

Case Study 3

The Loyalty Islands environment charter in Kanaky-New Caledonia

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Traditional laws and conservation practices

Pre-western contact

Melanesians occupied the territory of New Caledonia for more than 3000 years before the arrival of the French “colons” in the middle of the 19th century. Traditional knowledge and conservation practices had been developed and refined over centuries before the first Europeans arrived in New Caledonia. Local traditional fisheries management techniques were adapted to local conditions and accorded well with the environment; according to what is termed a system of “sustainable development”.

What remains today?

Subsistence fishing still forms an important part of traditional Kanak life, although there has been a very clear decline in traditional customs. This can be explained by poor transmission of traditional knowledge from generation to generation due to a westernised education that ignores or bypasses traditional culture, and by the introduction of new fishing technologies that are more efficient than traditional methods. The authority of traditional chiefs is progressively being eroded and superseded by national authorities. However, the Noumea Accord of 1998 recognised the customary native land system and established legal customary institutions (including a customary senate and customary councils). Kanak customary law is applied in parallel to the French law. The Noumea Accord divided New Caledonia into three provinces: the Northern Province, the Southern Province, and the Loyalty Islands Province. The provinces are governed by a congress, which consists of elected members from local assemblies. The congress has legislative powers and adopts the traditional local government laws.

Interface between traditional and governmental laws: Issues and challenges

The latest attempt to combine traditional and national law was the Loyalty Islands Environment Charter. This concept was first considered in the 1970s by the then Kanak leader, Jean-Marie Tjibaou. The Environment Charter was derived from French law, with adaptations for Kanak culture and tradi-

tions. The philosophy of this law reflects traditional “sustainable development” and community participation in decision making that guides the Loyalty Islands Kanak communities. It is a consensus between the different Loyalty Islands stakeholders and is recognised as a solemn commitment by the various partners (civil society, French State, research institutes, etc.) in development that acknowledges the rights of all participants. The charter will lead to the initiation of a coherent development scheme that recognises the current indigenous practices of the Loyalty Islands, and will create meaningful exchanges and consultation.

Boundaries, enforcement, penalties and conflict resolutions

The charter includes: the quality of life in the Loyalty Islands; the preservation of the environment; management of water resources; soil and sub-soil management; education, training and information; and contribution to research and technology. It proposes the creation of a Development Council, with a mission to monitor the development indicators, implement orientations defined by the Council, and deal with communication and information issues. The Loyalty Islands Environment Charter is to be integrated into French law, and is the first tool to combine traditional systems with French government laws. French President Jacques Chirac signed it, solemnly committing France to protect traditional knowledge and encourage Kanak customs. The charter complies with the proposal by the French President for a French Republic Environment Charter to be integrated in the preamble of the constitution.

Lessons learned and recommendations

The Loyalty Islands Environment Charter is a major step towards recognising of traditional knowledge and customs at the national level. The goals and principles of the charter are to:

- value and recognise cultural heritage;
- favour the expressions of Kanak culture;
- encourage the teaching of Kanak languages;
- protect traditional knowledge and skills;
- develop traditional arts;
- conduct programmes of research on Kanak identity;

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- support scientific projects for the protection and development of the environment;
- promote technologies that respect the environment and renewable energies;
- favour applied scientific research;
- initiate partnerships of research, society and industry;
- achieve a transfer of appropriate scientific technologies;
- support modern methods of training and communication for sustainable development;
- preserve biodiversity;
- manage an exceptional environmental heritage of world interest;
- develop resources for long-term exploitation;
- upgrade the knowledge and the comprehension of natural phenomena; and
- integrate the management of sustainable development in the decision-making process.

Case Study 4

Fisheries bylaws in Samoa

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Customary laws and conservation practices

Pre-western contact

In pre-contact times, Samoa was divided into divisions and ruled by paramount chiefs. Samoans had strong and intimate beliefs in deities. Tongans ruled Samoa for about 600 years (400–1000 AD), after which Samoans resumed control of their country; but divisional or factional infighting persisted. This led to the shaping and strengthening of social interactions that were followed by subsequent generations.

Today, Samoa is a hierarchical society where the chiefs (*matai*) govern village affairs. Two kinds of chiefs — the oratory chief (*tulafale*) and the high chief (*ali'i*) — have very different functions. All village land is controlled by the chiefs. There are three types of customary land: 1) settlement land (residential); 2) plantation land; 3) village land (from mountain top to fringing reefs; a concept equivalent to *vanua* in Fiji). The residential and plantation lands are controlled by family chiefs, whereas village land is controlled by village chiefs.

Papalagi (European) influence

Initial contact between Samoans and Europeans resulted in conflicts and subsequent alienation of the country to outside explorers. This was relatively short-lived, and whalers and traders re-opened communication with Samoa. The missionaries' arrival in the 1830s began a revolution in which many customs and traditional practices perished. Codified laws to govern trade with outsiders were first passed in 1838. Factional infighting between various paramount chiefs continued, and saw

America and Great Britain supporting one side and Germany the other. The Steinberger Constitution, drawn up by US Colonel A.B. Steinberger, governed Samoa from 1873 until 1876 (when he was deported). The Berlin Treaty, drawn up in 1889, gave token recognition to the nation's independence, but all decisions had to be approved by Germany, Great Britain and America. In 1900, Samoa was divided, with Tutuila and the Manu'a Group becoming an American protectorate, whereas Upolu and Savai'i formed German Samoa before New Zealand took over in 1914. In 1946 the United Nations assumed responsibility until independence on 1 January 1962, as Western Samoa.

Interface between traditional and governmental laws: issues and challenges

The supreme law, the Constitution of the Independent State of Western Samoa 1960, provides the foundation for national administrations. Laws prior to independence (mostly of New Zealand/British origin) continued to be enforced until they were repealed or amended.

The coastal and marine ecosystems of Samoa have been a mainstay for the people for many generations. Over the last 50 years, rapid development has led to a large increase in population, and significant changes to traditional lifestyles. The market economy has become a dominant force that is having negative impact on the traditional social settings and obligations.

The Fisheries Act (1988) and the Fisheries Regulations (1995) were enacted to manage fisheries resources. In the mid-1990s and with the assistance

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