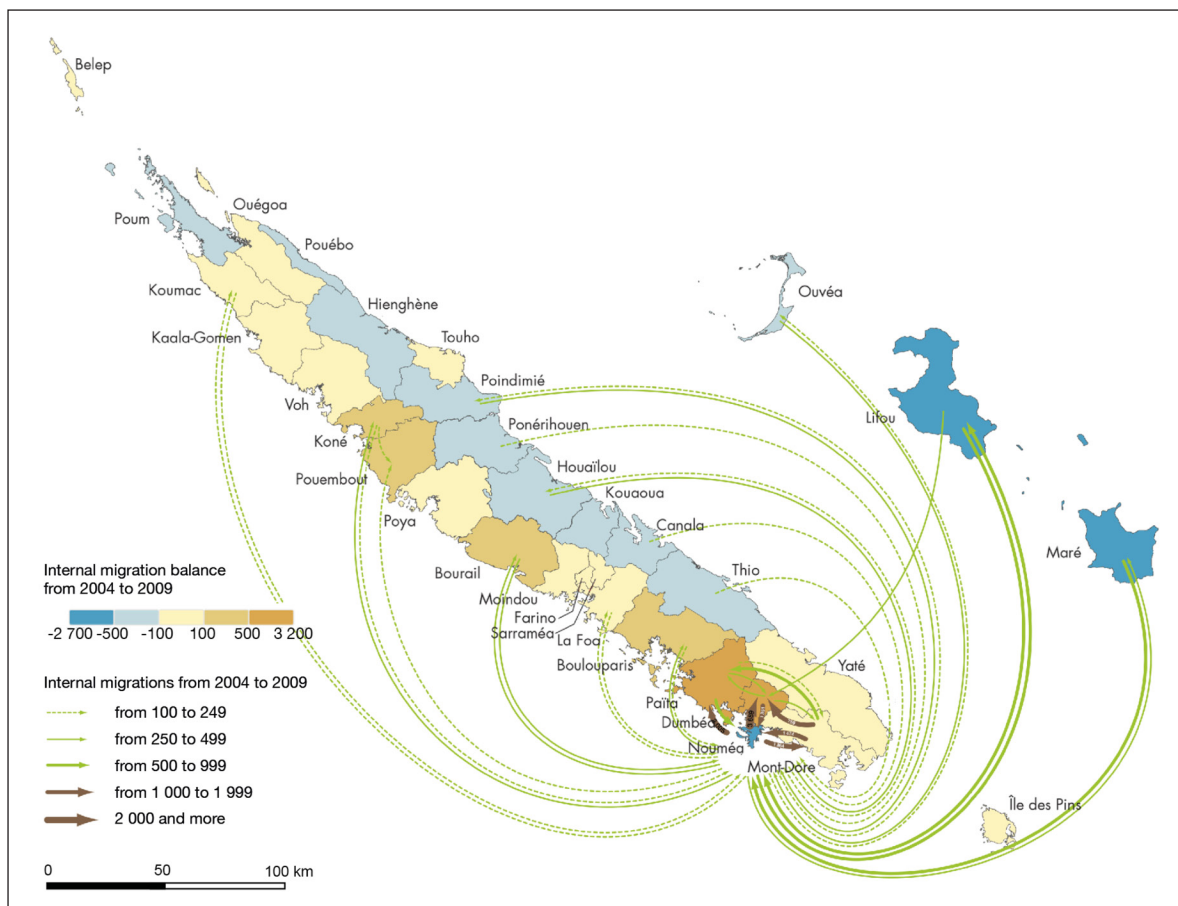


Figure 5 Internal population movements between 2004 and 2009: migrations and multi-residentiality.

Source: Demographic Atlas of New Caledonia, chapter 1: evolution and structure of the population, 2012, according to INSEE-ISEE population census, 2009).

NEW DEVELOPMENT PRACTICES ON CUSTOMARY LAND IN NEW CALEDONIA

BETWEEN POLITICAL RECOGNITION, LAND SECURITY, AND ECONOMIC DEVELOPMENT

With the modern designation of customary lands, the Kanak community sought political recognition of their customary land management: protection against commodification of land to the benefit of strangers and against land speculation for individual profit. However, today, these protections can be seen as obstacles to economic development.

Since the 2000s, public, private, and customary stakeholders have been innovating by setting up mechanisms and tools for the development of Kanak lands respectful of legal status and the tribal governance system. These instruments create new interfaces between custom and ordinary law, complementary to the GDPL. Within this paper, we analyse three development practices on customary land: residential development for entitled Kanak communities, residential development for non-Kanak communities, and economic development zones.

RESIDENTIAL DEVELOPMENTS FOR KANAK COMMUNITIES

The first development practice meets the critical dwelling needs of Kanak communities. Kanak housing on customary land is mainly self-built, located far from services and networks (water, sanitation, roads...). Nearly one third of housing units is over-occupied, i.e., hosting an average of more than 2 people per room (ISEE, 2015). Communities face challenges in building due to a lack of planning documents and financial tools. Local authorities have therefore created new kind of documents such as “risk mapping”—developed following the Houaïlou disaster in 2016—“Implementation Methods of Provincial Rules on the Occupation and Use of Land” (named *Marpous*) and “Development Schemes on Customary Land” produced by the municipality of Hienghène. These tools have no regulatory value; they provide methodological orientations and can be used as tools for negotiation between Kanak communities and public or private stakeholders to reconcile the area’s needs and the communities’ aspirations. It is with these tools that the Ba tribe’s customary housing estate in Houaïlou (24 lots for

tribal members) and the Werap tribe's district in Hienghène (houses for young people of the tribe) were developed. These two examples are in the east, where customary lands are in the majority and the need for quality housing is significant. They are part of broader development policies supported by the North Province and municipalities. In areas where land types coexist and urban developments are more important, another kind of negotiation is taking place.

In areas closer to urban spaces, Kanak communities have granted temporary land use options or authorization to implement development projects within their influence zone with a fixed-term agreement, generally of several decades, without transferring full ownership to users. As compensation, they benefited from funding and support for the development of residential area on their retroceded land. In Dumbea for instance—New Caledonia's third largest city south of Noumea—the Waka clan wanted to build housing for the community's youth. To meet the high costs of servicing the development, the GDPL manager reached an agreement with a non-Kanak neighbouring landowner who agreed to extend his earthworks to nearby customary land in exchange for the GDPL's relinquishment of its potential claim to other plots. The Waka clan obtained a financial contribution for part of the works and for the construction of a service road from the Southern Province and the developer, New Caledonia Infrastructure Company. The GDPL provided equity funding which beneficiary households then paid back in part. The lowest-income households also received assistance from the New Caledonia Social Housing Fund (according to

standard attribution criteria). The allocation of lots among GDPL members, before the houses were built, was done by drawing lots (See Figure 6).

Similarly, in Mont-Dore, the Kanoda GDPL sought funds to create a housing estate destined only for clan members with rights to customary land. This was made possible by an agreement with a social housing public utility society, the Caledonia Real Estate Company which was interested in customary land located within the attractive area of Greater Noumea. The Kanoda GDPL allowed the public utility to build social rental housing for households from outside the community on part of its customary land. As compensation, the public utility developed plots for the tribal entitled community housing estate building housing units with a rent-to-own financing plan. A partnership agreement signed between the public utility and the Kanoda GDPL helped the implementation of the project.

In these various examples, customary land preserves its function as a common good managed collectively, and directly targeted community needs. The various development practices are allowed by the bundle of rights connected to this land-based common.

MIXED RESIDENTIAL DEVELOPMENT FOR BOTH KANAK AND NON-KANAK

The second development practice is the provision of land where the delegation of use rights to public, semi-public, and private stakeholders involves the development of customary land for dwellers external to the entitled Kanak community.



Figure 6 Waka customary residential development, Dumbea, 2018.

The houses are built between columnar pines, a Kanak male symbol, and coconut trees, a Kanak female symbol, and symbolic spaces (called “taboo”) are preserved in the development of this residential district.

Photo: Céline Cassouret.

The development of the Kanoda housing estate offers a prime example of this. This operation, which combined housing for GDPL members and social housing for exogenous households, was one of the first projects of this kind. Following this experiment, social housing institutions have agreed to develop other projects at the request of Kanak communities such as the Baco tribe, represented by four clan-based GDPLs, and the Koniambo tribe, twelve clans represented by the unique Gou-Me-Wee GDPL. These recent experiments around social housing construction projects for Kanak and non-Kanak communities involve partnerships with the social housing institutions mentioned above—the Caledonia Real Estate Company and the Social Housing Fund—in dense urban areas such as Greater Noumea and the Voh Kone Pouembout area.

From GDPLs' perspective, these developments offer a prospect for rental income, but also for gains in the field of land development or services, as well as potential future retrocession of housing to the community. For example, in the Voh Kone Pouembout zone, the GDPL Gou-Me-Wee made its land available for the construction of 115 social housing units for households coming mainly from outside the clan, enabling it to generate rental income. The GDPL and developers (here, two social housing institutions) signed a 30-year agreement for the temporary provision of the land which covers an area of 400 hectares. The public institutions ensured the housing construction and ongoing rental management, the GDPL ensures the security of the site, and the sharing of customary values. Moreover, the agreement also required construction companies to hire tribal workers from the area. In 2018, the GDPL Gou-Me-Wee began exploring the possibility of creating a joint real estate investment company with the social housing institutions to co-manage the rental of the houses on its land.

Here, without questioning the “4i” rule, a part of the community's customary land thus became an economic resource. This second development rationale still implies collective and concerted management of land, but also integrates the idea of generating benefit from customary land. The stakeholders ready to get involved in these kinds of projects are public or para-public with a social vocation and projects always have the strong support of political bodies. In these arrangements, long-term leases are therefore used. However, as the beneficiaries build without having a real legal right to the land, the financial return of the infrastructure built must be certain and in the short term.

ECONOMIC DEVELOPMENT ON CUSTOMARY LANDS TO BOOST ECONOMIC GROWTH

The third development practice represents economic and commercial development beyond the usual agricultural and livestock sectors that were prevalent within customary

land before the introduction of the modern land development practices described in this paper. Following the organizational rationale explained above, some tribes and clans take advantage of the location of their land close to dynamic urban areas to promote development projects for business zones. Other projects are dedicated to tourism, such as in the Wetr district on the island of Lifou. These projects necessitate innovative arrangements to represent customary bodies and oversee developments.

On the lands of the Baco tribe in the Voh Kone Pouembout zone, the three development strategies are carried out jointly: housing for the tribe, social housing for non-customary dwellers, and the development of economic projects. The latter includes the construction of the northern branch of the University of New Caledonia and the development of sites for private companies (36.6 hectares have been developed for a shopping centre, a service station, offices, and workshops. Several stakeholders partnered for this project: semi-public companies such as Nord Aménagement and Grand Projet VKP (Voh Kone Pouembout) are in charge of land development; the Northern Province provides funding; Caisse des Dépôts Group¹¹ supports private banks to provide loans, and the Caledonia Real Estate Company is in charge of housing construction and management.

To ensure contractualization with partners and management of facilities by the customary community, several legal entities have been created. The Baco tribe, which is composed of four GDPLs, initially created a non-profit association, and later a private company in partnership with semi-public companies in order to rent lots long-term. Three real estate investment companies were also set up. First, the tribe created a company which is renting plots to small local companies via short-term leases. Then a clan created two others to coordinate on its own land the construction and rental of 20 social housing units with the social landlord Caledonia Real Estate Company; the rental of lots via long-term leases to companies (Shell, BNC, NC Motors...); and the rental of 15 intermediate houses with the *Caisse des Dépôts* Group (Figure 7). In each company created by the tribe and clan, the composition of shareholders must reflect the Kanak legitimacy and respect its governance over the land. The multiplication and interweaving of legal structures aim at splitting for-profit entities from land management decision-making bodies.

On the Loyalty Islands within the Wetr district, an ambitious project has been set up to create employment and to prevent migration of young people to Noumea (See Figure 8). In this isolated territory fully covered by customary lands, the association “Wetr Development Committee” was created to elaborate guidelines for economic, social,

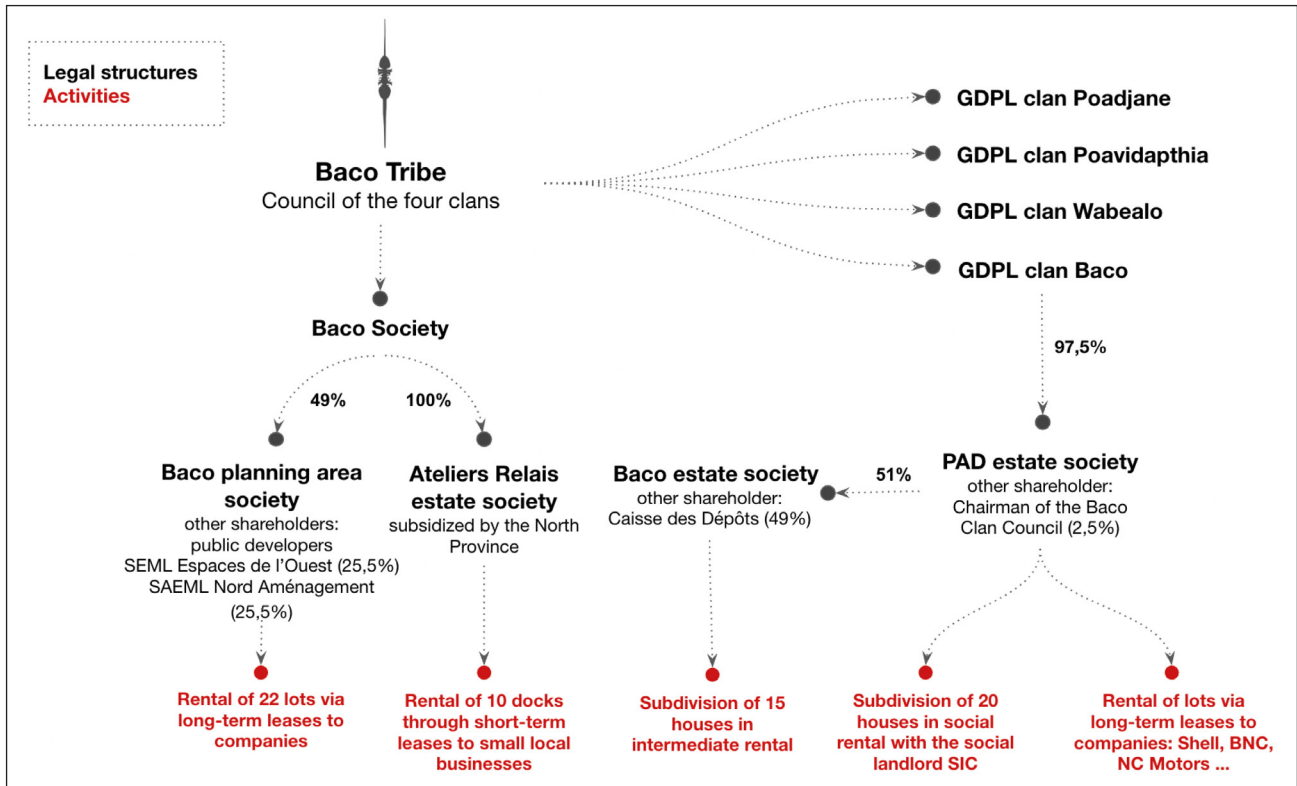


Figure 7 Governance scheme for development projects on Baco lands.

Infographic: Céline Cassouret, Juliette Hebenstreit, Valentin Napoli, Camille Sachot.

Data sources: Interviews conducted by the authors (2018).



Figure 8 Easo tourist site, Lifou, 2018.

The reception site for cruise passengers originally occupied by light infrastructure is now undergoing the development of new constructions piloted by Mejjine Wetr.

Photo: X.

and cultural development. After consultation, it initiated a major tourism development project based on the reception of cruise ships. To do so, three other legal structures were created to organize the financing and the management of related development. The GDPL Mejeiwetr, created in the late 1990s, represents the 17 tribes of the district with the 17 chiefs. The GDPL manages the project and issues approvals for each activity after verifying community consensus for each new use.¹² The GDPL also established two private companies, Mejine Wetr and Wetre, to ensure financial management and operation of the site (See Figure 9).

Thanks to profit generated by tourism activities, these companies also carry out development projects designed by the GDPL Mejei Wetr, creating additional direct and indirect jobs. The chiefs ensure that the jobs are distributed among the different tribes and clans of the district. A more ambitious tourism project is currently underway (construction of additional pontoons, premises, and a Melanesian village), supported by the Wetre semi-public company created for this purpose. The project gets financial support from the Lifou municipality, the Islands' Province, and from the State, in addition to GDPL's equity funds and a bank loan.

Within these economic development projects in Voh Kone Pouembout area and Lifou island, Kanak communities work

with semi-public companies for land development and create private structures to contract leases with private or public companies. Tenant structures benefited from a development project at a lower cost than if they were financing it on private land. The local public authorities, mindful of the creation of jobs for local communities, granted subsidies for the area's development. At the end of the leases, the entitled community can continue leasing or become owners and managers of the buildings. However, despite these so-far generally positive outcomes, these operations are too recent to assess their long-term economic sustainability.

BRIDGES BETWEEN CUSTOM AND ORDINARY LAW AND BETWEEN POLITICAL AND ECONOMICAL ISSUES

The development paths currently being followed, as described below, are leading to the creation of bridges between ordinary law and customary practices. Legal and judicial tools specific to New Caledonia—customary land tenure, the Specific Local Right Group (GDPL), local laws, and the customary court—have been created. To develop customary land, interfaces are being

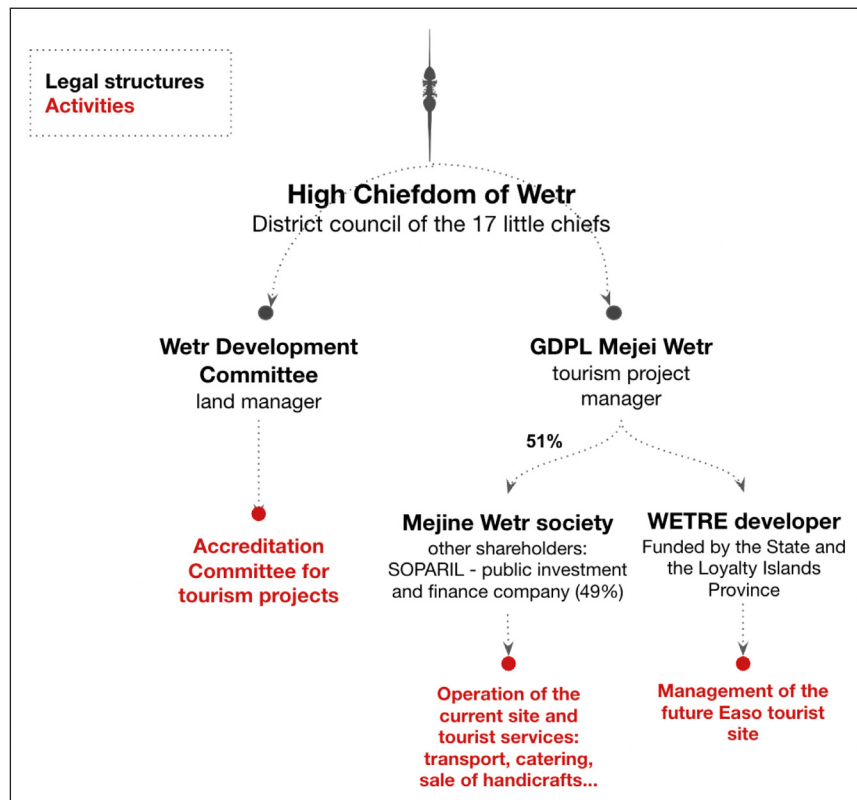


Figure 9 Governance scheme for development projects on Wetr high chiefdom land.

Infographic: Céline Cassouret, Juliette Hebenstreit, Valentin Napoli, Camille Sachot.

Data sources: Interviews conducted by the authors (2018).

constructed interweaving legal structures and generating tailored mechanisms respecting the functioning of both frameworks. New organizations enable the development of customary lands while protecting their social function and the custom, and controlling commodification and over-speculation.

However, some difficulties arise. This new kind of operation emerged within very specific land pressure contexts or with strong public implication and the pricing level are lower than in the private market. For instance, it is hard to forecast whether Kanak communities might reach a satisfying level of economic development on their land while preserving their land rights and their traditional way of life.

CUSTOMARY LAND WITH URBAN DEVELOPMENT; THE QUEST FOR BALANCE BETWEEN PROPERTY AND SOVEREIGNTY DYNAMICS

Within the projects described above, Kanak communities tried to find a consensus on the distribution and use of their lands, then began interacting with public, para-public, and private institutions, and eventually sought to articulate the management of a common good and the prospect for economic development. Partnerships had to be strong enough to gain the confidence of banks and investors and given projects' social or economic goals, public authorities generally guaranteed the development operations.

As legal agreement does not prevail over custom, agreements needed to be constructed using customary paths and consensus, both within the community of rights holders as well as between the community and the stakeholders of the development project. The most secured agreements were agreed upon, appropriated by all, consolidated, and adapted over time. Land tenure security therefore takes on another meaning: it is not achieved with a private property but when the supervision of negotiation and decision-making processes establishes confidence and flexibility in the definition of customary land use rights. Land tenure security implies the certainty that a person's land rights will be acknowledged and secured in cases of certain difficulties.

Development operations on customary land often led to innovation in terms of financing, dialogue, site management, and collaboration between customary, public, and private stakeholders. The legal and financial arrangements are complex and to guarantee respect of Kanak custom takes time. While protecting the interests of community members, to comply with ordinary law customary actors must create ordinary law structures to set up and run these projects. They then seek to maintain a separation between land management bodies which are coherent with customary legitimacies (chiefs' councils, GDPL, civil society), and private companies in charge of

economic development. Customary actors also have to develop skills to manage these structures. Finally, they must decide how to allocate profit among community members, either by allocating financial transfer to each household or by investing into new collective facilities. For example, in the Wetr District, earnings are invested in projects that generate new jobs, while within the Baco Tribe profits are distributed among the leaders of the six clans, who are then in charge of distribution among households.

Today, examples offer little perspective on agreement sustainability. Questions remain regarding agreement transmission through generations, as well as relative to the use of amenities after land development retrocessions. Beyond the hoped-for and proposed land security through sharp and permanent negotiations, uncertainties and inequalities still bring into question the sustainability of arrangements between customary and private stakeholders as well as those among members of entitled communities.

The recognition of Kanak custom and its land governance requires a logic more political than economic. It consists of the recognition of customary sovereignty over a given area more than an acknowledgment of the land ownership of a group of individuals. This territory sovereignty is defined by identity, the scope of authority and the relationship to the State and not by the notion of property (Le Meur, 2017). However, urban development of customary land involves activating legal and financial mechanisms linked to property and to the monetary value of land. To preserve customary sovereignty, new paths are being explored. The empirical findings of the three patterns of land development analysed above, show that situations combine economic dimensions linked to property for tenants (external stakeholders rent lands) and political dimensions about controlling space according to custom for right-owners. These cases combine both dimensions by building interfaces. The issues linked to the search for a balance between property and sovereignty dynamics go beyond customary land and Kanak group boundaries.

CUSTOM INFLUENCE BEYOND CUSTOMARY LAND AND KANAK COMMUNITY

The legal integrations of customary lands into the New Caledonian land system (notably by the Organic Act in 1999) radically changed the interaction between New Caledonian communities and land.

First, customary land in New Caledonia covers a majority of the island's area and is linked to a large part of the population. Thus, consideration of the characteristics of customary land by public policies is necessary to reduce spatial inequities and guarantee a balance between communities. Various types of groups are entitled to land

rights, from so-called traditional groups to groups created during the land restitution process. Customary land benefits from a flexible framework, to which a collective/common management can adapt. However, customary communities refer to their common organization and to their tradition beyond the scope of their allocated land. Common influence extends beyond customary lands and the entitled community.

Customary principles influence both private and state-owned land. Development blockages concerning private or public land have appeared throughout the archipelago, disrupting the formal distinction between various land designation. For example, customary stakeholders have blocked mining projects disputing “ownership” and protested the destruction of areas with symbolic value. To address these customary principles, institutional arrangements have been constructed based on recognition of firstcomer rights (but without formal customary land attribution) to settle conflict and/or to negotiate compensation and access to a share of mining revenues (Le Meur et al., 2021). In another example, taboo spaces remain sacred for Kanak communities even though they are located on private or state land. Now, negotiations concerning access and use over these places are organised even if the Kanak community is not the owner in terms of property. In the same way, if developments are proposed for a Kanak influence area, like in the case of Waka clan above, a consultation must take place even for non-customary land.

Various interactions between the three types of land exist, from islands made up entirely of reserve land to fragments of land returned to GDPLs within the main urban areas. The juxtapositions between the three types of land changed New Caledonian social organization and interaction between communities. First, complex land imbrications in mostly private and state land areas, as in the Voh Kone Pouembout zone, led to unprecedented land pressures and attempts to commodify customary land. Second, the struggles of isolated customary areas to develop led Kanak communities to develop multi-residential strategies. Third, on customary land, ordinary law mechanisms have begun to have an impact. Even though Kanak communities have the right to settle freely, without public regulation, formal agreements between communities and private and public partners frame the development projects studied above.

Finally, even if customary land is linked to a specific community (the entitled rights owner), customary rules can affect or be imposed on hosted communities. Cases of customary conflicts have led to open clashes, as in March 1982 in Yaté, or to mass expulsions as in 2004 in Mont-Dore. A land dispute between Kanak communities and Wallisian and Futunian hosted communities over 800 hectares on

the edge of the Saint-Louis tribe broke out in 2004, leading to the displacement of a thousand people. These cases question the public responsibility and competence over use and activities on customary lands, as well as the place of custom within the judiciary system.

Gradually, the operating autonomy of these various types of land is being discussed. An institutionalization of custom is occurring, as well as a “customarization” of institutions, but these processes are not fully achieved. The balance between the two dynamics results from ongoing negotiation between customary authorities and formal institutions and planning stakeholders.

The mechanisms of hybridization between custom and common law operate beyond the geographical limits of customary land. Today, the main challenge in New Caledonia is to balance communities’ aspirations for autonomy with public authorities’ responsibilities of guaranteeing public interest and social and spatial balance. Public policies must regulate the private sector, in order to steer private action towards common good.

FROM AUTONOMOUS AND COMPETING LAND ENCLAVES TO THE CONSTRUCTION OF LAND COHESION

Currently, two systems of spatial appropriation coexist within the New Caledonian archipelago. Within Kanak culture, common land is not an appropriated space with limits but a reticular metric, crossing the earth, and made of paths, places, and symbols (Sack, 1986). Colonization imposed boundaries and borders. In consequence, Kanak areas were recomposed integrating two different metric logics (Pantz, 2017).

Therefore, the key element for understanding the New Caledonian challenge lies in the consideration of the differentiated value of land. According to Kanak custom, the symbolic value of places creates the link between land and community (Bonnemaïson, 1992). Humans belong to land and must preserve this resource for the community. Land markets and public action cannot prevail over the community’s decision. Land is a political space, perceived and managed as such. In contrast, private land belongs to humans and has an economic value; it has a part in the market system and is submitted to planning regulations. State land belongs to the community, but also is subject to market mechanisms.

These various perceptions of land value have led to specific valuation strategies and to the construction of new economic, legal, and political frameworks. Yet, unifying the Caledonian society would require stronger coordination between the various practices of land developments. By the end of the land reform a new challenge had emerged: a comprehensive development of the archipelago implies dealing with various land dynamics.

Experiments are being carried out in this direction. The “implementation methods of provincial rules on the occupation and use of land” (*Marpous*) studied above pave the way of concerted urban planning, protecting the various communities’ interests while guaranteeing a balanced development by public authorities. Furthermore, in the context of mining conflicts and in order to understand and respond to these development blockages, the National Center for Technological Research (CNRT) “Nickel and Its Environment” funded a research project, “Negotiate, Evaluate and Recognize the Value of Places” (NERVAL). This project analyses the blocking of mining projects by customary actors and highlights the failure of private economic actors to take into account the value of places. It proposes a Territory-Events-Risks-Stakeholders (TERA) analysis grid, allowing the recognition of various values and enhancing the participation of customary stakeholders in development projects. This process enables compensation proposals or projects’ adaptation to the context (Le Meur et al., 2021).

Finally, initial normative experiments have succeeded in crossbreeding standards: this is the case in the co-construction of the Environmental Code in the Province of the Islands (CEPIL). This legal document includes rationale and regulations emanating from custom principles, from international law, and from French law (David, 2017). It provides Kanak system with legal value and offers a framework tailored to the needs of the New Caledonian territory.

The different values of the places are thus being combined, and the customary system hybridizes to create new dynamics of land added value. However, the ordinary law system is struggling to include customary principles, despite some experiments with negotiation and innovative tools. Today, various development strategies implemented on the three types of land have led to competition. Development is still easier on private land, thus perpetuating spatial, social, and ethnic inequalities. A strong land policy must be implemented at the New Caledonia level, and the issue of land use planning and development is key.

CONCLUSION: BUILD A LAND POLICY ENCOMPASSING THE DIFFERENT LAND STATUS

BRIDGES BETWEEN CUSTOM AND ORDINARY LAW THROUGH CONSOCIATIONAL INSTRUMENTS: INSTITUTIONAL INNOVATIONS AND DEDICATED LEGAL TOOLS

Land use planning and development in New Caledonia, especially of Kanak customary lands, represent major issues for the archipelago’s future. The current challenge is to move from local experimental initiatives based on

arrangements between stakeholders to the drafting of a strong public policy for regional and urban planning. On this point, some initiatives are underway such as the Convention on Housing or the research program (*Gouvernement de la Nouvelle-Calédonie & Haut-Commissariat de la République en Nouvelle-Calédonie, 2013*). But their recommendations were not yet implemented through official planning policies.

The governance of Kanak customary lands witnesses an inclusive organization allowing access to land and housing for each community’s member. Referencing this could theoretically help building a more inclusive urban society. Customary system prevents speculation but in the other hand it locks down customary communities within their autonomous spatial areas. New Caledonia is made up of a mix between customary, private, and public areas. In this context, the adoption of a multicultural approach to land management can be seen as an opportunity.

The encounter between respective value systems—customary rules, based on common land, and ordinary law, with conclusive individual property of land—is key to a sustainable development of the area. It requires understanding the links between land’s economic, social, cultural, human, and environmental dimensions to preserve the balance of the resource before any intervention (Geronimi et al., 2016). Sustainability of New Caledonia’s development thus relies on the selection of actions capable of creating synergies between two frameworks of values.

Customary land is a political space that, through land development, can create bridges between civil law and customary mechanisms. These interfaces through institutional, legal, and operational innovations following a consociational¹³ line could gradually provide an adapted land framework, becoming one of the key levers to build New Caledonia’s “common destiny.” The main challenge is to build a land policy encompassing the different land status across the country.

LEARNING FROM THE KANAK SYSTEM: URBAN LAND COMMONS CREATED BY CUSTOMARY MANAGEMENT

The analysis of New Caledonian customary lands developments can thus feed the discussion on urban land commons (Simonneau, 2018). Although modern market mechanisms are usually not part of a traditional system, here, the common resource (land) continues to be managed by the community (the Kanak tribe or clan) serving its interest (in this case, housing, or financial resources). Several recent research studies have shown that the economic use of common goods by a community does not oppose to its “common management.” In other words, the commons are not necessarily nonprofit (Alix, et al.,

2018). The urbanization of these lands therefore requires an enhancement of the skills of the entitled communities to manage the projects and the creation of new interfaces within legal and financial arrangements, without affecting their functioning as commons. These innovations will also help in redefining notions of land security, urban inclusion, and participatory democracy.

NOTES

- 1 Our translation of : “L’espace pour le monde mélanésien n’est pas seulement la terre nourricière ou la terre chargée de l’histoire du clan. Il est un des éléments constitutifs de la société globale.” (Tjibaou, 1978).
- 2 See introduction of this IJC file. Traditional commons are opposed to new type of commons such as digital commons.
- 3 The Institute of Statistics and Economic Studies of New Caledonia (ISEE) assesses distribution among communities according to “community of belonging” as self-designated by interviewees: Kanak, European, mixed, Wallisian, Futunian, or other.
- 4 The third and last referendum as provided for in the Noumea Agreement finally took place in 2021 but unlike the two previous ones, it was the subject of a boycott by the separatists. The “no” to independence won with 96.50% of the votes cast, for a turnout of 43.90%, ie 41.8% less than in the previous referendum.
- 5 Ordinance No. 82-877 of October 15, 1982 created customary assessors: disputes involving citizens of customary status are arbitrated taking custom into account.
- 6 The Constitution guarantees the unity of the French territory and people and excludes any particularism; however, a revision was added to provide a normative power to New Caledonia administration.
- 7 In order to request a land allocation, a customary group has to file a claim to ADRAF. Several contradictory claims can be made on an area, reflecting a disagreement on the expression of legitimacy; for allocation of land customary consensus is required. It also requires an acquisition by ADRAF—which assumes that these lands have been offered for sale—either through a privately negotiated purchase or the right of pre-emption that ADRAF holds throughout the New Caledonia territory. ADRAF cannot force a resistant owner to sell his land.
- 8 For further analysis, see Hall D., Hirsch P., Li T.M., 2011 – *Powers of Exclusion: Land Dilemmas in Southeast Asia*. Honolulu, University of Hawai’i Press.
- 9 4i meaning in French: *inalienable, insaisissable, immutable et intransférable*.
- 10 Customary land lease is defined in the Noumea agreement.
- 11 *Caisse des dépôts* is a French public financial institution created in 1816. It carries out activities of general interest on behalf of the State and local authorities (in particular the financing of social housing, urban policy, development territories, etc.) as well as competitive activities.
- 12 The GDPL includes an accreditation commission which verifies each activity. The project applicants must hold a certificate from the clan chief and a certificate from the tribal chief.
- 13 The notion of consociation qualifies institutional organizations that do not respond to the majority logic but seek to provide a political response to the needs of the different groups of a society divided on a religious, linguistic, or ethnic basis.

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COMPETING INTERESTS

The authors have no competing interests to declare.

AUTHOR AFFILIATIONS

Céline Cassourret  orcid.org/0009-0007-7785-7431

Délégation interministérielle à l’hébergement et à l’accès au logement (Dihal), France

Irène Salenson

Agence Française de Développement, France

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