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**THE 2004 FRENCH POLYNESIAN STATUTE:  
LEGAL CONSEQUENCES ON MARITIME ISSUES**

**HERVÉ RAIMANA LALLEMANT**

**THE 2004 FRENCH POLYNESIAN STATUTE: LEGAL  
CONSEQUENCES ON MARITIME ISSUES**

by

Hervé Raimana Lallemant

A Supervised Research Project submitted in partial fulfilment of  
the requirements for the degree of Master of Laws

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School of Law  
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June 2009

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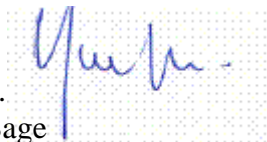


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### Statement by Supervisor

The research in this thesis was performed under my supervision and to my knowledge is the sole work of Hervé Raimana Lallemand.



.....  
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1 June 2009



*Ruahatu – God of the Ocean*

*Bobby Holcomb*

Ruahatu, god of the sea in Polynesian mythology, had a man's body with the tail of a swordfish. This god of the ocean, disturbed by a fisherman in his coral home, decided to cause the flooding of all the islands until Temehani was flooded. The only survivors were the fisherman, his friend, his wife and child and some animals that went to the Toa-Marama islet, the preferred place of the god of the sea. The sea rumbled, rising over the land and sweeping away everything—trees, houses, birds, animals and fish, as well as all humans who had not believed the fisherman's message.

*Myth of the flood of Raiatea*

Special Thanks to:

Yves Louis Sage

Karen Diard

## **ABSTRACT**

The French Polynesia is an enormous territory in the Pacific Ocean. With a territory composed of less than 4,000 square kilometres of emerged land for some 5,500,000 square kilometres of maritime territory, the importance of the sea is unquestionable. Many Statutory modifications have occurred in this “Collectivité d’Outre – Mer” since 1866 and the introduction of French Legislation in the Kingdom of Tahiti. The regulation of the sea was quite lacking in almost all the French Polynesian statutes except the one enacted in 1996. The enactment of a new Statute in 2004 was presented to the Polynesian people as a real institutional revolution in all domains. The French Polynesia is now no more a simple French territory but an autonomous country. Due to the importance of the maritime domain in French Polynesia, one of the confirmations of a real statutory evolution can be proved by the importance of the maritime competences held by the country. But did this text really change anything about the numerous maritime issues in French Polynesia? The answer is quite unclear. With some improvement for the maritime delimitation and the transfer of some French competences to the French Polynesia, the first statement can be quite positive. But in the end, many problems are still present and it can be stated that the French Polynesia is once more faraway to be completely independent for the maritime sovereignty.

# Abbreviation Table

AJDA (Actualité juridique Droit administratif) = current legal affairs, administrative law

Art. = article

CE (Conseil d'Etat) = State Council

CIJ (Cour Internationale de Justice) = International Justice Court

DGCL (Direction générale des collectivités locales) = General management of local authorities

DOM (Département d'outre-mer) = Overseas Département

DRCL (Direction de la réglementation et contrôle de la légalité) = Management of the regulations and control of legality

éd. (Editions) = publishing house

EDCE (Etude et documents du Conseil d'Etat) = Study and documents of the State Council

EDF (Electricité de France) = French electricity company

EFO (Etablissement français d'outre-mer) = French overseas establishments

EEZ = Exclusive Economic Zone

GCTR = General Code of Territorial Regions

JO (Journal Officiel) = Official Journal

JOPF (Journal Officiel de la Polynésie française) = Official Journal of French Polynesia

JORF (Journal Officiel (de la République française) = Official Journal of the French Republic

km = kilometres

L.C (Loi constitutionnelle) = Constitutional Law

L.O (Loi organique) = Organic Law

n° = number

NS (Numéro spécial) = Special issue

PUF (Presse Universitaire de France) = University Press of France

PTOM (Pays et territoires d'outre-mer) = Overseas countries and territories (OCT)



RDP (Revue de Droit Public) = Public Law Journal

RJP (Revue Juridique Polynésienne) = Polynesian Law Journal

RJC (Recueil Juridique Constitutionnel) = Constitutional Legal Compendium

TAAF (Terres australes et antarctiques françaises) = French Antarctic and Austral  
Lands

TA (Tribunal Administratif) = Administrative Court

TOM (Territoire d'outre-mer) = Overseas Territory

UE (Union Européenne) = European Union

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# INTRODUCTION

1- The 2004-192 Organic Law of 27 February 2004 brought about a completely new status for French Polynesia<sup>1</sup>. This new statute has 75 more articles than the previous text and seems to set new principles and difficulties for the maritime domain. This French territory “lost in the ocean” (§1) with an eventful statutory evolution (§2) faces once again new questions (§3) arising from this law of 2004.

## 1: General Introduction to French Polynesia

2- With a population of 245,516 inhabitants<sup>2</sup>, French Polynesia is a vast insular territory in the Pacific Ocean. The 118 islands that make up French Polynesia are scattered between the eighth and the 27<sup>th</sup> degrees of south latitude and the 134<sup>th</sup> and the 155<sup>th</sup> of west longitude. French Polynesia is located between Los Angeles and Sydney and lies about 6000 km<sup>3</sup> from both cities. This former “Territoire d’Outre – Mer”<sup>4</sup> is now recognised by the French Republic as a “Collectivité d’Outre – Mer”<sup>5</sup> or a “Pays d’Outre – Mer” as explained in the first article of the organic law of 2004. This territory is composed of less than 4,000 square kilometres of emerged land and some 5,500,000 square kilometres of maritime territory. At the political level, this territory is governed by the French Polynesian Assembly<sup>6</sup>. This assembly adopts the ‘Country Laws’, the French Polynesian budget, debates matters within its competences and controls the local government. The Assembly elects the French Polynesian President, who then chooses his government. The other French Polynesian governmental institutions are the

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<sup>1</sup> L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia, Law n° 2004-193 of 27/02/2004 completing the autonomy status of French Polynesia, J.O n° 52 of 02/03/2004 p.4183 et 4213. Decision n° 2004-490 DC of 12/02/2004 relating to the Organic Law giving its autonomy status to French Polynesia, Decision n° 2004-491 DC of 12/02/2004 relating to the law completing the autonomy status of French Polynesia, JOPF, 12/03/04, NS n°2

<sup>2</sup> Decree n°2003-725 of 1<sup>er</sup> Août 2003, JOPF 21/08/03

<sup>3</sup> *Encyclopedia Universalis*, Encyclopedia Universalis éditeur à Paris, 2002, Corpus 18, p.545

<sup>4</sup> *Le Petit Larousse Grand Format*, Larousse, 1996: « a TOM is a territory of the French Republic created in 1946 », p.1002.

<sup>5</sup> New article 72 of the 1958 French Constitution, Internet Source: <http://www.legifrance.gouv.fr/html/constitution/>

<sup>6</sup> Made of 57 representatives elected by the French Polynesian people.

Economic, Social and Cultural Council<sup>7</sup>, the French Polynesian High Council<sup>8</sup>, and Land tenure experts<sup>9</sup>.

## 2: Evolution of statutory powers in French Polynesia

3- Many Statutory modifications have occurred in this “Collectivité d’Outre – Mer” since 1866 and the introduction of French Legislation in the Kingdom of Tahiti<sup>10</sup>. This evolution continues with the enactment of a new Statute in 2004.

4- As from 1823, in Tahiti, a legislative assembly composed of elected representatives formed a counter-power to the local Monarchy. The society was ruled by a customary system. In 1842, France established political links with the Kingdom of Tahiti ruled by the Pomare lineage. The local Legislative Assembly voted for the introduction of French Legislation from 1866. In 1880 (the date of the French Annexation) the “Etablissements français de l’Océanie” were modified to be colonies. French pressure on the Tahitian Kingdom was strong long before this date<sup>11</sup>. On 9 September 1842, Vice-Admiral Dupetit-Thouars, commander of the French south sea navy, proclaimed of his own authority, a French Protectorate over the Pomare Tahitian Kingdom<sup>12</sup>. This signaled the creation of a real Colonial Protectorate in Tahiti<sup>13</sup>. Queen Pomare was quick to reject this Protectorate and wrote a letter to the French King Louis-Philippe in 1843. The French Vice-Admiral overthrew the Queen and proclaimed the annexation on 6 November 1843. The French King denied this arbitrary annexation in 1844 and the order to respect the Protectorate Treaty was given to the French Vice-Admiral<sup>14</sup>. After this event, the Protectorate evolved in favour of the French Republic. A progressive transfer of the local political powers was made and the last local powers were strongly

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<sup>7</sup> Gives its advice on all economic, social and cultural projects.

<sup>8</sup> Gives its advice on all projects and proposed laws of the country and guides the local government on all judicial matters.

<sup>9</sup> *Te fenua* « *Journal d’information du Gouvernement de Polynésie française* », February 2004, n°64, p.12

<sup>10</sup> ALAIN MOYRAND, *Les Institutions de la Polynésie française*, Ministry of Education, éd. CTRDP Tahiti, French Polynesia, 2003, p.11

<sup>11</sup> ALAIN MOYRAND, *Les Institutions de la Polynésie française*, p.12

<sup>12</sup> BERNARD GILLE et PIERRE YVES TOULLELAN, *Le mariage Franco-Tahitien : Histoire de Tahiti du XVIIIe siècle à nos jours*, éd. Polymage-Scoop 1994, p.40

<sup>13</sup> CLAUDE ALBERT COLLIARD, *Institutions des relations internationales*, Dalloz 9<sup>e</sup> éd, 1990, p.60

<sup>14</sup> GUY SEM, *Introduction au Statut Juridique de la Polynésie française*, éd DDOM Papeete, 1996, p.4

controlled<sup>15</sup>. The “Etablissements Français de l’Océanie” were regulated by a ministerial rule of 26 June 1860<sup>16</sup>.

5- The third French Republic (1870 – 1940) ended the Tahitian question by creating in 1880 more secure institutions in the “Etablissements Français de l’Océanie”. The five Polynesian archipelagos were unified in a single colony<sup>17</sup>. The successor of Queen Pomare, King Pomare V asked, on 25 June 1880, the fusion of his Kingdom with the French Republic. The French Republic “Commissaire” accepted this sovereignty gift the same day. The law of 30 December 1880 authorized the ratification of the Tahitian Kingdom sovereignty transfer<sup>18</sup>. Article 3 of this law gave the French Nationality to all Polynesians, because of the desire of the French to create a maritime empire<sup>19</sup>. For the next five years, all civil and military powers were concentrated in the hands of the French Navy Commander who took the name of “Commandant des Etablissements Français de l’Océanie”. In 1881, a governor replaced the Navy Commander. As far as the local political representation was concerned, an evolution took place with the creation of a Colonial Council by two local “arrêtés” in 1880 and 1881 which aimed to prepare the local population to manage the affairs of the colony by the formation of a general council. This General Council replaced the Colonial Council in 1884, created by a decree. The powers of the General Council were standard. It voted the budget, imposed taxes and managed state property, notably public works. The Administration Council replaced this institution by a decree of 1903 and, in 1932, there was a new modification with the appearance of a Private Council controlled by the French Governor<sup>20</sup>. Economic and financial delegations to the representative Assembly were also created<sup>21</sup>.

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<sup>15</sup> ALAIN MOYRAND, *Les Institutions de la Polynésie française*, p.12

<sup>16</sup> BERNARD GILLE et PIERRE YVES TOULLELAN, *Le mariage Franco-Tahitien : Histoire de Tahiti du XVIIIe siècle à nos jours*, p.79

<sup>17</sup> BERNARD GILLE et PIERRE YVES TOULLELAN, *Le mariage Franco-Tahitien : Histoire de Tahiti du XVIIIe siècle à nos jours*, p.75

<sup>18</sup> France also annexed many other islands to unify French Polynesia: V. PIERRE YVES. TOULLELAN, *Comment la Polynésie est devenue Française...*, Annales du Centre Universitaire de Pirae, 1988-1989, n°3 p.66 : « Polynesia did not give itself to France, it had to be conquered by force »

<sup>19</sup> GUY SEM, *Introduction au Statut Juridique de la Polynésie française*, p.5

<sup>20</sup> ALAIN MOYRAND, *Les Institutions de la Polynésie française*, p.16 à 20

<sup>21</sup> BERNARD GILLE et PIERRE YVES TOULLELAN, *Le mariage Franco-Tahitien : Histoire de Tahiti du XVIIIe siècle à nos jours*, p.100

6- The Constitution of the Fourth French Republic ended the colonial regime with the recognition of the overseas populations and the right of the nations to develop their civilizations. The French possessions turned into “Territoire d’Outre – Mer” as a result of progressive developments in applicable Statute<sup>22</sup>. Now a real French Territorial Region, French Polynesia was represented in the French Parliament by one deputy (which increased to two since 1985) and a senator in the Fifth Republic in 1958. To achieve this, French Polynesia went through six different Statutes from 1945 to 2004<sup>23</sup>. The “Etablissements Français de l’Océanie” thus became “Territoires d’Outre – Mer” within the French Republic as we saw before. As a result, a decree of 1945 and another of 1946, created the Representative Assembly in French Polynesia. The powers of this Assembly were stronger than the previous local institutions. For the first time, Polynesians elected a deputy, a senator, and a counsellor at the High Council of the French Union<sup>24</sup>. However, this was only a minor act of decentralization; it was not until 1956<sup>25</sup> and the “Cadre Defferre” law that the Territory was endowed with a new institutional organisation with an important autonomy. In application of this law, a decree of 1957<sup>26</sup> allowed French Polynesia to have almost state-like institutions and strong political powers. In 1957, the name “French Polynesia” was first used<sup>27</sup>. However, a strong reduction of these powers took place soon after, doubtless in anticipation of the future nuclear tests in French Polynesia<sup>28</sup>. It was indeed the “ordinance” of 23 December 1958<sup>29</sup> which allowed the governor to regain the ultimate

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<sup>22</sup> Art. 75 of the 1946 French Constitution, internet source: <http://www.justice.gouv.fr/textfond/ction46.htm>

<sup>23</sup> ALAIN MOYRAND, *Les Institutions de la Polynésie française*, p.21

<sup>24</sup> BERNARD GILLE et PIERRE YVES TOULLELAN, *Le mariage Franco-Tahitien : Histoire de Tahiti du XVIIIe siècle à nos jours*, p.126

<sup>25</sup> Law 56-619 of 23/06/1956, a measure to ensure the evolution of the territories falling to the Ministry of Overseas France, J.O "Lois et Décrets" of 24/06/1956, p.5782

<sup>26</sup> Decree 57-812 of 22/07/1957 instituting a government council and extending the functions of the territorial assembly in Etablissement français de l’Océanie, J.O "Lois et Décrets" of 23/07/ 1957, p.7258

<sup>27</sup> Law 57-836 of 26/07/1957, Organisation of the public powers in French Polynesia, J.O "Lois et Décrets" of 28/07/1957, p.7466

<sup>28</sup> French Defense File on the Nuclear Tests, Internet Source: <http://www.defense.gouv.fr/actualites/dossier/d60/02.html> : « The Pacific Experimentation Centre (PEC) is officially created on 1 July 1963 and the Direction of the Pacific Experimentation Centres (DIRPEC) follows soon after, in January 1964. The test campaigns in the Sahara are not yet completed then, as the last gallery launching was made in February 1966 in the Hoggar. It is then a matter of harnessing thermonuclear energy, which necessitates open air tests, an impossibility in independent Algeria. Due to its remote nature and the vast area of maritime deserts, Polynesia, a French territory, appears to be the best location to carry out the open air tests. »

<sup>29</sup> Ordinance 58-1337 of 23/12/1958 relating to the government council and the assembly of French Polynesia, J.O "Lois et Décrets" of 27/12/1958 p.11871



decision-making power. This system would last twenty years<sup>30</sup>. From then on, two types of autonomy systems ruled French Polynesia. The first one was the management autonomy created by the Statute of 1977<sup>31</sup>. Local politicians were disappointed by this statute and wanted to come back to the Statute of 1957<sup>32</sup>. The Statute of 1977 created an administrative and financial autonomy far less interesting for the local autonomist politicians<sup>33</sup>. Under the pressure of these local claims, the French Parliament voted a new Statutory Law in 1984<sup>34</sup> which conferred to the Territory “Internal Autonomy” defined by two elements: the common law power must benefit the local territory and the Head of the Executive must be elected by the members of the Local Assembly (this is a new element<sup>35</sup>). This statute would be modified ten times between 1984 and 1995<sup>36</sup>. Finally, the organic law of 12 April 1996<sup>37</sup> along with another law<sup>38</sup> created a new Statute for French Polynesia, which conferred “Autonomy”<sup>39</sup> to the local territory. The essential aim of this statutory modification was two-fold: to enhance the local judicial security and to obtain better control over the creation of norms<sup>40</sup>. These ideas were more developed in the new Statute of 2004. The Statute of 1996 conferred to French Polynesia complete administrative autonomy<sup>41</sup>.

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<sup>30</sup> ALAIN MOYRAND, *Les Institutions de la Polynésie Française*, p.23 à 26

<sup>31</sup> Law 77-772 of 12/07/1977 relating to the organisation of French Polynesia, J.O "Lois et Décrets" of 13/07/1977, p.3703

<sup>32</sup> BERNARD GILLE et PIERRE YVES TOULLELAN, *Le mariage Franco-Tahitien : Histoire de Tahiti du XVIIIe siècle à nos jours*, p.135

<sup>33</sup> GUY SEM, *Introduction au Statut Juridique de la Polynésie française*, p.11

<sup>34</sup> Law 84-820 of 06/09/1984 giving its autonomy status to French Polynesia, J.O "Lois et Décrets" of 07/09/1984, p.2831

<sup>35</sup> ALAIN MOYRAND, *Les Institutions de la Polynésie Française*, p.30

<sup>36</sup> Law n°85-1337, JOPF 01/03/86, p.2 ; Law n°86-1067, JOPF 10/12/86, p.1577 ; Law n°87-556, JOPF 24/09/87, p.1454 ; Law n°89-25, JOPF 09/03/89, p.390 ; Law n°90-612, JOPF 14/07/90, p.38 ; Law n°91-1406, JOPF 23/01/92, p.180 ; L.O. n°94-499, JOPF 28/07/94, p.1362 ; Law n°94-1040, JOPF 23/02/95, p.398 ; L.O. n°94-1132, JOPF 16/02/95, p.356 ; L.O. n°95-173, JOPF 28/02/95, p.5

<sup>37</sup> L.O 96-312 of 12/04/1996 giving its autonomy status to French Polynesia, J.O "Lois et Décrets" of 13/04/1996, p.5695

<sup>38</sup> Law 96-313 of 12/04/1996 completing the autonomy status of French Polynesia, J.O "Lois et Décrets" of 13/04/1996, p.5705

<sup>39</sup> PHILLIPE LECHAT, *Le Statut de la Polynésie française du 6 septembre 1984. Cinq ans après : Autonomie interne ou internée*, n°3, 1988-1989, p.69-98 ; GUY SEM, *Introduction au Statut Juridique de la Polynésie française*, p.95. We remark here that the absence of the term « internal » seems to be, according to George Sem a mere « semantic concession by the State » ; the Autonomy thus appears « internalised », remarks Philippe Lechat.

<sup>40</sup> ALAIN MOYRAND, *Les Institutions de la Polynésie française*, p.35 to 36. Adding to this point, it is worth noting that for some law experts, the statutory law of 12 April 1996 appears more as the « 11th modification of the statute of 1984 » due to the failure of the statute’s achievements (no improvement in the legal security of territorial norms and a very relative effectiveness of the deliberative power of the Assembly of French Polynesia).

<sup>41</sup> ALAIN MOYRAND, *Les Institutions de la Polynésie française*, p.39. It is worth noting here that the distinction between political and administrative autonomy seems extremely fragile (ROLLAND et

7- A new statutory project was created in 2004. On 1 March 2004<sup>42</sup>, the French President signed a decree which reinforced the Polynesian Autonomy after a judgement of the French Constitutional Council on 12 February 2004<sup>43</sup>. In its edition of March 2004, the Official Journal of the French Republic published Organic Law n°2004 – 192 “portant statut d’autonomie de la Polynésie française”. French Polynesia is now an “overseas Country” within the French Republic. French Polynesia governs itself freely and democratically and constitutes a region whose autonomy is guaranteed by the Republic and governed by article 74 of the French Constitution<sup>44</sup>. This new Statute was published in the Official Journal of French Polynesia<sup>45</sup>. According to the former French Polynesian President, M. Gaston Flosse<sup>46</sup>: “as far as the history of French Polynesia is concerned, what matters is the creation of the constitutional autonomy. What historians will remember is that on 12 March 2004, the law making French Polynesia a free and democratic country was published”<sup>47</sup>.

8- This new statute, like its predecessors, raises new questions about the French Polynesian political status within the French Republic and about the institutional novelty it introduces.

### 3: The sea as a key element for the French Polynesian political status within the French Republic.

9- French Polynesia is a complex subject for jurists and the arrival of this new statute does not facilitate the clarity of applicable norms in this territorial region. As M.

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LAMPUÉ, *Droit de l’Outre mer*, 3<sup>e</sup> édition, Dalloz 1959, p.42 and ALAIN MOYRAND, *Le Statut de la Polynésie française : La décentralisation en question, De l’autonomie administrative à l’autonomie politique*, Economica 1996, p.143)

<sup>42</sup> Unpublished, quote from Te fenua « Journal d’information du Gouvernement de Polynésie française », Friday 27/02/2004, n°64

<sup>43</sup> Decision of the Constitutional Council n° 79-104 DC, 23/06/1979, RJC p. I-69

<sup>44</sup> Internet Source : <http://www.presidence.pf/> (Website of the Presidency of the French Polynesian Government)

<sup>45</sup> L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia.

<sup>46</sup> The new President of French Polynesia is M. Oscar Temaru, as of May 2004

<sup>47</sup> GASTON FLOSSE, *Allocution à la Présidence*, 12/03/04, Internet Source : <http://www.presidence.pf/> (Website of the Presidency of the French Polynesian Government)

Philippe Lechat accurately said in the preface of Guy Sem's book, French Polynesia includes "law domains always complex and difficult to understand, where an interested audience makes slow progress through a jigsaw of scattered elements"<sup>48</sup>. It may also be noted that before the accession of French Polynesia to the status of "Collectivité d'Outre – Mer", M. François Luchaire remarked, "the determination of applicable law in French Polynesia presents a disturbing complexity"<sup>49</sup>. Trying to solve this complexity once and for all is an impossible task. In fact, the doctrinal study of the 2004 Statute will certainly take a long time. But here the objective is not to analyse the totality of the French Polynesian Statute of 2004, or to end the French Polynesian legal complexity but to ask a simple question: As concerns issues related to maritime matters, is French Polynesia, a real country which governs itself freely and democratically<sup>50</sup> or is French Polynesia just another French region?<sup>51</sup>. The objective here is to analyse the provisions in the new organic law of 2004 which touch on the seas and of the respective jurisdictions conferred on the French Republic and French Polynesia respecting various matters connected to the seas. we will see that French Polynesia is a French Decentralized Territorial Region (Part 1) with new powers bringing this region to the status of a true overseas country (Part 2).

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<sup>48</sup> GUY SEM, *Introduction au Statut Juridique de la Polynésie française*, p.1

<sup>49</sup> FRANÇOIS LUCHAIRE, *Le juge constitutionnel et le régime législatif des Territoires d'Outre mer*, RDP 1994, p.1624

<sup>50</sup> YVES HAUPERT (Editorial), *Te fenua* « Journal d'information du Gouvernement de Polynésie française », Vendredi 27 février 2004, n°64, p.3

<sup>51</sup> V. MICHEL VERPEAUX, *Les collectivités territoriales en France*, 2<sup>e</sup> éd., Dalloz 2004, coll. Connaissance du droit, p.13

# **PART 1: FRENCH POLYNESIA, THE MARITIME POWERS OF A SIMPLE DECENTRALIZED TERRITORIAL REGION**

10- The French Constitutional Law of 28 March 2003<sup>52</sup> adds to the first article of the French Constitution that the French Republic is “decentralized”. This polemical agreement is the result of a decentralizing State, with more autonomy given to the territorial regions<sup>53</sup>. Of course, this decentralisation was initiated well before this new law. The decentralization action affects the French marine regions and French Polynesia more particularly than other parts of the French territory, but the maritime domain is not so decentralized (Chapter 1). Actually, even with the new organic law of 27 February 2004<sup>54</sup>, the French State is still present in the French Polynesian maritime domain, proving that the new Polynesian powers come from decentralization and not federalisation (Chapter 2).

## **CHAPTER 1: A MARITIME DECENTRALIZATION, NOT A MARITIME FEDERALISATION**

11- Decentralization is a complex, imprecise and highly debatable doctrine.<sup>55</sup> Born in the aftermath of the French revolution, the notion of decentralization was created to structure a rational administration in France<sup>56</sup>. This notion of decentralisation was applied in French Polynesia like in any other part of the French territory in many domains (Section 1) nevertheless French Polynesia remains a territorial region within a unified State (Section 2).

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<sup>52</sup> L.C 2003-276 of 28/03/2003, J.O "Lois et Décrets" 75 of 29/03/2003, p.5568

<sup>53</sup> MICHEL VERPEAUX, *Les collectivités territoriales en France*, p.2

<sup>54</sup> L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia, .

<sup>55</sup> NADINE DANTONEL-COR, *Droit des collectivités territoriales*, éd Lexi Fac droit 2003, coll. 1<sup>er</sup> et 2<sup>e</sup> cycle, p.13

<sup>56</sup> MICHEL VERPEAUX, *Les collectivités territoriales en France*, p.34

## SECTION 1: Decentralization for a particular Region

12- The notion of decentralization has many meanings (Paragraph 1) but is present in French Polynesia under a particular form (Paragraph 2).

### 1: Decentralization Definitions

13- To decentralize is, literally to make more autonomous (A), something which depends on a central power<sup>57</sup> (B).

#### A) Decentralization as a source of Autonomy

14- Decentralisation consists in creating or recognizing the existence of distinct regions from the State at a juridical level<sup>58</sup>. These regions have a moral personality and have rights and obligations. Among their rights, they have distinct organs from the State (Elected Council), powers of their own and a defined territory. They employ personnel, own resources and a patrimony<sup>59</sup>. They have administrative powers and a relative freedom of decision and management<sup>60</sup>. Today, this autonomy allows them to handle the diversity of local situations in order to bring personalized answers. In general, the decentralization action has contributed to transform French society. According to the French Government, by transferring new powers to local representatives, democracy progresses and the needs of citizens are met more accurately<sup>61</sup>. Decentralization is in fact a method of division of power in a unified State. It is said to be necessary because it brings citizens closer to the power of decision. Decentralization encourages a

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<sup>57</sup> *Le Robert de Poche : Langue française et noms propres*, éd. Dictionnaires Le Robert Paris 2003, p.178

<sup>58</sup> DOMINIQUE FAUSSER, Territorial Director, lecturer at the CNFPT, Internet source: <http://www.localjuris.com.fr/>

<sup>59</sup> DOMINIQUE FAUSSER, Territorial Director, lecturer at the CNFPT, .

<sup>60</sup> MICHEL VERPEAUX, *Les collectivités territoriales en France*, p.2

<sup>61</sup> Internet source: [http://www.vie-publique.fr/decouverte\\_instit/instit/](http://www.vie-publique.fr/decouverte_instit/instit/) (Additional site to the « documentation française »)

democracy of proximity<sup>62</sup>. Decentralization must not be confused with the French notion of “deconcentration”. This notion consists in a delegation of powers to local representatives. These representatives are from the same administration and do not have autonomy<sup>63</sup>. Basically, “deconcentration” is meant to increase the local representatives’ powers to facilitate the work of the central power<sup>64</sup>.

15- The decentralization principle has had a long and eventful history throughout the French Republic but it was the law of 2 March 1982 “relative aux droits et libertés des communes, des départements et des régions”<sup>65</sup> which opened the way to a deep modification in the distribution of power for the benefit of local actors. This law is considered the fundamental French law of decentralization. More than 70 laws and 750 decrees have followed the vast reform accomplished by the 1982 law to this day<sup>66</sup>. The last innovation in this domain is the French constitutional revision of 28 March 2003<sup>67</sup>. It was scheduled that organic laws necessary for its application would follow this Constitutional revision. Only two organic laws have been published to this day from 1 August 2003<sup>68</sup>.

16- Decentralization is considered by a great majority of the French as a great advantage for the regions that benefit from this notion. Nevertheless, Polynesian jurists have a different opinion and think that the notion of decentralization reduces their autonomy.

## B) Decentralization, a dependence on a central power

17- It must not be forgotten that even if territorial regions have autonomy, they must respect the laws and rules of the French Republic. They cannot encroach upon the State

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<sup>62</sup> NADINE DANTONEL-COR, *Droit des collectivités territoriales*, p.13

<sup>63</sup> Internet source: [http://www.vie-publique.fr/decouverte\\_instit/instit/](http://www.vie-publique.fr/decouverte_instit/instit/) (Additional site to the « documentation française »)

<sup>64</sup> NADINE DANTONEL-COR, *Droit des collectivités territoriales*, p.16

<sup>65</sup> Law 82-213 of 02/03/1982 relating to the rights and liberties of the « communes », « départements » and « régions » (Law Defferre), J.O "Lois et Décrets" of 03/03/1982, p.730

<sup>66</sup> Internet source: [http://www.vie-publique.fr/decouverte\\_instit/instit/](http://www.vie-publique.fr/decouverte_instit/instit/) (Additional site to the « documentation française »)

<sup>67</sup> L.C 2003-276 of 28/03/2003, .

<sup>68</sup> L.O 2003-704 of 01/08/2003 relating to the experimentation of territorial regions, J.O "Lois et Décrets" 177 of 02/08/2003, p.13217

powers because France is a unified State. The regions have the right to administer their services but they cannot make laws or dispense justice<sup>69</sup>. The territorial regions are under surveillance by a State representative, the supervision authority<sup>70</sup>. The State Representative is not a hierarchical authority; he is only there to confirm the acts of the territorial regions. This control is the necessary counterpart to the free Administration principle of the territorial regions and recalls the unified nature of the French State<sup>71</sup>. In fact, a territorial region is limited in many respects. First, the region only has a limited normative power. Indeed, an administrative act is hierarchically inferior to a French Law and consequently the importance of the discretionary power is lesser because it is decreasing at each level of the creation of the law. In a law, whilst respecting the Constitution, it is possible to express differences in order to take into account local specificities. The same cannot be said of administrative acts controlled by the administrative judge as he ensures that there are no great discrepancies between the norms applicable in all of the territories of the French Republic<sup>72</sup>.

18- The second problem regarding the regions is that of the General Principle of Law (GPL or PGD in French, « Principes Généraux du Droit »). The authorities of the decentralized regions must respect the GPL. This set of rules created by the French State Council (“Conseil d’Etat”), strongly limits the normative power of the territorial regions and notably the power of French Polynesia. Indeed, the GPL “represents the state of evolution in civilisation reached by the nation<sup>73</sup>”. The GPL does not always reflect the local conceptions of the population and consequently the application of these rules results in the unilateral alignment of French Polynesian law to French law<sup>74</sup>. This full application of the General Principle of Law constitutes a unifying element of law that does not always include the local particularities of French Polynesia<sup>75</sup>. Another limit to the decentralization process is the legal control exercised by the administrative judge on the acts of the territorial regions, which differs from the Constitutional control

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<sup>69</sup> DOMINIQUE FAUSSER, Territorial Director, lecturer at the CNFPT.

<sup>70</sup> REMY CABRILLAC (direction), *Dictionnaire du vocabulaire juridique*, 2<sup>e</sup> éd., éd. LexisNexis Litec (Jurisclasseur) 2004, coll. Objectif droit, p.124

<sup>71</sup> Internet source: [http://www.vie-publique.fr/decouverte\\_instit/instit/](http://www.vie-publique.fr/decouverte_instit/instit/) (Additional site to the « documentation française »)

<sup>72</sup> ALAIN MOYRAND, *Les Institutions de la Polynésie française*, p.47

<sup>73</sup> M. LETOURNEUR, *Les principes généraux du droit dans la jurisprudence du Conseil d’Etat*, EDCE 1951, p.20

<sup>74</sup> ALAIN MOYRAND, *Les Institutions de la Polynésie française*, p.47

<sup>75</sup> GUY SEM, *Introduction au Statut Juridique de la Polynésie française*, p.152

conferred to the Constitutional judge. The control of the administrative judge is more extensive and intensive. This limitation creates vulnerability for the acts of the territorial regions. This vulnerability results in a clear legal insecurity of local acts. Indeed, every citizen may obtain the cancellation of an act of the region in the Administrative Tribunal. Lastly, the powers of the territorial regions are uncertain, and the French State can regain whatever it wants<sup>76</sup>.

19- Decentralisation is both the source of autonomous power but also the proof of a submission to the State for the decentralized regions. It has nevertheless some specificities in French Polynesia, which gives it an advantage over metropolitan regions.

## 2: A particular application in French Polynesia

20- Decentralization is present in French Polynesia like in any other part of the French Republic but the particular nature of this region resulted in the rise of specificities (like in other maritime French regions). The main differences are the particular organisation (A) and the legislative speciality (B) in French Polynesia.

### A) The Particular Organization of French Polynesia

21- Like other French maritime regions, a particular decentralization applies in French Polynesia. It has its own institutional structure and if, like in the French metropolitan territory, their status is established by the legislator, here an organic law is necessary (Article 74 of the French Constitution<sup>77</sup>). The French metropolitan regions have a “specific organization”<sup>78</sup> a notion not as extensive as the « particular organization »<sup>79</sup>. Indeed, the “particular organization” allows French Polynesia to benefit from legislative

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<sup>76</sup> ALAIN MOYRAND, *Les Institutions de la Polynésie française*, p.52

<sup>77</sup> French Constitution of 1958, article 74 : « The overseas regions subject to this article have a status which takes into account their own interests within the Republic. This status is defined by an Organic Law (...) ».

<sup>78</sup> Decision of the Constitutional Council n° 91-290 DC, 09/05/1991, Compendium p. 50, RJC p. I-438

<sup>79</sup> French Constitution of 1958, article 74 : « The other conditions of the particular organisation of the regions within the remit of this article are defined and modified by law after consultation of their deliberative assembly. ».



powers<sup>80</sup> as written in article 34 of the French Constitution<sup>81</sup>. It can be noted here that in 2002 the Constitutional judge banned a legislative rule intending to confer this kind of power to Corsica<sup>82</sup>.

22- The « particular organization » notion was present in the first point of article 74 of the French Constitution after the Constitutional revision of 1992<sup>83</sup>. The Constitutional revision of 2003 strongly modified article 74 but the notion of “particular organization” is retained, in the second point. The first point of article 74 now reads: “The overseas regions ruled by this article have a status which integrates their own interests within the Republic”<sup>84</sup>. It is the notion of “Status” which is put forward. It is a slight modification compared to the previous French Polynesian Statute where this notion (Point 2 of article 74 of the French Constitution) was in opposition with the “Particular Organisation”. The idea was that the “Status” was only an under-structure of the “Particular Organization” principle<sup>85</sup>. It is now the overseas region Statute which controls the “Particular Organization” bases.

23- The “Particular Organization” principle allowing French Polynesia to have an Institutional Structure is not the only specificity of this region. The other particularity is the “Legislative Speciality” principle.

## B) The Legislative Speciality principle

24- French Polynesian decentralization is different from that of French Metropolitan regions because of another principle. This difference is the “Legislative Speciality” principle. This notion, also valid for all former “TOM” (Territoire d’Outre Mer), can be defined by the “Notion of Special Applicability” (the fact that a French Metropolitan

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<sup>80</sup> ALAIN MOYRAND, *Les Institutions de la Polynésie française*, p.41

<sup>81</sup> French Constitution of 1958, article 34.

<sup>82</sup> Decision n° 2001-454 DC, 17/01/2002

<sup>83</sup> L.C 92-554 of 25/06/1992. It is worth noting that the first objective of this modification was essentially to adapt the Constitution to the evolution of European institutions. However, article 74 of the Constitution was modified following an amendment proposed by French Polynesia representative Alexandre Léontieff, against the recommendation of the government and the commissions of the laws of the national assembly (GUY SEM, *Introduction au Statut Juridique de la Polynésie française*, p.64)

<sup>84</sup> Article 74 of the French Constitution of 1958, .

<sup>85</sup> GUY SEM, *Introduction au Statut Juridique de la Polynésie française*, p.66

Act is applicable in French Polynesia only if the author of the act shows this intention) and specific formalities for promulgation and publication<sup>86</sup>, and a compulsory local promulgation and publication, principle deeply linked with the idea of “Legislative Speciality”<sup>87</sup>. For most law experts, the origin of this principle dates back to the XVI century. Indeed, this principle was created during the French “Ancien Régime” where the inapplicability of the French Metropolitan rules in the colony was progressively fashioned by the Superior Council of the different colonies<sup>88</sup>. There were two main reasons for the creation of the “Legislative Speciality” principle. Firstly, the idea that the “indigenous” people of the colonies were not equal to the French metropolitan people and hence could not benefit from the same laws and the same legal protection. The second point is the general particularities of the overseas regions of the French Republic. This second point is adopted by article 72 of the French Constitution of 1946<sup>89</sup> and the principle of “Legislative Speciality” becomes a true Constitutional rule<sup>90</sup>. Later on, without mentioning the principle by name, the Constitution of the Fifth Republic, in article 74 (before the Constitutional Revision of 2003), creates the principle of the “Particular Organization” which indicates the preservation of the “Legislative Speciality” notion<sup>91</sup>. Because the “Legislative Speciality” is not formulated, the Doctrine was divided on the validity of this principle. Some thought it equal to the GPL (General Principle of Law)<sup>92</sup>, whilst others believed that the “Legislative Speciality” notion was still a Constitutional Rule<sup>93</sup>, which fell into step with the French Government thought<sup>94</sup>.

25- Article 74 of the French Constitution was greatly modified by the Constitutional revision of 2003 but the « Legislative Speciality » principle is indirectly present once again in the overseas regions Statute. Indeed, in the new article 74 of the French Constitution “(...) This Statute is defined by an Organic Law, voted on the

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<sup>86</sup> ALAIN MOYRAND, *Les Institutions de la Polynésie française*, p.81

<sup>87</sup> YVES BRARD, « Autonomie internes et sources du droit en Polynésie française », AJDA 1992, p.554

<sup>88</sup> ALAIN MOYRAND, *Les Institutions de la Polynésie française*, p.78

<sup>89</sup> Internet source: <http://www.justice.gouv.fr/textfond/ction46.htm>, article 72 of the 1946 Constitution

<sup>90</sup> GUY SEM, *Introduction au Statut Juridique de la Polynésie française*, p.126

<sup>91</sup> YVES BRARD, *Nouvelle Calédonie et Polynésie française : « Les lois de Pays » de la spécialité législative au partage du pouvoir législatif*, RJP 2001, p.46

<sup>92</sup> PIERRE LAMPUE, « Le régime constitutionnel des Territoires d’Outre mer », RDP 1984, p.14

<sup>93</sup> ALAIN BOYER, *Le statut constitutionnel des Territoires d’Outre mer et l’Etat unitaire. Contribution à l’étude des articles 74, 75, 76 de la Constitution du 4 octobre 1958*, Economica – PUAM, p.131

<sup>94</sup> Circular of the Prime Minister of 15/06/90, J.O 16/08/90, p.1244

recommendations of the deliberative assembly, which states: The conditions by which the laws and rules are applicable (...)”<sup>95</sup>. It is therefore the Statutory Organic Law which defines the details of the « Legislative Speciality » principle. An entire title is reserved to this principle in the new French Polynesian Status Organic Law. This is title 2, named “Implementation of Laws and Regulations in French Polynesia” which comprises six articles (articles 7 to 12) <sup>96</sup>. The “Legislative Speciality” principle has evolved. Some of the rules are still present like in article 7 where there is direct mention of the “Legislative Speciality” principle: “In matters falling within the powers of the State, the laws and regulations that are applicable in French Polynesia are those laws and regulations which contain a mention expressly stating so.” <sup>97</sup>. The principle of « Legislative Speciality » seems to have gained in strength through the increased consultation of the French Polynesian Local Assembly and Government as far as the French Metropolitan draft government decision relative to this community are concerned (articles 9 and 10). There is also the possibility, granted to the Local Assembly, to repeal or change a law of the French Republic when the French Constitutional Council has established that the Law was promulgated after the new French Polynesian Statute and that it intervened into matters pertaining to French Polynesia (article 12).

26- French Polynesia has benefited from a progressive decentralization like any other region, but has also enjoyed positive differences. Because of this, the question to ask is whether French Polynesia is simply a decentralized region or has become an entity beyond this status.

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<sup>95</sup> Article 74 of the French Constitution of 1958, .

<sup>96</sup> L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia, .

<sup>97</sup> It is worth noting here that article 7 lists the domains not subject to the principle set in paragraph 1 (national defense, State public domain, nationality and the status and capacity of people, status of state representatives, but also the laws allowing for a ratification or approval of international commitments and the rulings deciding on their publication).

## SECTION 2: The place of French Polynesia within the French Republic

27- In spite of the principle of decentralization, French Polynesia is still a region within a unified State. A Territorial Region like the others (Paragraph 1), French Polynesia is also an Overseas Region since the Constitutional Revision of 2004<sup>98</sup> (Paragraph 2).

### 1: French Polynesia, Territorial Region

28- The notion of Territorial Region<sup>99</sup> can be briefly defined as encompassing the Decentralized Territorial Public entities<sup>100</sup> (A) which benefit from the principle of “free administration” (B).

#### A) A Decentralized Entity

29- A territorial region is a decentralized administrative structure, which has the moral personality of Public Law. The region is ruled by the territorial decentralization principle, which consists in the individualization of a human region in a part of the French Republic territory. The region is also granted the management and the regulation power of its own affairs. Elected representatives who exercise their function under the control of a State representative administrate each territorial region<sup>101</sup>. This idea of “territorial region” must not be confused with similar notions. It must be distinguished from the notion of “Local Public Establishment” which is a specialized public entity. It must be also distinguished from an administrative subsection known as the “Canton” (an electoral subdivision) or the “Arrondissement” (an administrative subdivision).

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<sup>98</sup> L.C 2003-276 of 28/03/2003, .

<sup>99</sup> MICHEL VERPEAUX, *Les collectivités territoriales en France*, p.1 : Let's note here the terminological problem set between the previously accepted term of « local region » and « territorial region ». However, since the constitutional law of 28 March 2003, article 34 of the Constitution replaced the previous expression by « territorial regions ».

<sup>100</sup> REMY CABRILLAC (direction), *Dictionnaire du vocabulaire juridique*, 2<sup>e</sup> éd., p.76

<sup>101</sup> ALAIN MOYRAND, *Les Institutions de la Polynésie française*, p.40

Because of their Moral Personality, the territorial regions have some rights and obligations but they can only act in the respect of the general interest principle<sup>102</sup>. Territorial regions can be identified by elements close to the one used to identify physical entities. The doctrine qualified this as a “Civil State of the Regions”<sup>103</sup>. This is a real local identity, including fundamental elements such as the name, the territory and the population. The name of the territorial regions, a product of history and geography, is necessary to identify, and distinguish, the different regions. If there is no territory, there is no territorial region. The territory is a very important criterion to distinguish territorial regions from public establishments. Lastly, population is another imperative element for the definition of territorial regions and knows a great diversity. Evidently, French Polynesia has these three elements. It can be quoted here that the overseas populations have been introduced by the Constitutional Law of 28 March 2003<sup>104</sup> in article 72-3 “The Republic recognizes, within the French Nation, the overseas populations, in a common ideal of liberty, equality, and fraternity”<sup>105</sup>. French Polynesia holds an exogenous conception of the State. Polynesians have the strong feeling of being part of a distinct nation to the French one. They see the State, “Hau Farani”<sup>106</sup>, as an exterior power, a foreign power<sup>107</sup>. It is interesting to look at the position of the French Constitutional Council on this subject. At first, the Constitutional Council holds a position very close to that of the Polynesians. Indeed, for the Constitutional Council “If a distinction is made between population and nation, it is only present overseas and not for example in Corsica or other French metropolitan regions”<sup>108</sup>. This controversial view held by the Constitutional Council changed on 7 December 2000<sup>109</sup> with the general recognition of overseas “populations” and not a distinct “nation” from the French one.

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<sup>102</sup> NADINE DANTONEL-COR, *Droit des collectivités territoriales*, p.8

<sup>103</sup> MICHEL VERPEAUX, *Les collectivités territoriales en France*, p.23

<sup>104</sup> L.C 2003-276 of 28/03/2003, .

<sup>105</sup> Note here the recognition of a « population » and not of a « people », the latter referring to the French people, no matter how diverse the populations. See decision 91-290 DC of 09/05/1991 in which the Constitutional Council, basing itself on the mentions of the French people in the Declaration of Rights of 1789 and in the preamble of 1958, proclaims this notion as constitutional.

<sup>106</sup> Literally, the « French Government ». TEPANO JAUSSEN, *Dictionnaire de la langue tahitienne*, 6 éd., Société des études Océaniques, Papeete 1987

<sup>107</sup> SEMIR AL WARDI, *Tahiti et la France*, Article of the University of French Polynesia, internet source: <http://www.upf.pf/recherche/>

<sup>108</sup> See Decision 91-290 DC of 09/05/1991 . The Constitutional Council censors the mention « Corsican people, component of the French people » in order to unify the people of the French Republic.

<sup>109</sup> Decision n°2000-428 DC, 04/05/00

30- There is actually no precise definition of the territorial regions in the law or in the French Constitution of 1958. There are also no criteria allowing their exact determination of territorial regions. It is therefore necessary to list them as presented by the new French Constitutional law. Indeed, the French Constitution defines them as “territorial regions of the Republic” after the revision of 28 March 2003<sup>110</sup>. They are the “Communes”, the “Départments” and the Overseas “Départments” (the “DOM”: Guadeloupe, Guyana, Martinique, and Reunion), the “Régions” and the Overseas “Régions” (Same as the “DOM”: Mayotte, Saint Pierre and Miquelon, Wallis and Futuna, French Polynesia). The “TAAF” (“Terres australes et antarctiques françaises”, Antarctic and Austral French Lands) remain the only Overseas Territories (“TOM”) because of the Statutory Law of 6 August 1955<sup>111</sup>. In reality, the “TAAF” are not really considered as a territorial region and there is a superior administrator in Paris assisted by three consultative organs that manage this kind of Public Administrative Establishment<sup>112</sup>. New Caledonia has a particular Status between Independence and Autonomous self-government<sup>113</sup>. Most of the regions follow the same rules defined by the French Constitution, the Laws and Administrative rules. These regions are called the “Common Law Regions”. They are composed of a deliberative assembly elected by universal suffrage (local, general or regional councils), an executive power elected by the assembly (the mayor and his deputies, the presidents of the general or regional councils). The regions also have an Economic and Social Council. There are exceptions to this situation. For example: Paris, whose territory covers two distinct territorial regions (the “commune” and the “département”); Lyon and Marseilles also have a specific status; Corsica benefits from a unique type of status<sup>114</sup>; some overseas regions

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<sup>110</sup> L.C 2003-276 of 28/03/2003, .

<sup>111</sup> Law 55-1052 of 06/08/1955 relating to the organisation of the public services in the TAAF, J.O «Lois et Décrets» of 09/08/1955, p.7979

<sup>112</sup> NADINE DANTONEL-COR, *Droit des collectivités territoriales*, p.54

<sup>113</sup> See circular of 01/07/2004 relating to the rules of elaboration, signing and publication of texts in the Official Journal of the French Republic and the implementation of particular procedures falling to the Prime Minister. It repeals and replaces the circular of 30/01/1997 : « The French Antarctic and Austral Lands, which are subject to a particular system rules by law, and New Caledonia, which is no longer an overseas territory as of the constitutional law n° 98-610 of 20 July 1998, must be designated by their name. », unpublished, internet source: <http://www.legifrance.gouv.fr/html/circu0704/circur04.htm>

<sup>114</sup> Since 1982, Corsica has known several statutes, all aiming to appease the violence of the claims for greater autonomy or in favour of independence. On 13 May 1991, a new Statute (called Joxe) was proposed. It creates a unique model of a territorial region of Corsica (TRC). Its goal is to set up institutions allowing for an effective responsibility of the local representatives in order to move forward towards a governing autonomy. (Internet source: <http://www.vie-publique.fr/>)

(like French Polynesia) present some particularities; and also TAAF and New Caledonia<sup>115</sup>.

31- A territorial region is a decentralized entity, however it is not its only specificity and it also benefits from the principle of free administration within the French Republic.

## B) A Free Administrated Entity

32- The notion of Free Administration was adopted for the first time by the Constitution of 1956 and this principle was reaffirmed by article 72 point 2 of the Fifth Republic Constitution. The revision of the Constitution of 2004 retained this principle in article 72 “In the conditions provided by the law, these regions administrate themselves freely by elected council and have a regulation power for the exercise of their powers”. The Constitutional Council in a decision of 23 May 1979, “Territoire de la Nouvelle Calédonie”, have adopted for the first time the constitutional validity of the principle of Free Administration<sup>116</sup>. This principle was originally created to ensure the balance between equality and liberty in a democracy<sup>117</sup>. This principle is as valid as individual liberties and has the same ideological origins<sup>118</sup>. The definition of the principle of Free Administration can be divided in four parts. Firstly, the territorial regions must have effective attributions<sup>119</sup>. Secondly, the law-maker must not cut back their tax resources to exert pressure on them and limit the principle of Free Administration<sup>120</sup>. It is possible to observe that these first two points are not really explicit and the powers or guarantees of the territorial regions depend greatly on the law-maker’s will. Thirdly, the territorial regions must have the ability to administrate themselves by elected councils<sup>121</sup>. Once again, there is here a lack of precision, which can result in the election of a State

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<sup>115</sup> Internet source: [http://www.vie-publique.fr/decouverte\\_instit/instit/](http://www.vie-publique.fr/decouverte_instit/instit/) (Additional site to the « documentation française »)

<sup>116</sup> Decision n° 79-104 DC, 23/05/1979, RJC p. I-69. This position was confirmed by the administrative judge who appears to consider the principle of free administration as a fundamental liberty. See CE Section, Commune de Venelles, n°229247, 18/01/2001, Recueil Lebon and CE 3 / 8 SSR n°246618 Commune de Fauillet, 12/06/2002, Recueil Lebon

<sup>117</sup> NADINE DANTONEL-COR, *Droit des collectivités territoriales*, p.10

<sup>118</sup> ROLAND DRAGO, *Droit fondamentaux et personnes publiques*, AJDA 1998, NS, p.132

<sup>119</sup> Decision n° 85-196 DC 08/08/1985, Compendium p. 63 ; RJC p. I-234

<sup>120</sup> Decision n° 90-277 DC, 25/07/1990, Compendium p. 70, RJC p. I-406 and Decision n° 2000-432 DC, 12/07/2000, Compendium p.104

<sup>121</sup> Article 72 of the French Constitution of 1958, .

representative to an executive function<sup>122</sup>. Finally, article 72 of the French Constitution postulates that a territorial region cannot be placed under the authority of another territorial region (except in the case of a legislative authorization).

33- Free Administration does not however mean free regulation. Indeed, such a hypothesis would mean that territorial regions had an autonomous regulatory power independent from the national legislative power. In fact, article 72 of the French Constitution does not directly authorize the regions to intervene instead of the law or the regulation power, which is held by the Prime Minister as explained in article 21 of the French Constitution. The normative action of the regions can only be exercised in the framework conferred by the law. This principle sometimes debated by the doctrine, was firmly recalled by the French Constitutional Council in many occasions and more particularly in the decision 2001-454 DC relative to the Corsica law<sup>123</sup>. On this point, the Constitutional law of 2003<sup>124</sup> authorized what Constitutional Jurisprudence had forbidden. Article 72 point 4 partially questions the myth of the identical and equal law over the French Territory. It authorises territorial regions to depart from the laws or national rules as an experiment. However, it is important to add that Free Administration cannot exist without the control of the State or its representative because France is a unified State<sup>125</sup>. French Polynesia is an exception because it is not a metropolitan but an overseas region. It is a true overseas region with specific attributions going beyond the simple principle of Free Administration, which only allows an administrative autonomy.

34- French Polynesia is a decentralized territorial region, which benefits from the principle of Free Administration. Nevertheless, this region has specificities like most other overseas regions within the French Republic and has the denomination of Overseas Region.

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<sup>122</sup> Example of the superior administrator of Wallis and Futuna. Let's note that for M. Luchaire, the local executive power being nominated by the State is an unconstitutional measure. FRANCOIS LUCHAIRE, *Le statut constitutionnel de la France d'Outre mer*, Economica 1992, p.132

<sup>123</sup> Decision n°2001-454 DC, .

<sup>124</sup> L.C 2003-276 of 28/03/2003, .

<sup>125</sup> MICHEL VERPEAUX, *Les collectivités territoriales en France*, p.56



## 2: French Polynesia, an Overseas Region

35- The new constitutional revision of 2004 marks the disappearance of the “TOM” category and creates the Overseas Region category instead. French Polynesia, whilst part of this last category, is a special case like New Caledonia because of a particular Statute<sup>126</sup>. This status of overseas region, whilst being specific (A), does not change the fact that France is a unified State (B).

### A) A Particular Community

36- Overseas regions replaced the former “TOM” as stated by article 72 of the French Constitution. This modification mainly occurred for clarification of the different regimes present overseas. In fact, the Overseas Regions (OR) category did not replace de facto the “TOM” category and in addition, sui generis regions turned into Overseas Regions (Mayotte and Saint Pierre and Miquelon). OR do not form a homogeneous category and their legal regime is extremely diversified. Many of them know deep periods of evolution. The new article 74 of the French Constitution makes distinctions in the OR category, between Overseas Regions and Overseas Regions enjoying autonomy. The only example in the latter category is French Polynesia. The OR category comprises in fact all the communities possessing a particular status<sup>127</sup>. The specificity of overseas regions is also acknowledged by European Institutions because they have a special status: OR are included in the European Community<sup>128</sup>. Indeed, they have Overseas Country and Territory (OCT) status within the European Union. These are countries enjoying a special and close relationship with the member States of the European Community. Most of them have been included in the European Community since its creation and the founding Treaty of Rome of 1957 granted the status of inclusion to these countries or territories. This inclusion of OCT forged the creation of

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<sup>126</sup> New Caledonia is however not an overseas region but a unique region in its own right. See circular of 01/07/2004 relating to the rules of elaboration, signing and publication of texts in the Official Journal of the French Republic and to the implementation of particular procedures falling to the Prime Minister ; annulling and replacing the circular of 30/01/1997, .

<sup>127</sup> MICHEL VERPEAUX, *Les collectivités territoriales en France*, p.14

<sup>128</sup> Press release of the Commission relating to the agreement of the General Affairs Council of 19/11/2001 on the system of associations with OCT, MEMO/01/389, 28/11/2001, Internet source: <http://europa.eu.int/>.

the future Development Policy of the European Community<sup>129</sup>. This relationship of inclusion to the European Union shows once more the specificity of French Polynesia and its quest for more autonomy. Undoubtedly, it is quite unusual to have this kind of relationship with a distant regional organization. The various French Overseas regions are: Saint Pierre and Miquelon, Mayotte, Wallis and Futuna. French Polynesia is the only Overseas Region enjoying autonomy. From a general point of view, the OR category members differ from each other on three points: The application of the principle of legislative speciality or identity<sup>130</sup>, the presence of a status unique to each OR and finally, the presence of a Local Assembly in each OR.

37- Furthermore, as stated in the new organic Law organizing local status, in article 1 point 2, French Polynesia, an Overseas Region with Autonomy is an “Overseas Country within the [French] Republic”<sup>131</sup>. The French Doctrine greatly debated this notion of “Overseas Country”. The former constitutional draft relative to article 78 of the French Constitution clearly stated that French Polynesia had to become an “Overseas Country” and not simply a territorial region with advantages<sup>132</sup>. Besides, in many of his papers and like many other authors, M. Jean-Yves Faberon suggested the use of the phrase “Shared Sovereignty”<sup>133</sup> to describe the new form of organization of New Caledonia and Overseas Countries in general. The majority of the Law experts rejected this position for only the State can have “the power of rule”<sup>134</sup>. The original aim of the notion of “Overseas Country” was to go from an administrative autonomy and create a political autonomy with a free government and a real local citizenship. In reality,

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<sup>129</sup> See Council decision of 27/11/2001 relating to the association of Overseas Countries and Territories to the European Community (« decision of overseas association ») 2001/822/CE, JO n° L 314 of 30/11/2001 p.0001 – 0077, and the amendment to decision 2001/822/CE of the Council of 27/11/2001 relating to the association of Overseas Countries and Territories to the European Community (« decision of overseas association »), JO L 314 of 30/11/2001), JO n° L 064 of 07/03/2002 p.0039 – 0039. Internet source : <http://europa.eu.int/>

<sup>130</sup> The principle of legislative identity meaning that laws and regulations are fully applicable in the regions (this principle concerns St Pierre et Miquelon and Mayotte in some matters). See NADINE DANTONEL-COR, *Droit des collectivités territoriales*, p.53

<sup>131</sup> L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia.

<sup>132</sup> ALAIN MOYRAND, *Les Institutions de la Polynésie française*, p.69. Note here the controversy amongst the doctrine on the subject, led by Professor François Luchaire, who believed that Overseas Countries were no longer territorial regions due to the political autonomy they enjoyed and to the implicit constitutional dispensations from which they benefited.

<sup>133</sup> JEAN YVES FABERON, *La Nouvelle Calédonie, pays à souveraineté partagée*, RDP 1998, p.645 - 648

<sup>134</sup> See particularly OLIVIER GOHIN, *La Constitution est-elle encore la norme fondamentale de la République ?*, D. chron. 1999, p.127 and FRANÇOIS LUCHAIRE, *Le Conseil Constitutionnel et la souveraineté nationale*, RDP 1991, p.1512

according to this hypothesis, Overseas Countries are like regional entities<sup>135</sup>. Finally, the Constitutional Revision of 2003<sup>136</sup> cleared the way and refused the creation of an “Overseas Countries” category. Moreover, even if French Polynesia calls itself an “Overseas Country within the Republic” in the first article of its Statute, the French Constitutional Statute, in its decision of 12 February 2004, adds in point 13 that “(...) The first article of the French Polynesian Statute refers to this community as an Overseas Country but this denomination is without legal validity”<sup>137</sup>. Therefore, French Polynesia remains a simple territorial region within the French Republic, a unified and indivisible State.

38- French Polynesia is an Overseas Region and even more, an Overseas Community with autonomy, which allows it to have the denomination of “Overseas Country”. However, at the end of the day, French Polynesia remains within the structure of a unified State, the French Republic.

#### B) A Community within a Unified State

39- French Polynesia remains a sub-state entity within the unified French Republic. Indeed, the French State presents itself as “one and indivisible” in a long historical tradition since the Monarchy of the “Ancien Régime”. Despite this unified nature<sup>138</sup>, there are territorial regions in France (proving by the way the application of the decentralization principle). However, even if territorial regions are moral entities distinct from the Central State, they cannot exist without the State because their very existence is provided and organised by the state. It must not be forgotten that territorial regions and even overseas regions are not federated States<sup>139</sup> but they are simple

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<sup>135</sup> ALAIN MOYRAND, *Les Institutions de la Polynésie française*, p.70 - 72

<sup>136</sup> L.C 2003-276 of 28/03/2003, .

<sup>137</sup> Decision of CC n° 2004-490 DC, 12/02/2004, .

<sup>138</sup> States that only know one political power, one legislative power, one government. MICHEL VERPEAUX, *Les collectivités territoriales en France*, p.52

<sup>139</sup> A federal state is a state in which the central government entrusts the exercise of certain powers to entities (Republics, provinces...), which will govern themselves. Principle of « free government ». Corollary : individuals are subject to common federal rules (federal constitution, federal laws...) and to local rules particular to the federated entities (constitution, laws of federated entities...). The central government generally retains certain « régaliens » powers : the right to conduct war, right to have diplomatic representation abroad, right to mint coins. OLIVIER CAMY, *Cours de droit constitutionnel*

decentralized public law moral entities. This indivisible quality of the French Republic, explained in the first article of the French Constitution means that the power and the law are indivisible, but not necessarily the territory<sup>140</sup> and therefore justifies the State control on territorial regions. If the Republic is indivisible, it is because the sovereignty is indivisible. Article 3 point 2 of the French Constitution affirms this uniqueness, “No section of the people nor an individual can claim the exercise of the sovereignty”<sup>141</sup>. Territorial regions do not in theory benefit from State powers and cannot edict laws, create tribunals or conduct international relationships<sup>142</sup>.

40- The State is also “unified” with regard to the legislative power. Indeed, only the State holds the initial normative power and in theory, no laws except the ones from the State can exist. It was not until the revision of the constitutional law of 20 July 1998<sup>143</sup> completed by the organic law of 19 March 1999<sup>144</sup> that the local assembly of New Caledonia was allowed to adopt “Country laws”, which apply to a dozen matters, and are then presented to the French Constitutional Council before their promulgation. In this instance, the concept of a unified French State was seriously breached<sup>145</sup>. In the same way, the new organic law relative to French Polynesia<sup>146</sup> also introduced the notion of Country laws although it is different from the one existing in New Caledonia (see below: Part 2). These Country laws stirred up trouble for the French law experts, who tried to minimize the impact of this new notion by explaining that Country laws « are not true Laws »<sup>147</sup> and that the Administrative Tribunal of New Caledonia is wrongly calling Country laws true legislative acts<sup>148</sup>. For the doctrine, they are only “a text of a legislative nature”<sup>149</sup>. If this kind of analysis can be perfectly transposed to

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général, University of Law and Political Science of Burgundy, internet source: <http://www.droitconstitutionnel.net/>

<sup>140</sup> Contrary to the received idea, indivisibility does not mean that the integrity of the territory cannot be questioned (principles which are recalled in articles 5 and 16 of the Constitution). MICHEL VERPEAUX, *Les collectivités territoriales en France*, p.55

<sup>141</sup> French Constitution of 1958, .

<sup>142</sup> MICHEL VERPEAUX, *Les collectivités territoriales en France*, p.52

<sup>143</sup> L.C 98-610 of 20/07/1998 relating to New Caledonia, J.O "Lois et Décrets" of 21/07/1998, p.11143

<sup>144</sup> L.O 99-209 of 19/03/1999 relating to New Caledonia, J.O "Lois et Décrets" of 21/03/1999, p.4197

<sup>145</sup> MICHEL VERPEAUX, *Les collectivités territoriales en France*, p.56

<sup>146</sup> L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia, .

<sup>147</sup> OLIVIER GOHIN, *L'évolution institutionnelle de la Nouvelle Calédonie*, AJDA 1999, p.512

<sup>148</sup> Decision of the Administrative Tribunal of Nouméa, 02/03/2000. Quoted by ALAIN MOYRAND, *Les Institutions de la Polynésie française*, p.73. See Internet sources: <http://www.gouv.nc/> and <http://www.juridoc.gouv.nc/>

<sup>149</sup> OLIVIER GOHIN, *Le Conseil d'Etat et le contrôle de la constitutionnalité de la loi*, RFDA 2001, p.1180

French Polynesia because of the particular nature of the Country laws in this overseas region, it is not so for New Caledonia where a true legislative power seems to be gained. Indeed, the laws taken by the New Caledonia Local Assembly (The Congress of New Caledonia) are controlled by the French Constitutional Council and are therefore “true legislative norms”<sup>150</sup>.

41- French Polynesia, regardless of its specific attributions in the decentralization structure, remains a simple decentralized region and not a federated entity. Decentralization is a principle that applies to various domains in varying degrees. Even if the Maritime domain is decentralized, it can be said that it would be a limited decentralization.

## CHAPTER 2: A LIMITED MARITIME DECENTRALIZATION

42- If we look at the powers transferred to French Polynesia, decentralization in the maritime domain can be considered as little important there. However, the few maritime powers transferred to this territorial region are quite unusual in the French Republic (Section 1), but regardless of these specificities, the French State stays in control of the majority of the maritime powers in French Polynesia (Section 2).

### SECTION 1: Maritime Advantages in favour of French Polynesia

43- The decentralization in French Polynesia touched the maritime domain by two main points: the fact that French Polynesia has an original and natural Maritime Public Domain (Paragraph 1) and the transfer of powers which are indirectly linked to legal matters concerning the sea (Paragraph 2).

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<sup>150</sup> LAURE BAUSINGER, *La loi du pays en Nouvelle Calédonie*, l'Harmattan 2001

## 1: A Polynesian Maritime Public Domain

44- The maritime public domain has a particular characteristic in that it is a real or natural public domain and is in theory the exclusive property of the State (A). However, this domain is slowly being transferred to French Polynesia (B).

### A) A Natural Public Domain

45- In order to define the ‘natural public domain’, it is first necessary to define the notion of ‘public domain’ of the state. To this end, one can rely on a legislative or a jurisprudential definition. In practice, the jurisprudential definition is more often used. The legislative definition or rather, the legislative definitions are present in the *State Domain Code* and the *Civil Code*. Firstly, according to article L.2 of the *State Domain Code*<sup>151</sup>, the ‘Public domain’ is composed of all real and personal property rights that cannot be part of a private ownership because of their nature. Secondly, articles 538 to 541 of the *French Civil Code*<sup>152</sup> list a number of properties belonging to the Public domain. According to article 538 of the *French Civil Code* “Ways, roads and streets of which the State is in charge, navigable or floatable rivers and streams, beaches, foreshore, ports, harbours, anchorages and generally all parts of the French territory which may not be under private ownership are deemed to be dependencies of the Public Domain.” Article 539 of the Civil Code states “All property without a claimant and a master, and that of private persons who die without heirs or whose successions are abandoned, belong to the Public Domain.” For article 540, “The gates, walls, ditches and battlements of fortified places and fortresses, are also part of the Public Domain”. Lastly, according to article 541 of the Civil Code “It shall be likewise with lands, fortifications and battlements of places which are no longer fortified places: they belong to the State, unless they have been lawfully transferred, or ownership has been acquired by prescription against it”. The jurisprudential definition can be explained by elements

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<sup>151</sup> Decree n° 62-298 of 14/03/1962, J.O of 18/03/1962, p.2912. State Domain Code, Internet source: <http://www.legifrance.gouv.fr/>

<sup>152</sup> *Code Civil 103<sup>e</sup> éd.*, éd. Dalloz 2004

of different law cases<sup>153</sup>. This sum of jurisprudential elements presents the Public Domain as “the domain which consists of all property belonging to a moral Public entity, attached to it by law, by the direct use of the Public, or by the allocation to a Public Service<sup>154</sup>.”

46- The ‘maritime public domain’ is particular, compared to the simple State public domain, in that it is part of the natural public domain. For the French author René Chapus this specific public domain is “made of maritime and river dependences” and has always been so<sup>155</sup>. The natural public domain, and therefore the maritime public domain are composed of the sea soil and subsoil located between the high shoreline limits (i.e. the highest tides without exceptional meteorological perturbation) and the limit of the territorial sea, of salted ponds naturally linked with the sea, of the foreshore formed after the law of 28 November 1963<sup>156</sup>. It also includes the foreshore formed before this law and incorporated by an administration act, as well as the 50-pace zone in the “DOM”<sup>157</sup> since the law of 3 January 1986<sup>158</sup>. The natural state public domain is characterized by the fact that ownership of this domain is limited to the State, and no other Public person can be in charge of this zone (this is not the case of the artificial public domain)<sup>159</sup>.

47- This natural maritime public domain has the specificity of being the exclusive property of the French State, but in French Polynesia, an interesting exception has appeared.

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<sup>153</sup> Notably CE Section n°20180 Sté Le Béton, 19/10/1956, CE Section n°59061, 19/03/1965 Sté Lyonnaise des Eaux, CE Assembly n°160246 EDF, 23/10/1998, published by Recueil Lebon

<sup>154</sup> LECTURE OF UNIVERSITY OF PARIS XII, Administrative property Law, Internet source: <http://site.ifrance.com/droitadm/domainedefinition.html>

<sup>155</sup> RENE CHAPUS, *Droit Administratif Général*, T.2, 11<sup>e</sup> éd, Montchrestien 1998, n°446, p. 361

<sup>156</sup> Law 63-1178 of 28/11/1963 relating to the maritime public domain, J.O "Lois et Décrets" of 29/11/1963, p.10643

<sup>157</sup> Information of the Ministries of Public Facilities, Transport, Territorial Development, Tourism and the Sea, Internet source (<http://www.mer.equipement.gouv.fr/>)

<sup>158</sup> Law 86-2 of 03/01/1986 relating to the development, protection and enhancement of the coast, J.O of 04/01/1986, p.200

<sup>159</sup> YVES BRARD, *Le domaine public maritime outre-mer : le cas de la Polynésie française*, in JEAN YVES FABERON (direction), *La Mer Outre-Mer*, L'Harmattan 2001, p.216

## B) A Transferred Public Domain

48- In French Polynesia, a particular form of decentralization has slowly transferred the natural public domain of the State into the hands of the Polynesian local power. At first, nevertheless, there was no decentralization in this area. Indeed, law n°77-772 concerning the organization of French Polynesia in 1977<sup>160</sup> (title 2, chapter 1, article 62) explains, “The State retains the rights of sovereignty and property in its public and private domain, whether terrestrial, maritime or aerial”. There was therefore no other reference creating a natural public domain different from the one of the State. The law of 6 September 1984 n°84-420 for the Status of the Territory of French Polynesia<sup>161</sup>, and the law n°90-612 of 12 July 1990<sup>162</sup> do not change the situation and are similar to the Statute of 1977. The only maritime domain present seems to be once again the exclusive property of the State. In reality, and even with this lack of elements in French Polynesian Statutes, it is possible to see signs of a progressive decentralization of the maritime domain of the State. Indeed, previous texts had recognized the principle of a natural public domain different from the State domain. One can quote the “décret-loi” of 22 July 1957 creating a Government Council and extending the attributions of “Etablissements français de l’Océanie”<sup>163</sup>. Article 45 states the attributions of the territorial assembly with “classification and declassification of the territory’s public domain and more precisely of the roads, waterways, lakes, lagoons, and ponds”. Besides, even with the absence of general recognition of a natural territorial public domain, law n°77-772 of 1977 relative to the organization of French Polynesia<sup>164</sup> gives an indication, by the transfer “to the territorial public domain in the Marquesas islands of the inalienable ownership of the 50-geometrical pace coast line”<sup>165</sup>. Notwithstanding the different Statutes of French Polynesia, territorial law<sup>166</sup> proclaims the existence of

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<sup>160</sup> JOPF 18/07/77, n°15, .

<sup>161</sup> Law n°84-420 ruling the status of the territory of French Polynesia, article 3 : «the State exercises its sovereignty and property rights over its public and private, terrestrial, maritime and air domains (...)», JOPF 08/08/84, n°42

<sup>162</sup> Law n°90-612 of 12/07/1990 modifying law n°84-820 of 06/09/1984 ruling the status of the territory of French Polynesia, JOPF 14/07/90, NS 38

<sup>163</sup> Decree 57-812 of 22/07/1957 portant institution d’un Conseil de gouvernement et extension des attributions des Etablissements français de l’Océanie, .

<sup>164</sup> Law 77-772 of 12/07/1977 relating to the organisation of French Polynesia, .

<sup>165</sup> Article 77 of the law.

<sup>166</sup> I.e. the law created by local institutions (decisions of the local assembly notably)



the « natural territorial public domain » in the territorial Assembly's "deliberation" of 3 August 1978 for the regulation of the occupation of public domain<sup>167</sup>. This text, which was never contested, states in article 2 the composition of the natural public domain of the French Polynesian territory<sup>168</sup>.

49- The Statutory beginnings of the decentralization of a natural public domain and the creation of a real territorial public domain appear in the amendment law of 1995<sup>169</sup>: "after the seventeenth point of article 26 of law 84-820 of 6 September 1984 already cited, an eighteenth point is inserted: Is allowed the concession of the maritime public domain of lagoons, waterways, lakes, where the water is salted, in the conditions and limits created by the Territorial Assembly". The organic law of 12 April 1996 clears all uncertainties with the addition of the composition of the territorial maritime public domain<sup>170</sup>. According to article 7 of the Statute of 1996<sup>171</sup>, "The State and the Territory exercise their property rights on their public and private domains. The territorial domain includes all property without a claimant and a master and that of private persons who die without heirs or whose successions are abandoned, ways, roads, navigable or floatable rivers and streams, beaches, foreshore, underground water. The maritime public domain of the Territory comprises the soil and sub-soil of internal waters as defined by international conventions and the soil and sub-soil of territorial waters. ».

50- French Polynesia has a natural maritime public domain like the French State. This is not the only subject matter that the French State accepted to transfer to French Polynesia, as certain maritime powers also benefited from this decentralization.

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<sup>167</sup> YVES BRARD, *Le domaine public maritime outre-mer : le cas de la Polynésie française*, in. JEAN YVES FABERON (direction), *La Mer Outre-Mer*, p.217-218

<sup>168</sup> This decision even served as the basis to reject a request asking for the cancellation of the occupation of the maritime public domain. Decision of the Administrative Tribunal of Papeete « Consorts Pomare », 20/04/1993 and « Consorts Fuller », 05/11/1991

<sup>169</sup> L.O. n°95-173, JOPF 28/02/95, .

<sup>170</sup> YVES BRARD, *Le domaine public maritime outre-mer : le cas de la Polynésie française*, in JEAN YVES FABERON (direction), *La Mer Outre-Mer*, p.219

<sup>171</sup> L.O n°96-312 of 12/04/1996 giving its autonomy status to French Polynesia, modified by organic law n°96-624 of 15/07/1996, JOPF n°5 N.S 23/04/96, p.216

## 2: French Polynesian maritime powers

{51- The powers relating to the sea have always lain in the hands of the French State. Only the new Statutory Law of 2004 has allowed<sup>172</sup> a progression in different domains such as maritime security, although close to the exclusive prerogatives of the French State. Before this statutory improvement, only the issue of the Exclusive Economic Zone (A) and of the transfer of the maritime resources exploitation rights in this zone (B) was present.

### A) The Exclusive Economic Zone of French Polynesia

52- The Exclusive Economic Zone (EEZ) is a relatively recent notion. This zone extends to a maximum of 200 marine miles from the baselines which are used to measure the outer limits of territorial waters. In this zone, the State has a list of powers as defined in article 56 of the United Nations Convention on the Law of the Sea 1982 (also known as the Montego Bay Convention [MBC]<sup>173</sup>) and for non-member States, in article 58 of the same Convention<sup>174</sup>. According to article 56 of the MBC, the EEZ is the zone where coastal states exercise “sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds”. These rights can be classified as economic<sup>175</sup>. The non-member States have the freedom of communication, navigation and overflight and of the laying of submarine cables and pipelines, and other

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<sup>172</sup> L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia, .

<sup>173</sup> United Nations Convention on Maritime Law, held in Montego Bay on 10/12/1982, law 95-1311, J.O 22/12/1995, p.18543, and ruling of the President of the Republic, not discussed before the Council of Ministers 96-774 of 30/08/1996 ruling the publication of the United Nations Convention on Maritime Law, signed in Montego Bay on 10/12/82, and of the agreement relating to the application of part XI of the United Nations Convention on Maritime Law of 10/12/82, made in New York on 28/07/82, JO "Lois et Décrets" of 07/09/1996, p.13307

<sup>174</sup> VERONIQUE LABROT, *Cours de droit international de la mer 2003-2004* (DEA Science Juridique de la mer), Université de Bretagne Occidentale (U.B.O)

<sup>175</sup> REMY CABRILLAC (direction), *Dictionnaire du vocabulaire juridique*, 2<sup>e</sup> éd., éd. LexisNexis Litec (Jurisclasseur) 2004, coll. Objectif droit, p.401

internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of the MBC Convention. For some Third World States, the EEZ seems to be a sovereignty zone where coastal States have a residual power (a right not provided by the MBC). Nevertheless, according to the 1985 Arbitration Tribunal decision in the case of *Senegal and Guinea Bissau Maritime Frontier Delimitation*<sup>176</sup> “Neither the EEZ nor the Continental Shelf are sovereignty zones”. Finally, it can be noted that non-coastal or geographically-disadvantaged states have a right to participate in the exploitation of the remainder of the natural resources of the EEZ<sup>177</sup>.

53- On 16 July 1976, France published a law<sup>178</sup> creating an EEZ on the coasts of the French Republic. France quickly established Economic Zones on its European and overseas coasts. In French Polynesia, the EEZ was established on 3 February 1978<sup>179</sup>. The French Polynesian EEZ is a vast puzzle made up of the limits specified for all islands and archipelagos. However, for this purpose, the location of every piece in the puzzle must be known precisely. Only positioning measure campaigns (geodesic measures) on every atoll, high island and emerged rock of French Polynesia can delimit perfectly this maritime frontier. This year (2006), the French Republic will present a complete file to definitely confirm its maritime frontiers to the international community<sup>180</sup>. The area of the French Polynesian EEZ is 5,030,000 km<sup>2</sup><sup>181</sup> which makes it the most extensive zone in the Pacific Ocean except for Australia's<sup>182</sup>. Let it be noted here that without its overseas territory (and particularly without French Polynesia), the French Republic would be relegated to the 45<sup>th</sup> place of the world maritime spaces (whereas now, France has the 2<sup>nd</sup> most important maritime space<sup>183</sup>).

<sup>176</sup> See IJC Matter relating to the arbitration sentence of 31/07/1989 (Guinée-Bissau vs. Sénégal). Ordinance of 02/03/1990. Internet source : <http://www.lawschool.cornell.edu/library/cijwww/cijwww/cijhome.htm> (Website of the International Law Court)

<sup>177</sup> PHILIPPE CAHIER, *Cour général de Droit International Public*, Academy of International Law of La Haye, Internet source : <http://membres.lycos.fr/cmeh/cahier-chap2.htm>

<sup>178</sup> Law n°76-655 16/07/1976, J.O. 18/07/1976, p.4299

<sup>179</sup> Decree n°78-143 03/02/1978, J.O 11/02/1978, p.683-684

<sup>180</sup> *Le SHOM en Polynésie française*, Ecart 2, 2003, Internet source : <http://www.shom.fr/>

<sup>181</sup> *Répertoire des pêches de la CPS*, 2003, Internet source : <http://www.spc.org.nc/>

<sup>182</sup> Presentation of the ZEPOLIF programme, Internet source : <http://www.upf.pf/jeto/geos/ZEPOLYF.html>

<sup>183</sup> The position of France in the world in relation to its maritime space varies from author to author (France can be in 2<sup>nd</sup>, 3<sup>rd</sup>, or even 4<sup>th</sup> position). The same is true of the area covered by the EEZ in French Polynesia, which varies, according to various sources, from 4 800 000 km<sup>2</sup> to 5 500 000 km<sup>2</sup> (the precise study of this area is underway).

The United States of America holds the first place). This area is obviously of great interest as far as fishing and mineral resources are concerned.

54- The EEZ is economically essential and although it remains in the hands of the French State, French Polynesia will be able to exploit it through a transfer of power.

#### B) The exploitation of the EEZ transferred to French Polynesia

55- French Polynesia has a maritime public domain. It comprises the internal waters, which are naturally exploited by French Polynesia, but it can only be a limited exploitation because of the few resources in them<sup>184</sup>. Of course, internal waters only account for a small proportion of the complete maritime domain of French Polynesia. The EEZ's worth lies in its maritime resources and yet this area has always belonged, and still does, to the French natural public domain<sup>185</sup>. With regard to resources exploitation in this area, article 62 of the statutory law of 1977<sup>186</sup> gave the maritime resources exploitation rights to the territory of French Polynesia. This situation changed for unknown reasons with article 3 of the law of 1984<sup>187</sup> which awarded the exploitation rights to the French State with the proviso that France "might concede" these rights to the French Polynesian territory. The Statute reform in 1990<sup>188</sup> slightly modified the initial text and added that from then on, the « State does concede » these rights to the French Polynesian territory under the conditions provided by a document adopted by decree by the State Council. The EEZ exploitation rights still remained in the hands of the French State. This transfer of rights proved abnormally difficult and the motives for the French State passivity remained unknown even in the answer given by the DOM/TOM French Minister to a written question from Senator Millaud of French Polynesia in August 1994<sup>189</sup>. In the Statutory reform of 1995, the territory of French Polynesia tried, through the intervention of its senator, to vote an amendment giving

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<sup>184</sup> Simply due to the smaller surface area of Polynesian internal waters.

<sup>185</sup> In French Polynesia

<sup>186</sup> Law 77-772 of 12/07/1977 relating to the organisation of French Polynesia, .

<sup>187</sup> Law 84-820 of 06/09/1984 ruling the status of the territory of French Polynesia.

<sup>188</sup> Law n°90-612 of 12/07/1990 modifying law n°84-820 of 06/09/1984 ruling the status of the territory of French Polynesia

<sup>189</sup> J.O Sénat, written questions, 11/08/1994. Quoted by GUY SEM, *Introduction au Statut Juridique de la Polynésie française*, éd DDOM Papeete, 1996, p.250

French Polynesia the EEZ exploitation rights; however the DOM/TOM French Minister preferred the solution expressed in the document of 1990<sup>190</sup>. Still, the French State was not implementing such rights<sup>191</sup>.

56- This position of the French State was to change in the nineties and a decentralization of the exploitation rights of EEZ resources occurred. By the decision of 7 November 1994 authorizing naval ships to go fishing in the French Polynesian EEZ<sup>192</sup>, the French State left to the French Polynesian authorities the power to deliver Fishing licences (a power which was already exercised by French Polynesia according to local decision n°953/CM of 21 September 1994<sup>193</sup>. The French State finally gave the EEZ exploitation rights in the French Polynesian Statute of 1996<sup>194</sup>. Article 7 point 4 expressly gave to the French Polynesian territory the power of regulation and exercise of the right of exploitation and exploration of the natural biological and non-biological resources in the exclusive economic zone in compliance with international commitments and in the limits of the French State powers as mentioned in article 6<sup>195</sup>. This EEZ power is found in the new organic law of 2004 in article 47: “French Polynesia regulates and exercises the right of exploration and the right of exploitation of the living and non-living natural resources of internal waters, in particular roadsteads and lagoons, and soil, subsoil and overlying waters of the territorial sea and of the Exclusive Economic Zone, in compliance with international commitments.”<sup>196</sup>. In comparison to the Statute of 1996, the missing words in this article might be the proof of a stronger control of French Polynesia over the exploration and exploitation rights in the EEZ<sup>197</sup>.

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<sup>190</sup> J.O sénat, debates in the session of 11/01/1995, p.144, Quoted by GUY SEM, *Introduction au Statut Juridique de la Polynésie française*, éd DDOM Papeete, 1996, p.250

<sup>191</sup> GUY SEM, *Introduction au Statut Juridique de la Polynésie française*, p.120-121

<sup>192</sup> Interministerial decree of 07/11/1994 allowing ships to fish in the exclusive economic zone off the coast of French Polynesia, J.O of 26/11/1994, p.16784

<sup>193</sup> Arrêté n°953/CM of 21/09/1994, JOPF 29/09/1999 p.1804

<sup>194</sup> L.O n°96-312 of 12/04/1996 giving its autonomy status to French Polynesia, modified by organic law n°96-624 of 15/07/1996, .

<sup>195</sup> GUY SEM, *Introduction au Statut Juridique de la Polynésie française*, p.120-121. See article 6 of L.O n°96-312 of 12/04/1996 giving its autonomy status to French Polynesia, .

<sup>196</sup> L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia, .

<sup>197</sup> Disappearance of « subject to the State powers mentioned in article 6» present in article 7 of the Statute of 1996 (this article presents the powers of the French State in French Polynesia).

57- French Polynesia has its own maritime public domain and the possibility to exploit the EEZ, which belongs to the French State domain. Nevertheless, despite this transfer of power, the French State remains in control of many maritime powers.

## SECTION 2: The French State - main master of the Maritime Powers

58- The French State retains significant power and influence in the maritime area. So do local towns (“communes”), which exercise powers external to the French Polynesian authorities. Despite the new French Polynesian Statute, these entities have control of important maritime powers (sub-section 1), in a gigantic domain (sub-section 2).

### 1: The Maritime powers of the State and the “communes”

59- The French State has great maritime powers (A). It is not the only exogenous entity present in French Polynesia because the “communes” also have maritime attributions (B).

#### A) The “Royal Prerogative” Powers

60- Power means the right to legitimately accomplish a juridical or lawful act<sup>198</sup>. There are many types of Power and one of them is the power pertaining to the royal prerogative known as the “Régalien” power in France. This power, literally the “Power of King”, consists in keeping order and security in a society<sup>199</sup> and only the State holds it. It is generally accepted that the “Régalien” power is composed of the powers relating to the Army, the Mint and International representation. This notion of order and security, a result of the “Regalien” power, is present in the maritime domain. In French Polynesia, like in other parts of the French territory, the State has the corresponding

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<sup>198</sup> REMY CABRILLAC (direction), *Dictionnaire du vocabulaire juridique*, 2<sup>e</sup> éd., p.297

<sup>199</sup> Internet source : <http://www.geoscopie.com/themes/t201pol.html>

powers relating to the maritime area. Article 14 of the new organic law for the French Polynesian Status<sup>200</sup> lists the exclusive maritime powers of the State. Point 9 of this article says that the State is responsible for “the policing and security of maritime traffic; the surveillance of maritime fishing; the safety of sea traffic and the coordination of maritime rescue resources; Vessel French flag registration; the security of ships with a gross tonnage exceeding 160 tons and of all passenger ships; implementation of airport elements and facilities of national interest”. It makes a fundamental point regarding the responsibility of the State over ‘maritime security’. Giving an exact definition of this notion is tricky because it is such a vast concept. To some authors, “maritime security is a notion regrouping multiple elements. It encompasses all the norms mandatory for ships, the regulations of the maritime business and the measures ruling sea navigation or harbour navigation”<sup>201</sup>. This broad definition concerns as much the technical prescriptions of the ship, as the judicial prescriptions applying to the maritime business or the rules of sea or harbour navigation. A different view of the concept focuses more narrowly on navigation safety in terms of “trying to ensure the saving of human life in the sea and the defence against natural and shipping dangers”<sup>202</sup>. Maritime safety traditionally concerns the safety of embarked people, the ship’s safety, and the safety of cargoes and but also the financial security of the maritime business. We can see the notion of safety broadening from the sea to the land. Increasingly, this notion extends to the people living on the coasts<sup>203</sup>. The French State is therefore responsible in this area, even in French Polynesia.

61- Other articles from the French Polynesian Statute list the State powers relating to the maritime sphere. Article 27 outlines another “Régalien” aspect of the State. According to this article, “French Polynesia exercises its powers in compliance with the constraints imposed by national defence. In this respect, the distribution of powers

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<sup>200</sup> L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia, .

<sup>201</sup> FRANÇOISE ODIER, La sécurité maritime : une notion complexe, le rôle des organisations internationales dans son développement (maritime security : a complex notion, the roles of international organisations in its development), ADM 1998, p.235-243

<sup>202</sup> DANIEL PAUL et JEAN YVES LE DRIAN, *Après l'Erika l'urgence*, Report of the inquest commission of the National Assembly, n°2535, Information Documents of the National Assembly, Tome I, report, p.73

<sup>203</sup> HELENE LEFEVRE et PIERRE ANTOINE COURDE, la sécurité maritime et la protection de l'environnement ( maritime security and environment protection), DEA de droit maritime et océanique (postgraduate certificate in oceanic and maritime law) de l'UFR droit de Nantes (2002/2003), Internet source : [www.droit.univ-nantes.fr/](http://www.droit.univ-nantes.fr/)

provided for in this organic law does not prevent the State from “establishing the rules relating to transportation, storage and delivery of oil products required for security and defence duties.” The link to the maritime sphere is here evident because of the maritime transport of oil products. The power of the French State is here powerful and untouchable by the French Polynesian authorities. Finally, it is possible to quote a detail concerning a power granted to the High Commissioner of the Republic<sup>204</sup> (the administrator of the French State in French Polynesia known as “Haut Commissaire”) by the law of 27 February 2004 completing the Autonomous Status of the French Polynesia<sup>205</sup> in article 29. According to this article, “commercial ships transporting passengers with no regular sea lane matriculated in the French Polynesian register may be authorized to open a casino or a reserved room for hazard games on the condition that only the passengers can play”. Of course this power is not directly related to the “Régalien” power but it is worth noting here (quite ironically) the existence of this rule despite the animosity that some French Polynesian political personalities<sup>206</sup> feel towards casinos for a long time<sup>207</sup>.

62- The French State is not the only exogenous entity in French Polynesia to enjoy maritime attributions. The “communes” enjoy certain powers as well.

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<sup>204</sup> See the following internet source for more information: <http://www.polynesie-francaise.gouv.fr/hc/haut-comm/index.asp>

<sup>205</sup> Law n°2004-193 of 27/02/2004 completing the autonomy status of French Polynesia, .

<sup>206</sup> *Casinos à Papeete*, Tahiti Pacifique n°27, 03/07/93, p.24

<sup>207</sup> However, one must not see here any malice on the part of the State, but rather the consideration of a purely economic element. Furthermore, French Polynesia has long had the power of regulating and authorising casinos and other game clubs, which it has partially done in the past (what is more, one of the first drafts of the new statute of French Polynesia showed the will of the local power to be able to open casinos more freely). For more information, see notably Decree n° 97-1135 of 09/12/1997 stating the rules relating to the installation and organisation of casinos, clubs, games and lotteries in French Polynesia. (Promulgation decree n° 962 DRCL of 15/12/1997), JOPF N°52 ; 1997, p.2659 and Arrêté of 25/01/1999 stating the rules relating to the control by the State over the installation and organisation of casinos, clubs, games and lotteries in French Polynesia. (Promulgation decree n° 108 DRCL of 04/03/1999) JOPF N°11, 1999, p.544



## B) Local Powers

63- French Polynesia is composed of forty-eight “communes” created in 1972<sup>208</sup> (except older “communes” such as Papeete, Uturoa, Faa’a and Pirae<sup>209</sup>). They are grouped in five administrative subdivisions: the Windward Group, the Leeward Group, the Tuamotu and Gambier Archipelago, the Marquesas Islands and the Austral Islands. The administrative subdivision of the Windward Islands comprises five of the Society Islands: Tahiti, Moorea, Maiao, Mehetia (high islands) and Tetiaroa (atoll) and nearly 75% of the Polynesian population. On the island of Tahiti, the town of Papeete comprises more than 100,000 inhabitants living in seven “communes”, three of which have over 20,000 inhabitants (Papeete, Faa’a and Punaauia). The Windward Islands include thirteen “communes” in total. As for the Leeward Islands, the 2002 census indicated 30,221 inhabitants. This archipelago comprises seven “communes” (Bora Bora, Huahine, Maupiti, Tahaa, Taputapuatea, Tumaraa, Uturoa). In the Marquesas Islands, six “communes” run the following islands, populated with 8,712 according to the 2002 census: Nuku Hiva with Taiohae; Taipivai and Hatiheu; the uninhabited islands of Eiao, Hatua Hiti and Hatutaa; Ua Pou with Hakahau and Hakamaii; Ua Huka, Hiva Oa with Atuona and Puamau; and the islands of Motane and Fatu Huku, Tahuata, Fatu Hiva. As for The Austral Islands, situated south of Tahiti, between the 22nd and 28th parallels on both sides of the Tropic of Capricorn, they comprise five inhabited islands (and corresponding “communes”) : Rimatara, Rurutu, Tubuai, Raivavae, Rapa and two groups of attached islets (Maria and Marotiri). At the time of the 2002 census, they had a population of 6,386 inhabitants. Finally, the Gambier-Tuamotu archipelago counts seventeen “communes”: westward, Rangiroa, Takaroa, Manihi, Arutua, Fakarava

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<sup>208</sup> Law n° 71-1028 of 24/12/1971 relating to the creation and organisation of « communes » in the territory of French Polynesia, J.O "Lois et Décrets" of 25/12/1971, p.12690, decree 72-407 of 17/05/1972 portant creation of « communes » in the territory of French Polynesia, J.O "Lois et Décrets" of 20/05/1972, p.5101

<sup>209</sup> Ruling instituting in the Etablissements français de l'Océanie a « commune » with at its head Papeete, Ruling making applicable to the Etablissements français de l'Océanie various provisions of municipal law of 05/05/1884, ruling stating the organisation of municipal organisations for the « commune » of Nouméa, made applicable to the « commune » of Papeete by article 2 of the first ruling of 20/05/1890, bulletin officiel EFO, p.500-534

; at the centre, Anaa, Makemo, Hikueru, Hao ; eastward, Napuka, Puka Puka, Fangatau, Tatakoto, Nukutavake, Reao ; southward, Tureia, Gambier<sup>210</sup>.

64- Most of the metropolitan regulations applying to the “communes” is applicable in French Polynesia. Nevertheless, there are a few additions to the new Statute of French Polynesia in article 43<sup>211</sup> concerning the specific powers of the “communes”. With regard to matters relating to the sea, directly or indirectly, one can cite the powers in terms of the local administration of the rail, road and waterways network, local transportation and the collection and treatment of wastewater. In reality, it is quite difficult to establish a list due to the mass of local powers<sup>212</sup>. In actual fact, the most important power regarding the maritime domain is without question the power of local police at the disposal of the mayor of a “commune”. Indeed, the latter must make every effort to ensure the order, safety, security and public health<sup>213</sup>. Article L.2212-2 of the *General Code of Territorial Regions* (GCTR)<sup>214</sup> lists the domains where the mayor may exercise his policing powers (safe and convenient street passage, repression of public disturbances, maintaining order in those places where big gatherings take place, inspecting the accuracy of the sale of foodstuff sold by weight, prevention and allocation of the necessary aid to put a stop to accidents, fires, floods, landslides)<sup>215</sup>. In addition, the mayor ensures the policing of local maritime ports, of bathing and certain nautical activities, and establishes the necessary regulations within the framework of the current provisions (articles L.2213-22 and L.2213-23 of the GCTR<sup>216</sup>). Arguably the local power over bathing and nautical activities may prove to be a problem for it overlaps with the powers of French Polynesia relating to its public domain and thus adds another factor to the local maritime imbroglio<sup>217</sup>.

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<sup>210</sup> List of archipelagos, Internet source : <http://www.polynesie-francaise.gouv.fr/>

<sup>211</sup> L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia, .

<sup>212</sup> MICHEL VERPEAUX, *Les collectivités territoriales en France*, p.124

<sup>213</sup> NADINE DANTONEL-COR, *Droit des collectivités territoriales*, p.47

<sup>214</sup> *Code général des collectivités territoriales*, Internet source : <http://www.legifrance.gouv.fr/>

<sup>215</sup> MINISTERE DE L'INTERIEUR, *Guide du maire : les pouvoirs de police*, DGCL, Internet source : <http://www.dgcl.interieur.gouv.fr/>

<sup>216</sup> *Code général des collectivités territoriales*, .

<sup>217</sup> We can here take the example of the decision of the « commune » of Moorea to forbid a nautical activity (kitesurfing) following accidents involving kitesurfers but also onlookers; the problem was that this activity was practised on the public domain of French Polynesia and not that of the « commune ». *Discours du maire de la commune*, 04/04, televised media.

65- The State and the “communes” thus have certain maritime powers which may be considered as important. The State exercises its many powers on its public maritime domain.

## 2 : The public maritime domain of the State

66- Thanks to French Polynesia, the State enjoys one of the largest maritime domains in the world. This huge maritime domain of the state (A) is beset by many uncertainties (B).

### A) An important domain for exercise of powers

67-The State maritime domain does not clearly appear in the new Statute for French Polynesia<sup>218</sup>. By taking article 47 of the Statute and analysing a contrario the French Polynesian maritime domain comprising « (...) subject to the rights of the State and other parties, seashores, the soil and subsoil of internal waters, in particular anchorages and lagoons, as well as the soil and subsoil and territorial waters. », it is possible to determine that the territorial sea, the adjoining area and finally the exclusive economic zone belong to the maritime area where the State exercises its powers. In order to give a concrete example of the sheer size of the State maritime domain, it is worth adding that this domain is equivalent to the size of Europe, not including Russia<sup>219</sup>. The territorial sea is described in article 2 of the Montego Bay Convention<sup>220</sup> (MBC), which states that « The sovereignty of a coastal state extends beyond its territory and its internal waters and, in the case of an archipelago state, beyond its island waters, to an adjoining area of sea referred to as territorial sea ». This sovereignty is extended to cover the airspace as well as the soil and subsoil of that sea. The territorial sea cannot exceed 12 marine miles from the base lines (article 3 of the MBC). Beyond the territorial sea is the adjoining

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<sup>218</sup> L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia.

<sup>219</sup> MIROSE PAIA et JACQUES VERNAUDON, *Méthode de langue tahitien Ia Ora Na (Bonjour Salut)* 2<sup>e</sup> édition, Public information library, Pompidou Centre, National Institute of Oriental Languages and Civilisations, 1999, p.16

<sup>220</sup> United Nations Convention on Maritime Law, held in Montego Bay on 10/12/1982, law 95-1311 and decree 96-774, .

area, or contiguous zone, where some of the powers enjoyed by the State in the territorial area have been duplicated. This space was recognised for the first time in 1930 on the basis of certain unilateral practices of the States<sup>221</sup>. According to article 33 of the MBC, the objective of the adjoining area is to exercise control in order to prevent breaches of its customs, tax, health or immigration laws and rules on its territory or territorial sea (as well as cracking down on them). The adjoining area cannot extend beyond 24 marine miles from the base lines. Finally, the exclusive economic zone extends as far as 200 marine miles from the base lines from which the width of the territorial sea is measured.

68-It is worth mentioning that, for those islands skirted with reefs<sup>222</sup>, the base line used to measure the start of the territorial sea is the low-water mark on the reef, off-shore side (article 6 of the MBC). And yet, there is an area of water between the low-water mark and the island : the lagoon. The latter is therefore an integral part of the internal waters as described by the MBC. There is however no specific legal definition for lagoons. This situation could logically lead to problems regarding its jurisdiction, as a « lagoon » is included in the maritime domain of French Polynesia (article 47 of the Statute<sup>223</sup>), and therefore, if it not legally defined, there might arise difficulties as to its actual size. In reality, geographical and geological marks can provide a definition. Across the world, lagoon and reef environments are seen in four aspects and three of the main ones correspond to the various stages of gradual coral reef evolution as described once upon a time by Darwin. The first of these are isolated constructions called “reef banks” which are coral structures built in the open sea on raised seabeds and can sometimes be seen. The second and most frequent are “fringing reefs” which closely skirt the coast and are relatively narrow compared to the other types. The third are “barrier reefs”, which are situated around a few to tens of kilometres outside of a continent or an island<sup>224</sup> and through which natural or artificial pass thus connecting the land with the open sea. The final are “atolls” which consist of a ring of calcareous reef

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<sup>221</sup> VERONIQUE LABROT, *Cours de droit international de la mer 2003-2004* (DEA Science Juridique de la mer), .

<sup>222</sup> Which is not the case of most French Polynesian islands, except for the Marquesas archipelago, made of islands devoid of reef barriers.

<sup>223</sup> L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia.

<sup>224</sup> The islands of French Polynesia have a circular reef (for bigger islands such as New Caledonia, the reef is called rectilinear)

without a central island. Thanks to these descriptions, a lagoon can be defined as the surface between the barrier reef and the land that is characterised by calm waters and a depth of a few dozens of meters (as well as the area inside atolls)<sup>225</sup>.

69- The State has therefore an important maritime domain where it can exercise its many “royal prerogative” attributions. However, for various reasons, this maritime domain often turns out to be a problem.

### B) A Domain causing many problems

70- During preliminary discussions about the drafting of the new Statute of French Polynesia, it was asked that the territorial sea be integrated to the local maritime domain. The request was rejected on the grounds that the territorial sea an important area where the « régalien » powers of the State are fully exercised and that defense attributions could in no way be delegated to French Polynesia. In any case, the area could have been transferred to French Polynesia whilst the State retained the functions of defense and maritime security in those waters<sup>226</sup>. Indeed, French Polynesia cannot physically undertake the full power relating to defense (which is actually legally impossible), policing, or more generally maritime security. This is the main cause of the control exerted by the State on the majority of Polynesian maritime areas, as the local government is incapable of assuming this function. Nevertheless, this type of obstacle does not discourage French Polynesia from asking, thus showing the will to obtain as many powers as possible, even if it cannot really take them on (the point is to include those powers in the texts, and have the State look after them as long as French Polynesia cannot assume these powers). This is a perfect illustration of French Polynesia’s will to constantly improve its autonomy<sup>227</sup>.

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<sup>225</sup> SEVERINE FENOT, *La protection de l’environnement lagunaire et récifal*, in JEAN YVES FABERON (direction), *La Mer Outre-Mer*, p.359.

<sup>226</sup> *Entretien avec Mme Catherine Rocheteau*, Maritime Affairs and Navigation Service Manager, Ministry for the Environment and Transport, in charge of road safety and towns, 10/04/04

<sup>227</sup> ALAIN MOYRAND, *Cours de droit des institutions de Polynésie française 2001-2002* (Law degree lectures), Université de Polynésie française (UPF)

71- If the territorial sea and the adjoining area, by their clear attribution to the State, do not pose any particular problem, the same is not true of the exclusive economic zone, which is once again an issue. Indeed, the zone superimposes three different types of powers : local, state and international (relating to the European Union). As seen previously, French Polynesia enjoys the right to explore and exploit the exclusive economic zone as stated in article 47 of the new organic law<sup>228</sup> whilst the EEZ is integral part of the State public maritime domain. Next to these internal law regulations, the EEZ adjoining the Polynesian archipelagos does not seem to be subject to a clear system with regard to European law. On the one hand, the OCT (Overseas Country and Territory) status enjoyed by French Polynesia should withdraw its EEZ from the field of application of the European Union (notably as far as the fishing domain is concerned), but on the other hand the unification of this zone, situated beyond the territorial sea, to the legal scheme of terrestrial island surfaces is not an easy task. The notion of OCT allows uncertainty to persist as to its geographical area of application. Does it only consist of emerged lands or should maritime areas be added? (The latter, apart from internal waters and parts of the territorial sea, belong to the State public maritime domain, which is arguably subject to the jurisdiction of the European Union)<sup>229</sup>. This is a contentious issue because European jurists are convinced that the EEZ belongs to European Communities<sup>230</sup>.

72- According to legal texts French Polynesia is an overseas region: a simple territorial region enjoying a more important decentralisation than that granted to metropolitan regions. Due to this situation, the state power is well and truly present in the maritime affairs of French Polynesia, monopolising many powers. Nevertheless, the situation might not be as clear as the discussion presented above would lead us to believe. Indeed, the new organic law that organises the new Statute of French Polynesia includes many innovations relating to maritime affairs and probably extracting the latter from the

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<sup>228</sup> L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia, .

<sup>229</sup> GUY SEM, *Introduction au Statut Juridique de la Polynésie française*, éd DDOM Papeete, 1996, p.250-256

<sup>230</sup> See notably JOEL LEBULLENGER and DIDIER LE MORVAN, *La Communauté européenne et la mer*, conference CEDECE Brest 1989, *Economica* 1990, p.41 : the European Community « has therefore the purpose, come the right time, to make use of the most extended maritime heritage in the world by far ». The author believes that this Community claim could be legitimate for the populations of the islands have so far approved by a majority their unification with the metropolitan countries of the Community. One might feel sceptical about this position.

constraints of being a region within a state. Consequently, in view of these different elements, the analysis of the new French Polynesian powers could assist in determining whether the region is heading more and more towards the much-sought after notion of « Overseas Country ».

## PART 2: FRENCH POLYNESIA, THE MARITIME POWERS OF AN EMERGING OVERSEAS COUNTRY

73- For some, the statement that French Polynesia is an « overseas country » that « governs itself freely »<sup>231</sup> is not just a description, as the words seek to convey how the administrative autonomy is exceeded, sanctioned by the advent of a near-legislative power and the possibility to contribute to certain state powers<sup>232</sup>. Indeed, the Organic Law of February 2004 allows French Polynesia to evolve positively towards its autonomy. Concerning the maritime sector, two new advances can be noticed. Indeed, following the example<sup>233</sup> of New Caledonia<sup>234</sup>, a system of « country laws » has been set up in French Polynesia. The said « laws » affect many areas relating to the sea. Furthermore, there appeared a novelty in the French legal system: the concept of participation of local power to the « régalien » powers of the State as well as a power of foreign policy. This new normative system (Chapter 1) and the participation to State powers coupled with a power of foreign policy (Chapter 2) are in theory getting French Polynesia out of its simple position within a state and bringing about advances for the maritime powers of the region.

### CHAPTER 1: A PARTICULAR NORMATIVE POWER AFFECTING THE MARITIME DOMAIN

74- The principle of « country laws » is not a Polynesian exception. It has been present in New Caledonia since 1999 and the doctrine has already had the chance to look into

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<sup>231</sup> Art. 1 of L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia.

<sup>232</sup> ALAIN MOYRAND and ANTONINO TROIANIELLO, *Polynésie française : un projet de nouveau statut d'autonomie* ; in JEAN YVES FABERON (dir.), *l'outre-mer français : la nouvelle donne institutionnelle*, La documentation française, Paris 2004, p.170

<sup>233</sup> As far as the denomination is concerned.

<sup>234</sup> OLIVIER GOHIN, *Rapport de synthèse*, in JEAN YVES FABERON (direction), *l'outre-mer français : la nouvelle donne institutionnelle*, p.197. For Olivier Gohin, French Polynesia is « actively engaged in a process of caledonisation ».



this « constitutional UFO »<sup>235</sup> in the framework of the unified state that is the French Republic. With the new Organic Law, French Polynesia is also granted the possibility to create « country laws » but in a distinct manner to that of New Caledonia (Section 1), because this normative innovation directly affects the local maritime domain (Section 2).

## SECTION 1: « Country laws » in French Polynesia

75- « Country laws » in French Polynesia had led some to fear a new infringement to the French normative system as was the case in New Caledonia (§1), but they eventually turned out to be once more mere administrative acts (§2).

### 1: The impulse towards legislative rules

76- French Polynesian acts suffer from a great fragility because of their administrative nature, which brings about the definite legal insecurity of local acts (A), an insecurity which would only end with « country laws » (B).

#### A) An old system beset by legal insecurity

77- In the previous Statute of French Polynesia<sup>236</sup>, local acts were merely rules with an administrative value. Unfortunately, the legal framework governing administrative acts reveals that these rules are imbued with a strong legal insecurity. The obvious problem was that these rules only had regulatory value in a legal environment where they were meant to practically replace the law<sup>237</sup>. Setting aside the problem of Kelsen's pyramid and the unenviable position of administrative acts within it (and therefore the

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<sup>235</sup> ERIC CONAN, *Le caillou constitutionnel*, l'Express, 02/07/98, Internet Source : <http://www.lexpress.fr/>

<sup>236</sup> L.O 96-312 of 12/04/1996 giving its autonomy status to French Polynesia.

<sup>237</sup> ALAIN MOYRAND, *Les Institutions de la Polynésie française*, p.52 : According to Alain Moyrand, this situation was known as the « asymmetrical face ».

superiority of the state's legislative power or even sometimes of certain superior regulatory acts such as the General Principle of Law), the major complication regarding administrative acts certainly lies in their nature. Indeed, all citizens can refer matters to the administrative jurisdiction and obtain the cancellation of all decision or ruling within the framework of an appeal for ultra vires action. A constituent can indeed ask the High Commissioner to act on the basis of article 3 of the ruling of 28 November 1983, which states that the competent authority is required to grant all request aiming to cancel an illegal regulation<sup>238</sup>. The High Commissioner could himself refer those same acts to the administrative court for the purpose of cancellation or suspension on the basis of its capacity of administrative control. The jurisdictional administrative control a posteriori is open for a period of three months as from the coming into effect of the act. After this period and with no further restriction of time (if needs be, after several years) any citizen can ask for either the cancellation of any regulation that contravenes a superior rule, on the basis of the precedent of Alitalia<sup>239</sup>, or the non-application of any regulation, on the basis of the procedure of the illegality exception<sup>240</sup>.

78- Territorial rules were vulnerable at any time and quite often, they only owed their salvation to the intervention the law-makers who were called upon to validate a decision vitiated by illegality. The procedures relating to administrative acts cannot be contested in their aspect of protection of the constituents' interests. However, in the case of French Polynesia, having an elected assembly (representative of the will of the people) from whom only easily-blocked administrative acts can originate, is a very arguable situation. One could witness a real devaluation of the acts of the French Polynesian Assembly, although in theory legislative, because of their contentious treatment<sup>241</sup>. Such a devaluation of the normative autonomy of overseas regions is considered to be questionable by some law experts. Louis Favoreu thus feels that « they cannot (...) regress to the conditions of ordinary territorial regions by notably having the decisions of territorial assemblies who, let us not forget, give rulings in place of law-makers, lowered to the position of mere administrative acts due to the fact that they are

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<sup>238</sup> GUY SEM, *Introduction au Statut Juridique de la Polynésie française*, p.193

<sup>239</sup> Decision of the State Council, Compagnie Alitalia, 03/02/1989, published by Recueil Lebon, p.44

<sup>240</sup> ALAIN MOYRAND, *Les Institutions de la Polynésie française*, p.52

<sup>241</sup> ALAIN MOYRAND and ANTONINO TROIANIELLO, *Polynésie française : un projet de nouveau statut d'autonomie* ; in JEAN YVES FABERON (dir.), *l'outre-mer français : la nouvelle donne institutionnelle*, p.171, .

subjected to the respect of the general principle of law in its infra legislative value. Emphasized by the fact that the competent administrative judge is the administrative court, this devaluation<sup>242</sup> certainly goes against the will of the constituent and the organic law-maker »<sup>243</sup>. This situation, a significant infringement of Polynesian autonomy, has blocked many local decisions because of the repeated referrals to the administrative jurisdiction<sup>244</sup>. This is one of the reasons why a new Statute was drafted, the guarantee of a larger autonomy thanks to an increased legal security of French Polynesian acts through the creation of a new type of rules : the « country laws ».

79- Local rules were weakened by the previous system and all Polynesian law experts acknowledged that « country laws » were the solution to the problem.

#### B) A new system, a solution to the legal insecurity

80- For the law experts in favour of an increased autonomy of French Polynesia, « country laws » should be the most symbolic expression of their autonomy<sup>245</sup>. The new notion of « country laws » is all the more important since the concept of autonomy must, according to some law experts, absolutely exceed the administrative decentralization<sup>246</sup>. This evolution of local rules could thus prove that autonomy is a « variation on decentralization »<sup>247</sup>, or even a notion « going beyond decentralization »<sup>248</sup>. « Country laws » are indeed a fundamental aspect of the concept

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<sup>242</sup> LOUIS FAVOREU, *Principes généraux du droit et ordonnances non ratifiées*, RFDA 1996, p.1112 : « the administrative judge keeps on lowering the hierarchical place of French Polynesian rules to that of ordinary administrative acts such as decrees or bylaws ».

<sup>243</sup> LOUIS FAVOREU, *Les normes de référence applicables au contrôle des délibérations des assemblées territoriales des territoires d'outre mer : principes généraux du droit ou normes constitutionnelles ?*, RFDA, 11/12/1995, p.1242

<sup>244</sup> Tahiti Pacifique, N° 142, 02/2003, Internet Source : <http://www.tahiti-pacifique.com/98-/142/display.html>

<sup>245</sup> ALAIN MOYRAND and ANTONINO TROIANIELLO, *Polynésie française : un projet de nouveau statut d'autonomie* ; in JEAN YVES FABERON (dir.), *l'outre-mer français : la nouvelle donne institutionnelle*, p.170, .

<sup>246</sup> See PHILIPPE LE CHAT, *Le statut de la Polynésie française du 6 septembre 1984 cinq ans après : autonomie interne ou autonomie internée*, Annales du Centre Universitaire de Pirae, Année 1988-1989, n°3

<sup>247</sup> MICHEL BUILLARD (Member of Parliament), *Les Nouvelles de Tahiti*, 21/11/2002

<sup>248</sup> PASCAL CLEMENT (President of the Commission of constitutional laws, of the legislation and general administration of the Republic of the National Assembly), *Fin de la visite des commissions des lois*, les Nouvelles de Tahiti, 30/08/03, p.3

of autonomy because they show that an overseas region is willing to exercise the governmental power and not just free administration<sup>249</sup>. Such power implies that an autonomous region could, unlike an ordinary territorial region, assert their own interests alongside the general interest represented by the State by law, international treaties and the Constitution<sup>250</sup>. French Polynesia would therefore be on a par with the State over certain aspects, which would avoid the problems of institutional asymmetry encountered in the past. Thanks to « country laws », the notion of autonomy logically implies that during the exercise of their respective powers, the relations between the State and French Polynesia would not be viewed in terms of hierarchy but in a logic of coexistence of two powers, both in their respective fields of application.

81- The initial project regarding « country laws » provided a control of constitutionality such as the one applying to the parliamentary acts of the French Republic. The project envisaged a restricted control over the acts of French Polynesia through the implementation of a preventive control and by bringing action in relation to the Constitutional Council<sup>251</sup>. This type of control would have indeed allowed to go against the negative effects of the administrative control and hence to counter the relative legal insecurity in French Polynesia, thus reaching the type of system present in New Caledonia<sup>252</sup>. The authors of the first draft of the new statute<sup>253</sup> had raised another point, namely that the General Principle of Law was set apart from « country laws ». Originally, the latter were to have legislative value and therefore be immune to all administrative rules. The principle stating that « country laws » have legislative value was in the end not taken into account, but the principle stating that acts of French Polynesia were predominant over the General Principle of Law remained among the doctrine. Emanating from this superiority of « country laws » over the GPL, the acts of French Polynesia could have truly gone beyond their regulatory nature. « Country laws » could have thus been placed in the hierarchy below legislative rules, but above

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<sup>249</sup> Free administration only being the expression of a simple decentralisation granted to an average territorial region.

<sup>250</sup> ALAIN MOYRAND and ANTONINO TROIANIELLO, *Polynésie française : un projet de nouveau statut d'autonomie* ; in JEAN YVES FABERON (dir.), *l'outre-mer français : la nouvelle donne institutionnelle*, p.171, .

<sup>251</sup> ALAIN MOYRAND, *Les Institutions de la Polynésie française*, p.74

<sup>252</sup> L.O 99-209 of 19/03/1999 relating to New Caledonia, J.O "Lois et Décrets" of 21/03/1999, p.4197

<sup>253</sup> See notably *Projet de loi organique giving its autonomy status to French Polynesia*. NOR : DOMX0300085L/R1, République française, Overseas Ministry.

regulatory ones, which, according to Alain Moyrand : « perfectly corroborates the idea of autonomy : a power exercised beyond free administration and below the sovereignty of the State»<sup>254</sup> .

82- « Country laws » were a project aiming to give French Polynesia the possibility of creating rules bearing a legislative value. This project turned out to be quite diminished in its description by the new Statute for French Polynesia.

## 2: A system of regulatory rules after all

83- The revision of the Constitution of 2003<sup>255</sup> allowed to better understand what would happen to the « country laws » of French Polynesia, but it is the publication of the new Organic Law on the new status of the overseas region<sup>256</sup> that will finally bring a detailed description the system of « country laws ». These laws end up being particular regulatory rules (A) subject to the jurisdictional control of the State Council (B).

### A) « Country laws » are administrative acts

84- Organic law n°2004-192 of 27 February 2004 giving autonomy status to French Polynesia states the place of « country laws » within the rules hierarchy and even describes the notion of « law of sovereignty »<sup>257</sup> in article 7. This notion comprises all the regulations that have always been fully applicable in the former Overseas Territories, without the need for a special mention of applicability. Attempts to list these « laws of sovereignty » have been carried out in the past<sup>258</sup> without necessarily providing an exhaustive result. The list of these directly applicable rules was unfortunately not visible in the previous Statute of French Polynesia and had led to the

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<sup>254</sup> ALAIN MOYRAND and ANTONINO TROIANIELLO, *Polynésie française : un projet de nouveau statut d'autonomie* ; in JEAN YVES FABERON (dir.), *l'outre-mer français : la nouvelle donne institutionnelle*, p.171.

<sup>255</sup> L.C 2003-276 of 28/03/2003, .

<sup>256</sup> L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia.

<sup>257</sup> See ALAIN MOYRAND, *Les Institutions de la Polynésie française*, .

<sup>258</sup> Circular of the Prime Minister relating to the application of overseas legislative and regulatory texts of 15/06/90, modifying that of 21/04/88, J.O « lois et décrets », 24/04/88

law being very vague in that area<sup>259</sup>. In the new Statute for French Polynesia, lawmakers added which rules fully applied in French Polynesia (without necessarily being prejudicial to the particular organisation of the region) relating to the constitutional public powers of the Republic, to jurisdictions, or to the status of civil servants and State agents can be found there, as well as laws allowing the ratification of international commitments, texts relating to the State public domain, to national public buildings and state-owned firms<sup>260</sup>.

85- The General Principle of Law does not appear in the list and this situation thus seems to corroborate the view of legal experts who favour “country laws » above regulations. Nevertheless, the General Principle of Law, excluded from the law of rules that acts of the Assembly of French Polynesia must conform to, were re-integrated in article 176 of the Statute<sup>261</sup> and it was added that they had a superior value to « country laws ». For some law experts, whether they were superior or not to Polynesian « country laws » would in fact not have made any difference at all, for the General Principle of Law is part of the Republican common law that only true laws are not subject to<sup>262</sup>. From then on, even qualified of « country laws », acts of the Assembly of French Polynesia that come under the domain of the law<sup>263</sup> remain administrative acts, whether they intervene in areas transferred to French Polynesia or areas under the competence of the State where French Polynesia is allowed to participate<sup>264</sup>. « Country laws » are therefore rules with a regulatory value, despite their name and their truly legislative content<sup>265</sup>. For some authors, the name only ends up sowing more confusion for the « country laws of French Polynesia are different from those of New Caledonia, and in

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<sup>259</sup> L.O 96-312 of 12/04/1996 giving its autonomy status to French Polynesia.

<sup>260</sup> Article 7 of L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia.

<sup>261</sup> YVES BRARD, *Identité ou spécialité législative*; in JEAN YVES FABERON (dir.) *l'outre-mer français : la nouvelle donne institutionnelle*, p.125.

<sup>262</sup> See YVES BRARD, *Nouvelle Calédonie et Polynésie française : les « lois du pays »*, les Petites affiches, 06/06/01, n°112, p.13

<sup>263</sup> A possibilité provided by article 73 paragraph 3 of the Constitution. Let's note here that this possibility already existed before 2003 but only at the benefit of the Overseas Territories. French Polynesia therefore already had the possibility to intervene in matters of article 34 of the Constitution, but the new organic law grants it new domains of power.

<sup>264</sup> ANDRE ROUX, *Le pouvoir normatif*; dans : *l'outre-mer français : la nouvelle donne institutionnelle*, La documentation française, Paris 2004, p.138

<sup>265</sup> JEAN YVES FABERON, *L'évolution statutaire*; in JEAN YVES FABERON *l'outre-mer français : la nouvelle donne institutionnelle*, p.17, .

the end, they are only administrative acts<sup>266</sup>. According to this analysis, it seems that there has hardly been an evolution in the acts of French Polynesia, apart from their name, but this would be putting aside the new system of jurisdictional control imposed on these rules.

85- Indeed, in spite of their administrative nature, « country laws » have a particular jurisdictional control: the administrative court is pushed aside, to the benefit of the State Council.

#### B) « Country laws » operate under a particular jurisdictional control

86- The initial text of revision of the Constitution by the government did not state which judge would be competent to exercise control over the acts of overseas regions entering the legislative domain. The Law Commission of the Senate had thought of letting organic law-makers decide case by case if it fell under the competence of the State Council or the Constitutional Council. Finally, the Senate adopted an amendment of the Government adding that the specific control of the acts was to rest with the State Council, as they judged it preferable that the Constitutional Council be reserved to the sole legislative acts adopted by Parliament<sup>267</sup>. Thus, the revision of the Constitution of 2003 provides in article 74 paragraph 8 for those regions with autonomy, that the State Council exercise « a specific jurisdictional control over certain acts of the deliberative assembly intervening according to the powers this assembly exercises in the frame of the law »<sup>268</sup>. As French Polynesia is the only overseas region with autonomy, its new statute introduces the jurisdictional control of the State Council. Indeed, according to article 176 of the new organic law, it is the responsibility of the State Council to « pronounce on the conformity of the acts provided in article 140 and named « country laws », with regard to the Constitution, Organic Laws, international commitments and

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<sup>266</sup> ALAIN MOYRAND and ANTONINO TROIANIELLO, *Polynésie française : un projet de nouveau statut d'autonomie (Addendum)* ; in JEAN YVES FABERON (dir.), *l'outre-mer français : la nouvelle donne institutionnelle*, p.184.

<sup>267</sup> ANDRE ROUX, *Le pouvoir normatif*, in JEAN YVES FABERON (dir.), *l'outre-mer français : la nouvelle donne institutionnelle*, p.138, .

<sup>268</sup> Article 74 paragraph 8 of the Constitution, L.C 2003-276 of 28/03/2003, .

the General Principle of law »<sup>269</sup>. The same article 140 of the Organic Law, in its first paragraph, sanctions the specific jurisdictional control of the State Council over « country laws ».

87- The procedure regulating a specific jurisdictional control over Polynesian « country laws » is broadly inspired by New Caledonian « country laws ». The notable difference is that the State Council, as opposed to the Constitutional Council, can be referred a matter by either an action (by the High Commissioner, the President of French Polynesia, the President of the Assembly of French Polynesia, or the six representatives of the Assembly of French Polynesia), or by exceptional measure, as stated in article 179 of the new Organic Law. It says

When, during a litigation before a jurisdiction, a party invokes the serious incompatibility of an act provided in article 140 and named « country laws » with the Constitution, Organic Laws, international commitments, or the General Principle of Law (...), the jurisdiction must without delay pass on the question to the State Council, by a decision not available to appeal ». For André Roux, French Polynesia gains a « normative power of participation allowing it to intervene, by delegation of the State, in the latter's realm of power<sup>270</sup>.

Once again, one might imagine an absence of significant evolution to the benefit of the autonomy because of the new Statute governing French Polynesia, but this would be ignoring certain details. For a part of the doctrine indeed, for want of adopting true country laws and only submitting them to a constitutional judge, in practice in French Polynesia, an Organic Law would allow certain acts to escape the jurisdictional control of local administrative jurisdictions, which is a way of not being subject to the general constitutional rules<sup>271</sup>.

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<sup>269</sup> Article 176 of L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia.

<sup>270</sup> ANDRÉ ROUX, *Le pouvoir normatif*; in JEAN YVES FABERON (dir.), *l'outre-mer français : la nouvelle donne institutionnelle*, p.139, .

<sup>271</sup> MICHEL VERPEAUX, *Les conséquences générales de la révision constitutionnelle de 2003*; in JEAN YVES FABERON (dir.), *l'outre-mer français : la nouvelle donne institutionnelle*, La documentation française, Paris 2004, p.42. Let's note here that by giving jurisdictional competence to the State Council, French Polynesia therefore freed itself from the control of the local administrative Court.



88- « Country laws » are therefore rules endowed with a regulatory value with a specific control attached to them. However, they deal with legislative areas under control of the State and therefore, following the example of the new roles of the local government, they have a certain influence on maritime matters in French Polynesia.

## SECTION 2: Country laws and other local rules relating to the Polynesian maritime domain

89- The powers of French Polynesia in the maritime domain have been through a certain evolution thanks to the new Organic Law of 2004 giving a new status of autonomy<sup>272</sup>. This evolution is visible in the exercise of powers extended to the maritime sector, both by the government and the Assembly of French Polynesia. These powers relating to the sea are exercised by the decisions of the Council of Ministers (§1) and through the new « country laws » (§2).

### 1: The maritime action of the Government of French Polynesia

90- The Government of French Polynesia is responsible for several matters relating to the sea. Those responsibilities are limited as far as maritime security is concerned (A), whereas the Government enjoys a certain latitude as to the remaining ones (B).

#### A) The Council of Ministers – a restricted maritime remit

91- The new Organic Law n° 2004-192 of 27 February 2004 giving the status of autonomy to French Polynesia describes, in Part 5, the maritime matters that fall to the government ; this section concerns the attributions of the Council of Ministers and the Ministers themselves. In article 90, the Organic Law says that the Council of Ministers sets the rules that are applicable, subject to the domain of laws provided by article 140

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<sup>272</sup> L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia.

and called « Country laws », to the « security of maritime traffic and navigation in internal waters » (paragraph 11), to the « navigation of ships, registration of ships, nautical activities » (paragraph 12). The question of the security of maritime traffic and navigation in internal waters raised some difficulties when the organic draft appeared in front of the Constitutional Council. Indeed, the first draft for a new status of French Polynesia stated in article 84, paragraph 11 that the Council of Ministers had responsibility for the « security of maritime traffic in internal and territorial waters<sup>273</sup>. The Constitutional Council analyzed the question of security in the territorial waters granted to French Polynesia in a decision of 12 February 2004<sup>274</sup> and censored this provision, in particular the word « territorial » on the basis of articles 73 and 74 of the Constitution<sup>275</sup>, which states that the transfer of powers from the State to overseas regions cannot apply to « security and public order ». Finally, the Organic Law is drafted in the same terms as paragraph 11 of article 27 of the previous Statute<sup>276</sup>. The notions of « security of maritime traffic » and « duties of police in internal waters » must not be confused. Indeed, the role of French Polynesia here is limited to the organisation of maritime traffic in its waters, and not to giving sanctions.

92- The government of French Polynesia was granted another power; it is quite unexpected and is found in article 14 paragraph 9 of the Organic Law and states that the State is responsible for the « security of ships over 160 register tons and of all ships destined to transporting passengers »<sup>277</sup>. Taken the other way around, this provision gives French Polynesia the power to ensure the security of ships of less than 160 register tons<sup>278</sup> and of ships not intended for the transportation of passengers. Passenger transport can be defined according to a decision of the State Council in 1984<sup>279</sup> as « any

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<sup>273</sup> Article 84 of the draft of the organic law giving its autonomy status to French Polynesia.

<sup>274</sup> Decision of the Constitutional Council n° 2004-490 DC, .

<sup>275</sup> Constitution of 1958 after revision of the L.C 2003-276 of 28/03/2003, .

<sup>276</sup> L.O 96-312 of 12/04/1996 giving its autonomy status to French Polynesia.

<sup>277</sup> L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia.

<sup>278</sup> « A gross register ton is not, contrary to what its name seems to indicate, a unit of weight. It is rather a maritime unit equal to 100 cubic feet (about 10 cubic metres) and is used to indicate the size of a ship. Gross register tonnage indicates the internal volume of a ship, including freight holds and other areas, whereas the net register tonnage is the internal capacity of the ship used for commercial purposes, i.e. the gross register tonnage minus the crew quarters, engine rooms, etc. The gross register tonnage, i.e. the size of your ship, will partly determine the rules and regulations which will apply to your ship. The tonnage is established using measures and calculations or can be established with a table. », Internet Source : <http://www.tc.gc.ca/securitemaritime/>

<sup>279</sup> Decree of the State Council 84-810 of 30/08/1984 relating to the safeguard of human life at sea, to the capacity aboard ships and to the prevention of pollution, J.O "Lois et Décrets" of 01/09/1984, p.2778

ship transporting more than twelve passengers, if it is superior or equal to twelve metres in length. Not included in this definition are sailing boats inferior to twenty-five metres in length, whatever the number of passengers ». It is worth noting that the captain, crew members and other persons employed or having a purpose on board in a professional capacity (or paid) are not included in the notion of « passenger ». The same goes for children under one and the persons present on board in extreme cases. The transfer of this power to French Polynesia has proved quite problematic. The immediate application of the new statute of French Polynesia makes the situation even more difficult. Indeed, not only did the transfer of power not appear in previous organic drafts<sup>280</sup> (and therefore did not appear to be coveted by French Polynesia), but it could also have detrimental consequences in the implication of responsibility, because of the material impossibility of the local government to exercise this power (mainly due to the element of surprise of being granted this power and the lack of trained personnel). Furthermore, the category comprising ships under 160 register tons not transporting passengers amounts to an impressive number of small ships present in French Polynesia<sup>281</sup> (« poti marara »<sup>282</sup> and other equivalent fishing or pleasure vessels). This power over maritime security could thus turn out to be a poisoned chalice rather than an advantage for the local autonomy.

93- The domain of maritime security, where the government of French Polynesia does not have full control, is compensated by other powers where it enjoys more freedom.

## B) The Council of Ministers – an autonomous maritime remit

94- Another remit of the Council of Ministers mainly concerns ships, including their driving, navigation and registration. In France, driving is organised by the law of 28 March 1928<sup>283</sup> and the ruling of 19 May 1969<sup>284</sup>, reviewed in 1986<sup>285</sup> and in 2000<sup>286</sup>.

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<sup>280</sup> Draft of Organic Law giving its autonomy status to French Polynesia.

<sup>281</sup> *Entretien avec Mme Catherine Rocheteau* Maritime Affairs and Navigation Service Manager, Ministry for the Environment and Transport, in charge of road safety and towns.

<sup>282</sup> Small fishing boats typical of French Polynesia. For more information, see Internet Source <http://www.pacific-promotion.com.fr/FR/Photo/a005733.htm>

<sup>283</sup> Law of 28/03/1928 on the regime of piloting in maritime waters, J.O "Lois et Décrets" of 31/03/1928, p.3673

After the decentralization of the Administration, carried out in France in 1982<sup>287</sup>, the authority of the Transport Minister over driving stations was transferred to each regional prefect, who is in charge of supervising all questions of driving in their region with the help of the control exercised by the Regional Director of Maritime Affairs<sup>288</sup>. The definition of driving as it appears in article 1 of the law of 1928 describes it as the action that « consists in the assistance given to the Captain by a state-commissioned personnel for the navigation of ships when entering and exiting ports, inside ports, anchors, and the maritime waters of rivers and canals ». As for navigation at sea, it can be defined as all procedures aimed to obtain a permit for ship navigation (obtaining a permit, list of the required skills, etc.). The system of sea navigation is set in a ruling of 1984<sup>289</sup>, and in many other subsequent administrative acts<sup>290</sup>. Lastly, ship registration consists in naming a port of registry<sup>291</sup>. The rules concerning ship driving, navigation and registration are not fundamentally different in French Polynesia. At the end of the day, they are but simple administrative powers transferred to the overseas region without significant consequences. For example, registering a ship does not necessarily mean registering it as French<sup>292</sup> (consisting in the awarding of a flag), which is the exclusive competence of the State, as stated in article 14 paragraph 9 of the new Organic Law relating to French Polynesia<sup>293</sup>; here, it means that the overseas region deals with the simple task of administrative registration.

95- Even more important are the powers relating to the rights of exploration and exploitation of the natural maritime resources of French Polynesia that the Council of

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<sup>284</sup> Decree of State Council 69-515 of 19/05/1969 relating to the regime of piloting in maritime waters, J.O "Lois et Décrets" of 01/06/1969, p.5459

<sup>285</sup> Decree 86-663 of 14/03/1986 modifying decree 69515 of 19/05/69 relating to the regime of piloting in maritime waters and decree of 14/12/29 stating the general regulations of piloting, J.O "Lois et Décrets" of 20/03/1986, p.4798

<sup>286</sup> Ministerial decree of 05/06/2000 modifying the decree of 18/04/1986 stating the powers and the composition of the local commission and the terms of issue of piloting captains licenses, J.O "Lois et Décrets" 139 of 17/06/2000, p.9134

<sup>287</sup> Law 82-213 of 02/03/1982 relating to the rights and liberties of « communes, départements & régions » (Law Defferre), .

<sup>288</sup> Internet Source : <http://www.pilotes-maritimes.fr/pilotes.html#orgaf>

<sup>289</sup> Decree of State Council 84-810 of 30/08/1984 relating to the safeguard of human life at sea, to the capacity aboard ships and to the prevention of pollution

<sup>290</sup> See notably Ministerial decree of 22/11/2000 relating to sea driving documents of French motor pleasure boats, J.O "Lois et Décrets" 279 of 02/12/2000, p.19175

<sup>291</sup> ANTOINE VIALARD, *Droit maritime*, conference. Droit fondamental, PUF 1997, p. 260

<sup>292</sup> See decree taken after recommendation of the State Council 67-967 of 27/10/1967 application of law 675 of 03/01/1967 ruling ships and other sea vessels, J.O "Lois et Décrets" of 04/11/1967, p.10386

<sup>293</sup> L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia.

ministers owns according to article 91 paragraph 11 of the Organic Law of 2004. Indeed, the economic dependence of French Polynesia on Metropolitan France<sup>294</sup> can only be partly reduced by the exploitation of these resources, which are not limited to fishing, but also include aquaculture, or even pearl farming<sup>295</sup>. In the future, the exploitation of polymetallic nodules<sup>296</sup> might even be taken into account. The total exploitation of all these ressources represents an significant income for French Polynesian economy<sup>297</sup>. According to the Fishing Ministry in French Polynesia : « If there was ever a sector of the future in Polynesia, it is Fishing. The figures are proving the development of what we can call a real industry. The halieutics reserves of the Polynesian Exclusive Economic Zone seem considerable. Similarly, the fishing trawler fleet regularly increases in size. »<sup>298</sup>. As far as fishing is concerned, it is the Council of Ministers which grants permits, as described in article 92 paragraph 8 of the Organic Law<sup>299</sup>. It is worth noting that for a long time, the exploitation of French Polynesia's deep sea had been delegated to foreign companies (mainly Korean and Japanese) due to the absence of material means necessary for the exploitation of the Polynesian maritime areas<sup>300</sup> (these agreements have not been renewed since their recent expiry<sup>301</sup>).

96- The government of French Polynesia thus has many new competences thanks to the new Statute for French Polynesia. The same goes for the Assenbly of French Polynesia and the « Country laws ».

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<sup>294</sup> See Internet Source : <http://www.polynesie-francaise.gouv.fr/infos/donnees-econ/index.asp>

<sup>295</sup> Pearls being the first source of external profit for the territory, behind tourism, Internet Source : [http://www.domtomfr.com/info\\_domtom/economie\\_2.php3?domtom=2](http://www.domtomfr.com/info_domtom/economie_2.php3?domtom=2)

<sup>296</sup> JEAN MICHEL GRIESSINGER, *La mise en valeur des ressources marines de l'outre-mer : l'action de l'IFREMER*, in JEAN YVES FABERON (direction), *La Mer Outre-Mer*, p.96 : « IFREMER has explored polymetallic nodules in the archipelago of the Tuamotu in the years 1970 to 1980, which are the mineral concretions distributed in fields over sedimentary layers ; as well as cobaltiferous crusts at the top of underwater mountains »

<sup>297</sup> See *La Polynésie Française en 2002*, Institut d'Emission d'Outre Mer, éd. STP-multipress, Juin 2003, p. 50 et s.

<sup>298</sup> MINISTRY OF FISHERIES, OF SMALL AND MEDIUM ENTREPRISES, *Les richesses de la mer, trésor de la Polynésie française*, unpublished, nov 2003, Internet Source : <http://www.mer.gov.pf/>

<sup>299</sup> L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia.

<sup>300</sup> See notably decree n° 773 CM of 30/07/1991 granting ninety-nine fishing licenses in the economic zone of French Polynesia in favour of the Japanese fishing fleet, JOPF N°32 1991, P.1326

<sup>301</sup> These fishing agreements have actually always been questioned by many political parties in French Polynesia. La dépêche de Tahiti, 06/04

## 2: The maritime action of the Assembly of French Polynesia

97- The « Country laws » mainly concern the maritime domain of French Polynesia in one aspect relating to several laws: coastal law. Subject to many rulings in Metropolitan France, it is however not applied in the same way in French Polynesia (A), as it is regulated by the Assembly of the region (B).

### A) The inapplicability of metropolitan coastal law

98- The coast is, literally, « the contact area between land and sea»<sup>302</sup>. The notion of coast is governed by a specific area of law dealing with various matters. In Metropolitan France, coastal law comprises many texts going back to the Ordinance of Colbert of 1681<sup>303</sup> until the law of 3 January 1986 relating to the protection and development of the coast<sup>304</sup>. This set of rules is scattered in the French Town Planning and Environmental Code<sup>305</sup>. The law of 1986 mainly governs coastal law in France. It sets up a sometime-complex system relating to the control of urban expansion, the limited urban extension in areas close to the shore, the not-for-development 100 metre strip, and the protection of natural spaces<sup>306</sup>. These rules are obviously the consequence of the typical geography of the French metropolitan territory, along with an urban evolution just as specific. Indeed, the French territory opens on four maritime fronts, the Mediterranean Sea, the Atlantic Ocean, the English Channel and the North Sea, whilst also occupying a significant internal territory<sup>307</sup> and it would thus be impossible to imagine an anarchic urbanisation on such a coastline.

99- French Polynesia's geographic configuration is undoubtedly different, as it is made up of a myriad of islands of different types scattered across the vast Pacific Ocean. As

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<sup>302</sup> *Le Robert de Poche : Langue française et noms propres*, p.421

<sup>303</sup> Internet Source : <http://www.assemblee-nat.fr/12/rap-info/i1740.asp>

<sup>304</sup> Law 86-2 of 03/01/1986 relating to the development, the protection and the enhancement of the coast.

<sup>305</sup> Internet Source : <http://www.legifrance.gouv.fr/>

<sup>306</sup> LOIC PRIEUR, *Cours de droit du littoral 2003-2004* (DEA Science Juridique de la mer), Université de Bretagne Occidentale (U.B.O)

<sup>307</sup> ARMANT FREMONT, *La géographie de la France*, La France de A à Z, Internet Source : <http://www.ambafrance-zm.org/>

far as volcanic islands are concerned, the Polynesian population is distributed on the coastal strips for the simple reason that these are the only relatively flat areas suitable for development, which do not require earthworks (with the exception of valleys). Indeed, the volcanic islands of French Polynesia are generally endowed with a very mountainous central relief that makes urbanisation very difficult, if not impossible. Simply looking at the example of French Polynesia's main island, Tahiti, is enough to realise how the population is concentrated in the « communes » located along the coastline. That is why, over its 1,043 square kilometres, only 150 are inhabited and exploited<sup>308</sup>. As for inhabited atolls<sup>309</sup>, their geographical configuration (low area surfaces, originally made of coral) leads one to logically say that the population literally « lives » on the coast. Therefore, a direct application of metropolitan rules concerning the coastline to French Polynesia would be impossible due to the geographical characteristics of the region. One good example is the case of « bande inconstructible des 100 mètres » (a fringe of 100 metres from the high tide mark where development is not allowed) which would make any urbanisation impossible in French Polynesia. Of course, metropolitan coastal law, and more particularly the law of 3 January 1986<sup>310</sup> are not applicable in French Polynesia due to the principle of legislative specialty (as the application of these rules to French Polynesia has not been expressly mentioned in the texts, they cannot apply to the region).

100- Metropolitan coastal law is therefore difficult, if not impossible, to implement in French Polynesia. Thus the Assembly of French Polynesia has the power of regulating this matter, which is greatly facilitated by the « Country laws ».

## B) Local coastal law

101- As seen above, coastal law has actually a function over two matters: town planning law and environment law. These two matters were transferred to French Polynesia by

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<sup>308</sup> Internet Source : <http://www.presidence.pf/>

<sup>309</sup> Atolls are coral structures forming a ring and supporting dotted islands, broken by passes. They surround a lagoon whose depth generally exceeds 30m, but rarely 100m. Their diameter, which varies a lot, can exceed 60km. Internet Source : <http://www.ens-lsh.fr/geoconfluence/doc/typespace/littoral1/LittorDoc.htm>

<sup>310</sup> Law 86-2 of 03/01/1986 relating to the development, protection and enhancement of the coast.

the Statute of 1996<sup>311</sup>, and confirmed by article 140 of the new Organic Law, which adds as follows:

The acts of the Assembly of French Polynesia, called « Country laws », and over which the State Council exercises a specific jurisdictional control, are those that either fall within the remit of French Polynesia, or are considered a participation of French Polynesia to state powers and intervene in the following matters: Town planning and Development Law, Environment Law...<sup>312</sup>.

From then on, the rules concerning these two matters are created by the Assembly of French Polynesia, through the new normative system of « country laws ». Coastal development in French Polynesia is thus controlled by the local assembly, through the « Development Code»<sup>313</sup>. The latter has set up two main plans for development, one of which deals mainly with the maritime domain. These plans are called *General Plan for Development* (GPD) and *Plan for the Management of the Maritime Area* (PMMA). According to the Development Office, the PMMA must allow « a rational use of lagoon areas and their resources, prevent conflicts of interest, and allow the population to give their opinion on development choices and the management of this community area»<sup>314</sup>. This particular type of law has specific consequences on the private occupation of the maritime domain, for instance hotel occupation on lagoons<sup>315</sup>.

102- In article 140, the new Organic Law of 2004<sup>316</sup> only confirms the powers that had already been transferred to French Polynesia in the past. The new notion of « country laws » was bringing an increased legal security to the acts of the Assembly of French Polynesia and consequently made the acts relating to the coast (through development, town planning or the environment) harder to oppose. Nevertheless, despite the visible indirect progress, it is necessary to put a dampener on this evolution. Indeed, the new

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<sup>311</sup> L.O 96-312 of 12/04/1996 giving its autonomy status to French Polynesia.

<sup>312</sup> L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia.

<sup>313</sup> Development Code of French Polynesia, Internet Source : <http://www.urbanisme.pf/> (Website of the Development Service)

<sup>314</sup> Internet Source : <http://www.urbanisme.pf/> (Website of the Development Service)

<sup>315</sup> See YVES BRARD, *Le domaine public maritime outre-mer : le cas de la Polynésie française*, in JEAN YVES FABERON (direction), *La Mer Outre-Mer*, p.215.

<sup>316</sup> L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia.



Statute for French Polynesia (through the « country laws ») does not appear to have brought a significant improvement relating directly to the maritime domain. The local « law-maker»<sup>317</sup> only will be able to correct the situation in the future. Of course, it would not make sense to ignore the fact that French Polynesia enjoys great freedom as far as coastal law is concerned, a very important and fundamental matter in the maritime domain<sup>318</sup>, and that the appearance of the new notion of « country laws » only supports the idea of a more sustained and stronger autonomy in local law relating to the sea.

103- « Country laws » are not the only innovations brought by the new Statute of 2004. Indeed, French Polynesia now enjoys the principle of participation as well as increased powers in terms of foreign policy. These two elements seem to grant French Polynesia a near « régalien » power.

## CHAPTER 2: A NEAR « REGALIEN » POWER RELATING TO THE MARITIME DOMAIN

104- Thanks to the new Organic Law of 2004, French Polynesia intervenes more and more in the « régalien » matters of the State. It does so firstly by « participating », a principle drawn from the constitutional revision of 2003<sup>319</sup> and currently is exercised exclusively by French Polynesia. Then, it also makes its mark gradually at the international level, notably through its new-found ability to engage in international representations abroad. The principle of participation is a brand-new notion and is considered by some to be revolutionary<sup>320</sup>. Indeed, the relevant region is now not simply associated to the exercise of state powers, but it truly « participates » (Section 1); this participation, like the new roles in foreign policy of French Polynesia, extends to maritime domains (Section 2).

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<sup>317</sup> This expression remains a denomination of no consequence in the same way as acts of the Assembly of French Polynesia. See the position of in ALAIN MOYRAND, *Les Institutions de la Polynésie française*, p.69, .

<sup>318</sup> Especially in the insular geographical type where, as it was seen, the « coastal » surface is predominant in the life of the population at very different levels (development, economy, etc.)

<sup>319</sup> L.C 2003-276 of 28/03/2003, .

<sup>320</sup> JEAN PERES, *Le nouveau statut de la Polynésie française*, Conférence « Savoir pour tous », 25/03/04, Internet Source : <http://www.upf.pf>

## SECTION 1: The notion of 'participation' in the exercise of State powers

105- Participating literally means « taking part in something»<sup>321</sup>. Because it is a new principle within the context of the legal framework of the French Republic, the new Polynesian Organic Law devotes its section 3 to « the participation of French Polynesia to the exercise of State powers»<sup>322</sup>, as well as the field of application of this system (§1) and the procedure for its implementation (§2).

### 1: The field of application of the principle of participation

106- Participation was a novelty introduced by article 74 of the Constitution<sup>323</sup>, where paragraph 11 states that the Organic Law governing overseas regions with autonomy can determine « the conditions in which the region will participate, under control of the State, to the exercise of the powers , in the respect of the guarantees granted on the whole of the territory for the exercise of public liberties»<sup>324</sup>. Participation can however encompass two distinct functions : one where French Polynesia takes the initiative in the framework of its normative activity (A) and another by associating with certain State public policies (B).

#### A) Participation by initiative

107- The first type of « participation » allows French Polynesia to take the initiative to encroach upon some State powers with the enactment of « country laws » or other rulings intervening for their application. Nevertheless, for these rules to come into effect, the State must approve them<sup>325</sup>. The State powers that are subject to encroachment are listed in article 31 of the Organic Law : The State and the ability of

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<sup>321</sup> *Le Robert de Poche : Langue française et noms propres*, p.511

<sup>322</sup> L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia.

<sup>323</sup> Constitution of 1958, .

<sup>324</sup> L.C 2003-276 of 28/03/2003, .

<sup>325</sup> ALAIN MOYRAND and ANTONINO TROIANIELLO, *Polynésie française : un projet de nouveau statut d'autonomie* ; in JEAN YVES FABERON, *l'outre-mer français : la nouvelle donne institutionnelle*, p.173, .

people (similar to the terms used in article 14 of the Statutory law<sup>326</sup>, and covering civil status records, absence, marriage, divorce and filial status), parental authority, matrimonial regimes, inheritance and gifts (a very interesting point to try and solve the local problem of joint ownership<sup>327</sup>), pursuit and reports on offences, the provisions of criminal law regarding games of chance (these provisions cannot breach the regulatory and legislative rules set by the State in terms of control and penalties), the entry and stay of foreigners (participation does not extend to cover the exercise of the right of asylum, the removal of foreigners and the movement of citizens of the European Union, which all fall within the remit, fully or partly, of international conventions), audio-visual communications, and finally, the financial services of postal institutions<sup>328</sup>.

108- Whilst the law allows for encroachments, it provides however that on the one hand, the State remains « master » of its powers, and on the other hand, a strict control of the rules generated by these encroachments. Indeed, according to M. Dominique Perben, « since we are dealing with « régalien » powers, the State will always retain the right to oppose an act within its remit or to reform it, on grounds of legality as much as sheer opportunity»<sup>329</sup>. Indeed, it will be possible to modify by a law, an ordinance or a decree carrying an express mention of application in French Polynesia (as stated in article 32 paragraph 3) the rules generated by an encroachment on State powers. In addition, individual decisions arising from those same rules can only be implemented with the approval of the High Commissioner of the Republic, who then gives a ruling in a time-period no longer than a month. Failing an express refusal of approval, the individual decision is declared approved at the end of this time-period. Moreover, within the regulatory framework arising in French Polynesia by encroachment, the High

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<sup>326</sup> Article 14 paragraph 1 of L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia.: « The State authorities are competent in the following matters alone : (...) civil rights, state and capacity of persons, notably acts of civil status, absence, marriage, divorce, filiation (...) ».

<sup>327</sup> For more substantial information on the Polynesian problem of indivision, see notably ALFRED GRAND, *L'indivision foncière et le développement économique et social en Polynésie française*, Journal de la Société des Océanistes, Tome 27, 1971, p.7-29

<sup>328</sup> JEAN PERES, *Le nouveau statut de la Polynésie française*, Conférence « Savoir pour tous », .

<sup>329</sup> DOMINIQUE PERBEN, discussions of the Senate on the Organic Law giving its autonomy status to French Polynesia. (29/10/02), Internet Source : <http://www.service-public.pf/theme.php?t=115>

Commissioner of the Republic approves the immigration documents issued by the government of French Polynesia under the conditions and time-periods set by decree<sup>330</sup>.

#### B) Participation by association

109- The association of French Polynesia to the implementation of certain state policies is the second aspect of its participation to state powers. It concerns three sectors : higher education, police duties and international relations. Firstly, French Polynesia is associated to the research and higher education policies (as provided by article 37 of the Organic Law). In that respect, it is associated to : the draft contracts between the State and educational establishments and research organisations ; the definition of the charter of higher education and research, which is subject to a convention with the State<sup>331</sup>. It discusses the proposals for the creation of courses of study submitted by the President of French Polynesia or the High Commissioner. Secondly, as far as the power of police is concerned, article 34 of the Organic Law provides that « French Polynesia can participate to the exercise of police duties falling within the powers of the State in matters relating to the surveillance and occupation of the public domain of French Polynesia ; of road-traffic policing ; maritime traffic policing within the internal waters ; and of public or civil security duties »<sup>332</sup>. As for article 35, it provides that the civil servants and sworn officials of French Polynesia's administrations and public offices are able to pursue and report offences to the legislation of French Polynesia<sup>333</sup>.

110- Finally, as far as international relations are concerned, article 38 of the Organic Law provided in paragraph 1 that the State can, within its remit, entrust the president of French Polynesia with the powers necessary to negotiate and sign international agreements, mostly those concerning the Pacific region (which means agreements with

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<sup>330</sup> ALAIN MOYRAND and ANTONINO TROIANIELLO, *Polynésie française : un projet de nouveau statut d'autonomie* ; in JEAN YVES FABERON, *l'outre-mer français : la nouvelle donne institutionnelle*, p.173 .

<sup>331</sup> Higher education in French Polynesia is mostly centred around the « Université de Polynésie française » (University of French Polynesia). See Internet Source : <http://www.upf.pf/>

<sup>332</sup> L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia.

<sup>333</sup> By « legislation », understand the totality of the acts made in French Polynesia (« country laws » notably).

other states, territories or regional bodies of the Pacific<sup>334</sup>). Paragraph 2 adds that the president of French Polynesia can be associated, within the French delegation, to the negotiations and signing of agreements. The last paragraph states that the French State may allow him to represent it in international organisations. Article 39 adds that the president of French Polynesia can negotiate agreements with other states, territories or international organisations in the respect of international commitments (and after discussions by the Council of Ministers<sup>335</sup>). In conclusion, it is necessary to add that the president of French Polynesia (or his representative) takes part in all French delegations that negotiate agreements relating to the field of competence of French Polynesia. The same goes for all relations with the European Union<sup>336</sup> (these last two points are described respectively in articles 40 and 41 of the Organic Law of 2004).

111- The principle of participation is very promising in theory. It allows French Polynesia to participate in the exercise of many powers that normally reside within the realm of the State. However, its procedure is very complex.

## 2: Procedure of the principle of participation

112- The procedure to be used varies whether the participation of French Polynesia is exercised in the legislative or regulatory domain, in which the Organic Law recognises but two normative levels: « country laws » for matters within the legislative domain, and the rulings of the Council of ministers, whether they are passed for the application of country laws (derived regulatory power) or intervene in the regulatory domain (autonomous regulatory power). The hypothesis of discussions<sup>337</sup> is at no point considered. In the end, this binary procedure (A) proves amazingly complex (B).

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<sup>334</sup> As an example of an important regional organisation, we can mention the « South Pacific Forum », which gathers all the countries of the area, including notably Australia, New Zealand, Fiji and where French Polynesia actively participates. Internet Source : <http://www.forumsec.org.fj/>

<sup>335</sup> Council of Ministers of French Polynesia.

<sup>336</sup> See JACQUES ZILLER, *Les collectivités des outre-mers de l'Union européenne* ; in JEAN YVES FABERON (dir.), *l'outre-mer français : la nouvelle donne institutionnelle*, p.105.

<sup>337</sup> JEAN PERES, *Le nouveau statut de la Polynésie française*, Conférence « Savoir pour tous », .

A) A different procedure for legislative or regulatory acts

113- Any act intervening in the legislative domain must necessarily take the form of a « country law». Here, the procedure governing the mechanism of « participation » is structured in several stages as described in article 32 of the Organic Law. Firstly, a draft of the government or parliamentary decision for a country law is forwarded by the president of French Polynesia (for draft Government decision) or the president of the Assembly (for draft private members' decision) to the Overseas Minister who acknowledges receipt thereof without delay. The latter and other Ministers concerned suggest to the Prime Minister, within two months, a draft order with a view to either totally or partially approve the draft decision, or deny such approval (the reasons must be stated). Further on, the approved ruling is forwarded, as appropriate, to the president of French Polynesia or the Assembly of French Polynesia. The text can only be adopted by the Assembly in the same terms as those approved by the State. Therefore, the right to amend can no longer be exercised and the Assembly can only approve or reject the whole of the draft decision.

114- Secondly, as far as regulatory acts are concerned, the Organic Law makes a distinction between the procedure applicable to the rulings of the Council of Ministers, and that applicable to individual acts. With regards to rulings of the Council of ministers, the procedure is the same whether it concerns rulings of application for « country laws » or rulings intervening in the regulatory domain, in one of the terms listed in article 31 of the Organic Law and relating to the domains where French Polynesia can make use of the principle of « participation ». The procedure, like the one relating to legislative acts, is structured over several stages. The draft decision is forwarded by the President of French Polynesia to the Overseas Minister who acknowledges receipt thereof without delay. As for country laws, the Overseas Minister and other Ministers concerned suggest to the Prime Minister, within a period of two months, a draft order with a view either totally or partially approve the draft decision, or deny such approval (the reasons must be stated). The order which grants the approval is submitted to the analysis of the Council of Ministers, which must adopt it in the same terms, without possibility of amendment or reject. Private members' decisions taken in application of country laws or rulings of the Council of Ministers must be forwarded to the High Commissioner of the Republic; their entry into force is subject to their receipt

by the High Commissioner. The High Commissioner exercises a hierarchical control over these decisions; it gives him a power of reform over an act, without the need to refer it to the Administrative Court<sup>338</sup>.

115- The procedure relating to the principle of participation is beset by terrible complexity, not only by its subdivision according to the legislative or regulatory nature of the act, but also by all the stages necessary to its application.

### B) A problematic and complex procedure

116- The Statutory law adopted by the National Assembly<sup>339</sup> provided that the order granting approval (concerning the procedure relating to the mechanism of « participation » as applied to legislative acts) would be null and void if it was not ratified by law in the eighteen-month time-period following the signing of the order. This provision obviously raised the question of knowing what would happen to the provisions of « country laws » if the substantial formality of the legislative ratification was not respected (either the draft decision is not forwarded, or the National Assembly refuses to vote on it, or, the law that was passed is censored by the Constitutional Council; the latter hypothesis being an extreme case). If the order becomes null and void, so do the « country laws » and the acts passed for its application. The question was however never raised because the Constitutional Council, in a decision<sup>340</sup>, recalled that the possibility granted to French Polynesia to enact rules in a domain that remains within the remit of the State could only result from the prior agreement of the state authority normally in charge of this power. Therefore a text normally entering the legislative domain can only be approved by the National Assembly.

117- The Council therefore censored the terms « in the eighteen-month time-period following the signature » and added that « country laws » could not come into effect until the order granting full or partial approval was ratified by the National Assembly.

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<sup>338</sup> JEAN PERES, *Le nouveau statut de la Polynésie française*, Conférence « Savoir pour tous », .

<sup>339</sup> See the different stages of adoption of the organic law and the discussions within the National Assembly, Internet Source : <http://www.service-public.pf/theme.php?t=116>

<sup>340</sup> Decision of the Constitutional Council n° 2004-491 DC, .

With this decision of the Constitutional Council, the procedure becomes more complicated and longer, for if the Government must decide within two months, it is obvious that no minimum time-period can be imposed on Parliament. For M. Jean Péres, « one can wonder, with regards to those particular « country laws » ; which have been approved by an order, submitted to the analysis of the State Council through the ratification law and maybe even referred to the censorship of the Constitutional Council ; about the use of preserving the specific jurisdictional control procedure, which allows six Assembly representatives or any concerned person to refer a « country law » to the analysis of the State Council»<sup>341</sup>. For Alain Moyrand, the law-maker should have decided on a simpler method, instead of this « extravagant and uselessly complex »<sup>342</sup> procedure. The « participation to State powers » turns out to be a real sore point in the autonomy status.

118- The principle of participation, however complex, influences the Polynesian maritime affairs. The same can be said of another of the new Statute's improvements, namely the possibility for French Polynesia to pursue a foreign policy.

## SECTION 2: The principle of participation and the new roles of foreign policy in the maritime domain

119- The Polynesian maritime legal affairs are concerned by the new (but complex) system of participation, and also by French Polynesia's new roles in external relations. Indeed, the new possibilities of encroachment on State policing powers (§1) as well as those relating to international relations (§2) allow French Polynesia to better control its maritime domain.

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<sup>341</sup> JEAN PERES, *Le nouveau statut de la Polynésie française*, Conférence « Savoir pour tous », .

<sup>342</sup> ALAIN MOYRAND and ANTONINO TROIANIELLO, *Polynésie française : un projet de nouveau statut d'autonomie* ; in JEAN YVES FABERON (dir.), *l'outre-mer français : la nouvelle donne institutionnelle*, p.173.



## 1: The French Polynesian power of maritime policing

120- The new principle of participation introduced in the new Organic Law of 2004 allows the region to intervene in domains that were until then forbidden (A). These domains remain nevertheless within the remit of the State, which exercises control over the actions of French Polynesia (B).

### A) French Polynesian control of its maritime public domain

121- In article 34 of the new Statute of French Polynesia, it is possible to highlight two main domains of maritime actions: the participation of the region in the exercise of State police duties for the surveillance and occupation of the public domain of French Polynesia and for the regulation of maritime traffic in internal waters. Firstly, with regards to the participation of French Polynesia to the surveillance and occupation of its public domain, this kind of participation mostly concerns the coastal domain<sup>343</sup> belonging to French Polynesia. This Polynesian public domain will from now on be monitored by the Intervention Unit of Polynesia (IUP)<sup>344</sup> more efficiently and consequently decrease all negative effects on the coast (for instance, control of marine pollution). Secondly, with regards to the power of police granted to French Polynesia by participation, the region has been enjoying, since its Statute of 1996, a power relating to the security of the traffic in its internal waters. Indeed, the previous statutory law expressly reserved the power of the Council of Ministers over « the security of navigation and traffic in internal waters, including anchors and lagoons ; driving by the entrances and exits of internal waters »<sup>345</sup> (article 28, paragraph 11 of the Statutory Law of 1996). However this kind of power must not be confused with the power of « police », which literally means aiming to « maintain law and order »<sup>346</sup> and was the

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<sup>343</sup> And more particularly the busier parts of this coastal domain such as « Toa'ta » Square in Papeete.

<sup>344</sup> Its full name being « Intervention Unit of Polynesia, Te Toa Arai » ; this public establishment of an industrial and commercial nature has been at the centre of many stormy discussions in the past (it was several times described as the « private police » of the local Government) and is in charge of many missions of general interest. Internet Source : <http://www.presidence.pf/>

<sup>345</sup> L.O 96-312 of 12/04/1996 giving its autonomy status to French Polynesia.

<sup>346</sup> REMY CABRILLAC (direction), Dictionnaire du vocabulaire juridique, p.294

sole responsibility of the State according to the Statute of 1996. Article 34 of the new Statute adds that « French Polynesia may take part in the exercise of police duties falling within the powers of the State in matters relating to...maritime traffic policing within the internal waters»<sup>347</sup>. The role of French Polynesian public servants is thus reinforced in the domain of law and order. These civil servants can report offences related to maritime traffic in internal waters and other offences listed by subsequent order<sup>348</sup>.

122- It is necessary to mention here another function concerning powers of police relating to the maritime domain<sup>349</sup>. Indeed, until now, the authorities of French Polynesia (Assembly and government) could prescribe fines or even imprisonment sentences (the latter being subject to legislative approval) to the offences set out under the regulations that they had enacted. However, for want of being able to search for offenders, this too often remained theoretical, a situation which did not escape the attention of the Constitutional Council, which believes that it is necessary to grant French Polynesia the power to enact rules of criminal procedure, a necessary extension to the exercise of its powers<sup>350</sup>. Article 35 of the new Organic Law adds that “decisions provided for in article 140 known as ‘country laws’ may contain, in the same limits and conditions as those defined by the law, provisions allowing public servants and sworn officials of the administration and public departments of French Polynesia, ...to search and report offences against ...‘country laws’, resolutions of the Assembly of French Polynesia and regulatory orders of the Council of Ministers...”<sup>351</sup>. Thanks to this provision, the new Statutory Law allows to adopt provisions allowing civil servants and sworn officials of the administration of French Polynesia to ask any offender, under control of a legal authority, to prove their identity, carry out consignments, carry out samplings, provisional attachment of property, remove products from the marketplace, establish prohibitions and prescriptions and bring offenders before a judicial police officer. These officials may also be authorised to pay visits with a judicial officer being

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<sup>347</sup> L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia.

<sup>348</sup> *Te fenua* « *Journal d'information du Gouvernement de Polynésie française* », p.19

<sup>349</sup> The latter being coupled with the two maritime powers formerly explained.

<sup>350</sup> Decision of the Constitutional Council n° 2004-491 DC.

<sup>351</sup> L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia.

present for that purpose<sup>352</sup>. Of course, the new provision will allow a better application of local regulations, notably those relating to maritime affairs.

123- Thanks to the new system of participation, French Polynesia will finally carry a power of police over its public maritime domain. However, this power of police is strongly controlled by the State authorities.

#### B) A power under a strong State control

124- The power of participation of the authorities of French Polynesia is far from absolute and this is all the more true in the domain of police duties. Article 34 of the Organic Law defines the control of the State over Polynesian officials. Firstly, the « police agents » of French Polynesia do not personally have the capacity of judicial police officer. Acting in the framework of the administrative police, they are subject to the agreement of the State Prosecutor. After taking an oath before the Court of First Instance, they are appointed by the president of French Polynesia. In case of misconduct, the agreement can be removed or suspended<sup>353</sup>. The same powers are also granted to sworn officials of port authorities and of the Social Security Fund. Of course, the provisions defined by « country laws » cannot move away from the limits and conditions stated by state law, and particularly by the criminal procedure Code<sup>354</sup>. The actions of the public representatives of French Polynesia are therefore always perfectly controlled by State institutions in order to avoid any ‘blunders’<sup>355</sup>.

125- For Brigitte Girardin, former Overseas Minister « The « régalien » powers of the State are in no way affected, even by the new procedure of participation of the region to the exercise of the powers provided for in the penultimate paragraph of article 74 : indeed, the State can always, on grounds of legality as well as opportunity, refuse to

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<sup>352</sup> *Te fenua « Journal d’information du Gouvernement de Polynésie française », p.19*

<sup>353</sup> The agreement can be removed by the High Commissioner of the Republic « after consultation with the president of French Polynesia who has five days to give his recommendation ; once this delay has lapsed, the recommendation is considered given. » Article 34 of L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia.

<sup>354</sup> JEAN PERES, *Le nouveau statut de la Polynésie française*, Conférence « Savoir pour tous », .

<sup>355</sup> *Te fenua « Journal d’information du Gouvernement de Polynésie française », p.19*

approve the measures taken by local authorities in these matters. »<sup>356</sup>. This position particularly highlights the insecurity of the system of participation notably with regards to police duties. This insecurity, coupled with a strict State control (without forgetting the total complexity of the implementation of this system of participation) makes this constitutional, as well as statutory, innovation far less interesting than anticipated, despite the enthusiasm of the previous government for this new element<sup>357</sup>. In the maritime domain, and more precisely with regards to the power of police by participation to the maritime traffic in internal waters, the question is raised of the material implementation of such a power, or still, of the availability of State agents in cases where they must be present. In the end, the complex and over controlled power of participation would appear difficult to implement in the future, unless in a form that may be less innovating than presented by the initial drafts of the Organic Law.

126- The new power of participation granted to French Polynesia turns out to be quite disappointing as far as the Polynesian maritime affairs are concerned. Fortunately, this proves different for its new powers in foreign policy.

## 2: An extended power in international relations

127- Since its annexation by France, French Polynesia has had to wait a long time before finally regaining a role in international affairs<sup>358</sup>. The exercise of powers over foreign policy were limited in the past, despite some improvements (A), but the Organic Law of 2004 brings elements that are not only interesting, but also with a significant influence on the local maritime domain (B).

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<sup>356</sup> BRIGITTE GIRARDIN, *Allocution of 29/11/03*, in JEAN YVES FABERON (dir.), *l'outre-mer français : la nouvelle donne institutionnelle*, La documentation française, Paris 2004, p.216. For further information, see internet source : <http://www.outre-mer.gouv.fr/outremer/front>

<sup>357</sup> See notably *Te fenua* « *Journal d'information du Gouvernement de Polynésie française* », p.1

<sup>358</sup> Especially since L.O 96-312 of 12/04/1996 giving its autonomy status to French Polynesia.

#### A) International roles were traditionally controlled

128- Article 1 of the new Organic Law of 2004 provides that « French Polynesia freely determines the distinguishing signs to be displayed at official public events alongside the national emblem and the signs of the Republic. It may create a specific order to recognise the merits of its inhabitants and guests. ». For the government of French Polynesia, a symbol of liberty, recognition and rallying for all Polynesians, the flag marks the identity of the Territory in all official events taking place on Polynesian soil. The reporters who presented the Assembly, on 20 November 1984, with their resolution draft aiming to determine the choice of themes for the Polynesian flag said : « For Polynesia, this flag will symbolise, finally and mostly, for the next generations, the spirit of liberty, of responsibility and initiative of a people facing the future and attached, through traditional values, to its dignity and its development. »<sup>359</sup>. The flag was officially implemented by several orders<sup>360</sup>. As for the anthem « Ia Ora O Tahiti Nui », it was chosen amongst seventeen other pieces, following a competition launched by the Council of Ministers on 27 May 1992<sup>361</sup>, and the selection by a jury presided by the Minister of Culture. The Assembly of French Polynesia definitively adopted this composition as the anthem of the Territory in the session of 10 June 1993<sup>362</sup>. These « national » signs can be considered as the first stage of the will to have a true power of international relations. However, they are not enough by themselves to grant French Polynesia a power of foreign policy.

129- In the previous Statute, the matter of external relations, a « régalien » power, was logically given exclusively to the State. The Statutory Law of 1996 also added that this state exclusivity extended to financial and commercial matters (article 6-1). French Polynesia had nevertheless a few powers in the domain of external relations which constituted exceptions to the general power of the State, that is to say quantitative

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<sup>359</sup> Assembly reporters, declaration of 20/11/1984, internet Source : <http://www.presidence.pf/>

<sup>360</sup> Decree n° 1132 CM of 13/10/1988 ruling the use of the flag and arms of French Polynesia, p.1919, n°42, 20/10/1988 ; Decree n° 863 CM of 22/06/1999 modifying decree n° 1132 CM of 13 October 1988 ruling the use of the flag and arms of French Polynesia, p.1422, n°26, 1999

<sup>361</sup> Decree n° 672 CM of 04/06/1992 modifying decree n° 187 CM of 19/11/1984 organising a competition for the choice of a territorial anthem, p.1144, n°24, 1992

<sup>362</sup> Decision n° 93-60 AT of 10/06/1993 adopting the territorial anthem of French Polynesia, p.1086, n°25, 1993

restrictions on imports<sup>363</sup>, foreign investments, the customs regime of goods on imports and exports, veterinary and phytosanitary rules of police. In addition, the president of the government had limited powers in the domain of external relations and he had at his disposal a « service of international relations » to assist him in the exercise of his powers<sup>364</sup>. The new Organic Law defines the regime relating to the participation of French Polynesia in articles 9, 10, 38, 39 and 40. In terms of international agreements, nothing is fundamentally changed compared to the previous Statute of French Polynesia. A small change was made for when international agreements intervene in matters falling within the remit of French Polynesia. In this particular case, the State agreement that was previously required to negotiate was removed. The President of French Polynesia must submit the draft to the Council of Ministers and inform the Ministry of Foreign Affairs of his intention; the latter can oppose this negotiation in the month following its submission. Signing agreements remains subject to the approval of the Assembly of French Polynesia and to the power granted by the authorities of the Republic.

130- French Polynesia, so far controlled in its functions of foreign policy, will benefit from a very interesting possibility concerning the local maritime life through the new provisions allowing better international economic relations.

#### B) New international roles concerning the maritime domain

131- Several points concerning « foreign policy » can be noticed in the new Statute, including administrative arrangements, conventions on decentralised cooperation, participation in international organisations and international representation. Article 16 of the Organic Law adds that the president of French Polynesia « negotiates administrative arrangements »<sup>365</sup>. Those arrangements are negotiated freely with the administrations of any State or territory of the Pacific. They cover agreements of limited scope or of a technical nature made necessary by the implementation of international

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<sup>363</sup> See a very large case law on the subject, including notably the decision of the State Council n°112025 Union of the importers-wholesalers retailers and traders, 10/ 7 SSR, 17/01/94, Published by Recueil Lebon.

<sup>364</sup> Recommendation of the State Council n°238588 High Commissioner of the French Republic, 28/12/01

<sup>365</sup> L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia.

agreements. Their signing happens after approval by the Council of Ministers. The same goes for the conventions on decentralised cooperation<sup>366</sup>, as stated by article 17 of the Organic Law, concluded with French or foreign territorial regions. The Constitutional Council added that these conventions had to be approved by the Assembly of French Polynesia when they concerned a matter falling within the remit of the Assembly<sup>367</sup>. These two points are not major innovations of the new Organic Law as they were already present in the previous Statute (in articles 40 and 41 of the Organic Law of 1996). Furthermore, by their nature, they only moderately concern the maritime domain.

132- The main attraction of a « foreign policy » for French Polynesia in local maritime affairs is without doubt the economic domain. Indeed, maritime affairs as a whole represent the most important source of resources for French Polynesia, along with tourism, pearl farming, aquaculture and fishing<sup>368</sup>. The development of external relations by French Polynesia leads to an increase in the exchanges abroad and therefore an important benefit for a region that is strongly tied to Metropolitan France economically. If we leave aside the fact that French Polynesia will be able to, with the approval of the authorities of the Republic, become a member or associated member of international organisations of the Pacific, or an observer thereof<sup>369</sup> (this is an important role, but not so much in the maritime domain), there remains the novelty of article 15 of the Organic Law, that is to say, the international representation of French Polynesia abroad. Indeed, French Polynesia will be able to open representations with any State or international organisation. They will be able to devote themselves, like the ones recently opened in China, to the development of commercial relations, to the promotion of tourism to French Polynesia or to the reinforcement of cultural links<sup>370</sup>. However, it

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<sup>366</sup> This notion is defined by Law 92-125 of 06/02/1992 relating to the territorial administration of the Republic, J.O "Lois et Décrets" of 08/02/1992, p.2064

<sup>367</sup> Decision n°29 of the Constitutional Council: « Considering that, because it is not subject to the authorisation of the Assembly of French Polynesia, the decentralised ability, granted to the president of French Polynesia by article 17 of the Organic Law, to negotiate and sign conventions of cooperation in the name of French Polynesia should not apply to a matter pertaining to the competence of the aforementioned assembly without flouting the recognised prerogatives of the deliberative assemblies of the territorial regions (...) », Decision of the Constitutional Council n° 2004-491 DC.

<sup>368</sup> See *La Polynésie Française en 2002*, .

<sup>369</sup> Article 42 of L.O n° 2004-192 of 27/02/2004 giving its autonomy status to French Polynesia.

<sup>370</sup> JEAN PERES, *Le nouveau statut de la Polynésie française*, Conférence « Savoir pour tous », .

appears, as much from the discussions of the National Assembly<sup>371</sup> as the decisions of the Constitutional Council<sup>372</sup>, that these representations cannot have a diplomatic nature, which means that they cannot be embassies. The president of French Polynesia negotiates the opening of these representations and appoints their representatives, after informing the authorities of the Republic and the Assembly of French Polynesia, as stated in article 15 of the new Organic Law.

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<sup>371</sup> See the different stages of adoption of the organic law and the discussions within the National Assembly, Internet Source : <http://www.service-public.pf/theme.php?t=116>

<sup>372</sup> Decision of the Constitutional Council n° 2004-491 DC.



## CONCLUSION

133- By this new Statute, has French Polynesia become, at a maritime level, a true overseas country which governs itself freely and democratically, or is it but another peripheral region, the simple consequence of the decentralization of the French State? From a general point of view, and independently from the maritime domain, the doctrine is torn between the will to show French Polynesia as an entity becoming more and more autonomous, or like a region still in the exclusive hands of the State. Considering this new Statute, and as far as the maritime domain is concerned, one is allowed to remain sceptical of the improvements it has brought. Indeed, the State is ever-present in maritime affairs, the poor relation of the Statute, as the State represents the general frame of mind on maritime legal matters in French Polynesia. Of course, French Polynesia can at last participate in the State police duties within internal waters, it can « legislate » in the coastal domain and finally, it can improve its economic relations abroad through increased international powers. Nevertheless, it is at the end of the day but an insecure possibility of participation, as « country laws » turn out to be regulatory acts, and the international representation is far from having a diplomatic status. One can wonder about the imbalance between the importance of the sea for Polynesians and the powers they have in that respect. However, limiting the benefits of this new organic law to the sole maritime rules would be ignoring the many improvements brought to French Polynesia since February 2004. Nonetheless, only the future can show how French Polynesia will use its new maritime powers.

# Appendix

## FRENCH POLYNESIA PRESENT STATUS

**NOR: DOMX0300085L**

### **LAWS**

**Organic Law No. 2004-192 of 27 February 2004  
relating to the self-governing status of French Polynesia**

Official Journal of the French Republic [JORF – *Journal officiel de la République française*]  
dated 2<sup>nd</sup> March 2004, No. 52, page 4183,

Official Journal of French Polynesia [JOPF – *Journal officiel de la Polynésie française*]  
dated 12<sup>th</sup> March 2004, No. 2 NS, page 102.

After adoption by the National Assembly<sup>373</sup> and the Senate<sup>374</sup>,

After being found consistent with the Constitution<sup>375</sup> by the Constitutional Council<sup>376</sup>,

The following law is enacted by the President of the Republic:

### **TITLE I AUTONOMY**

#### **Article 1**

French Polynesia comprises the Windward Group, the Leeward Group, the Tuamotu and Gambier Archipelago, the Marquesas Islands and the Austral Islands, as well as the surrounding maritime areas.

As an Overseas Country within the Republic, French Polynesia is an overseas authority whose autonomy status is governed by article 74 of the Constitution<sup>377</sup>.

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<sup>373</sup><sup>373</sup> French National Assembly.

<sup>374</sup> French National Senate.

<sup>375</sup> French Constitution.

<sup>376</sup> French National Constitutional Council.

<sup>377</sup> French Constitution.

French Polynesia governs itself freely and democratically through its elected representatives and by way of local referendum, in the manner described in this organic law.

The Republic guarantees the autonomy status of French Polynesia and furthers such autonomy status, in order to durably promote economic, social and cultural development in French Polynesia, in accordance with its own interests, geographical characteristics and identity of its population.

French Polynesia freely determines the distinguishing signs to be displayed at official public events alongside the national emblem and the signs of the Republic. It may create a specific order to recognise the merits of its inhabitants and guests.

## **Article 2**

The State and French Polynesia promote the development of this overseas country and assist the communes<sup>378</sup> in the exercise of their powers.

## **Article 3**

The High Commissioner of the Republic, State Representative<sup>379</sup>, representing each member of the Government, is entrusted with the power of the Republic. He is responsible for national interests, compliance with statutes and international commitments, law and order and administrative control.

## **Article 4**

French Polynesia is represented in Parliament<sup>380</sup> and on the Economic and Social Council of the Republic in the manner provided for in the organic laws.

## **Article 5**

The institutions of French Polynesia are the President, the Government, the Assembly and the Economic, Social and Cultural Council.

## **Article 6**

The communes of French Polynesia, as territorial administrations of the Republic, are freely self-administered in the manner provided for by the Constitution, by this organic law, and by the laws applicable thereto.

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<sup>378</sup> Smallest administrative sub-division in the French system of local Government.

<sup>379</sup> English translation of the title of the representative of France in French Polynesia.

<sup>380</sup> French National Parliament.

## **TITLE II IMPLEMENTATION OF LAWS AND REGULATIONS IN FRENCH POLYNESIA**

### **Article 7**

In the matters falling within the powers of the State, the laws and regulations that are applicable in French Polynesia are those laws and regulations which contain a mention expressly stating so.

Notwithstanding the provisions of the first paragraph, and without prejudice to the provisions which may adapt them to its specific organisation, the laws and regulations relating to the following areas are automatically applicable in French Polynesia:

1° Composition, organisation, operation and responsibilities of the constitutional public authorities of the Republic, of the Council of State<sup>381</sup>, of the 'Cour de Cassation'<sup>382</sup>, of the 'Cour des Comptes'<sup>383</sup>, of the 'Cour des Conflits'<sup>384</sup>, of any national sovereign court, of the Ombudsman and of the Child Advocate;

2° National Defence ;

3° State public property;

4° Nationality, status and legal capacity of persons;

5° Status of State civil servants.

Laws authorising to ratify or approve international commitments and orders of publication related thereto, are also automatically applicable in French Polynesia.

### **Article 8**

Laws and regulations mentioned in article 7 come into force in French Polynesia upon the date they have set, or otherwise, upon the tenth day after their publication in the Official Journal of the French Republic.

Decisions referred to in article 7 are published, for information, in the Official Journal of French Polynesia.

### **Article 9**

The Assembly of French Polynesia is consulted:

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<sup>381</sup> French Administrative Supreme Court.

<sup>382</sup> French Supreme Judicial Court.

<sup>383</sup> A court in charge of examining the accounts of public accountants and public corporations.

<sup>384</sup> A court in charge of determining the jurisdiction for a case.

1° On any Government bill or private member's bill and on draft ordinances which add, amend or repeal provisions specifically relating to French Polynesia;

2° On draft ordinances issued on the basis of article 74-1 of the Constitution;

3° On bills authorising the ratification or approval of international commitments dealing with matters within the powers of French Polynesia.

The Assembly gives its opinion within one month. If the matter is urgent, at the request of the High Commissioner of the Republic, this time-period is reduced to fifteen days. At the expiry of such time-period, the opinion is deemed to have been given.

Outside the period of sessions, the Standing Committee gives its opinion on draft ordinances. It may also be empowered by the Assembly to issue its opinion on Government bills or private member's bills other than the ones which amend this organic law. Opinions are issued within the time-periods provided for in the previous paragraph.

The consultations mentioned in the previous paragraphs must be made, at the latest before the adoption of the Government bill or private member's bill in first reading by the first assembly consulted.

Opinions issued pursuant to this article are published in the Official Journal of French Polynesia.

## **Article 10**

The Government of French Polynesia is consulted on draft orders dealing with regulations which add, modify or repeal provisions specifically relating to French Polynesia.

Prior to their ratification or approval, the Government of French Polynesia is also consulted, on treaties or agreements not mentioned in the first paragraph of article 53 of the Constitution and which deal with matters within the powers of French Polynesia.

The Government gives its opinion within one month. In case of emergency, at the request of the High Commissioner of the Republic, this period is reduced to fifteen days. At the expiry of such time-period, the opinion is deemed to have been given.

Opinions issued pursuant to this article are published in the Official Journal of French Polynesia.

## **Article 11**

Laws, ordinances and orders adopted before this Organic Law has come into force and dealing with matters which, from now on, fall within the powers of the authorities of French Polynesia, may be amended or repealed by the authorities of French

Polynesia, whenever they apply to French Polynesia, in the manner provided for in this Organic Law.

## **Article 12**

I. - When the Constitutional Council has notified that a law enacted after the entry into force of this Organic Law comes within the powers of French Polynesia, whenever it applies thereto, the Assembly of French Polynesia may amend or repeal such law.

II. - The Constitutional Council is referred to by the President of French Polynesia, after a resolution adopted by the Council of Ministers, by the Speaker of the Assembly of French Polynesia implementing a resolution of the Assembly, by the Prime Minister, by the Speaker of the National Assembly or by the Speaker of the Senate. The Constitutional Council informs the other relevant authorities which have the right to refer cases of the case referred to it and of the legal grounds put forward. Such authorities may present remarks within fifteen days.

The Constitutional Council rules within three months.

## **TITLE III POWERS**

### **Chapter I**

#### ***Distribution of powers between the State, French Polynesia and the communes***

## **Article 13**

Notwithstanding any provisions to the contrary, the authorities of French Polynesia exercise power over all matters that do not vest in the State under Article 14 subject to those vested in or exercised by the communes pursuant to this Organic Law.

French Polynesia and the communes exercise their respective powers up to the outer boundary of the territorial sea.

### **Part 1 *Powers of the State***

## **Article 14**

State authorities have power in the following matters:

- 1° Nationality; civil rights; electoral law; civic rights; status and legal capacity of persons and especially civil status records, absence, marriage, divorce, filial status; parental authority; matrimonial regimes, inheritance and gifts;

- 2° Guarantees of public liberties; justice: judicial organisation, jurisdictional assistance, organisation of the profession of lawyer, excluding any other legal or judicial profession, criminal law, criminal procedure, mandatory appointments as a matter of regular procedure, prison public service, reception services or centres for juvenile offenders upon court decision, contentious administrative procedure, judicial costs for administrative and criminal offences, responsibilities of the Ombudsman and of the Child Advocate in the relations between citizens, public administrations and public services;
- 3° Foreign Affairs;
- 4° Defence: import, trade and export of military equipment, weapons and ammunition of all classes; strategic raw materials as defined for the whole territory of the Republic, except liquid and gaseous hydrocarbons; defence and security links and communications in the postal and telecommunications services;
- 5° Immigration control, excluding foreigners' access to the employment market;
- 6° Security and public order, especially law and order; import and export prohibitions related to public order and international commitments ratified by France; regulations on radio frequencies; preparedness measures, development and implementation of operational rescue plans for major hazards and disasters; requisition and co-ordination of public safety resources;
- 7° Currency; credit; exchange; Consolidated Revenue Fund; financial markets; obligations relating to illegal movements of money and money laundering;
- 8° Authorisation for the operation of air services between French Polynesia and any other point located within the territory of the Republic, except for the part of such service located between French Polynesia and any other stopover point located outside the national territory, without prejudice to the provisions of article 21 - I - 6° of the organic law No. 99-209 dated 19 March 1999 relating to New Caledonia; approval of operating schedules and travel charges related thereto; policing and security relating to civil aviation;
- 9° Policing and security of maritime traffic; surveillance of maritime fishing; safety of sea traffic and co-ordination of maritime rescue resources; Vessel French flag registration; security of ships with a gross tonnage exceeding 160 tons and of all passenger ships; implementation of airport elements and facilities of national interest;
- 10° Regulations concerning administration, organisation and powers of communes, of their groupings and statutory bodies; co-operation between communes; control of the decisions of communes, of their groupings and statutory bodies; accounting and financial organisation and budgetary control of such administrations; 'commune' civil service; 'commune' public domain; census of the population;

- 11° State civil and military service; status of other state civil servants; State public domain; public contracts and State public service delegations and its statutory bodies;
- 12° Audio-visual communication;
- 13° University education; research; collation and delivery of national degrees and diplomas; rules applicable to the approved personnel of private educational institutions legally bound by contract to Government bodies for teaching duties, where they extend to such personnel the provisions applicable to the career teaching staff of the public education system, including those relating to conditions of service and cessation of employment, to social measures, to training opportunities and to promotion and advancement measures.

The powers of the State as defined in this article are exercised subject to the powers conferred on the institutions of French Polynesia by the provisions of Part 2 of this chapter and of Title IV, and subject to the participation of French Polynesia in the powers of the State, as defined in Part 3 of this chapter.



## **Part 2**

### ***Specific powers of French Polynesia***

#### **Article 15**

French Polynesia may have missions in any State or in one of its territorial entities or territories acknowledged by the French Republic or in any international organisation of which the latter or in any Pacific international organisation. The President of French Polynesia negotiates the opening of such missions and appoints the representatives. The authorities of the Republic and the Assembly of French Polynesia are kept informed thereof.

#### **Article 16**

Under the conditions defined in article 39, the President of French Polynesia negotiates administrative arrangements with the administrations of any State or territory of the Pacific, in order to promote the economic, social and cultural development of French Polynesia, in compliance with and for the implementation of the international commitments of the Republic.

The President of French Polynesia signs such administrative arrangements which are approved by the Council of Ministers of French Polynesia. They come into effect from their notification to the High Commissioner of the Republic under the conditions laid down in article 171.

#### **Article 17**

In the matters within the powers of French Polynesia, the President of French Polynesia negotiates and signs agreements for decentralised co-operation with French or foreign local administrations, their groupings or statutory bodies, in compliance with the international commitments of the Republic.

After their signature, these agreements are submitted to the Council of Ministers of French Polynesia for approval. They come into effect from their notification to the High Commissioner of the Republic under the conditions laid down in article 171.

#### **Article 18**

French Polynesia may take measures to promote access to salaried employment in the private sector for persons who can prove that they have resided in French Polynesia for a sufficient length of time, or persons who can prove that they have been married, have lived in concubinage or under the civil solidarity pact [*pacte civil de solidarité*] with the aforesaid persons.

Such measures are applied in the same conditions, on the basis of equality of merit, for access to employment in the public service of French Polynesia and of the communes.

French Polynesia may also adopt, in compliance with the provisions of the first paragraph, measures to promote the exercise of a self-employed professional activity, in particular a liberal profession.

Measures taken pursuant to this article must, for each type of professional activity and economic sector, be justified by objective criteria which are directly related to the needs to support or promote local employment. In addition, at the date of their publication, these measures should not affect the individual and collective rights of the natural or legal persons other than the ones mentioned in the first paragraph and who exercised their activity in compliance with the laws and regulations in force at that date.

The conditions of application of this article are determined by decisions provided for in article 140 known as “country laws” [*loi du pays*]. They can especially provide for cases in which periods of time spent outside French Polynesia in order to fulfil the national service, to study or to follow a training or for family, professional or medical reasons are not, for persons who had previously their domicile there, a reason of interruption or suspension of the time limit taken into consideration in order to assess the conditions of residence required in the previous paragraphs.

## Article 19

French Polynesia may subject to declaration transfers *inter vivos* of landed property located on its territory or social rights applicable thereto, except for gifts in direct line or collateral line up to the fourth degree.

In order to protect land ownership and tenure in that it belongs to the cultural heritage of the population of French Polynesia and its identity, and in order to protect or enhance areas of unspoiled nature, French Polynesia may, within two months, exercise its right of first option on landed property or social rights applicable thereto being the subject of the declaration of transfer, provided it pays to the beneficiaries the amount corresponding to the value of the said landed property or social rights. If no agreement may be reached, this amount is set according to the procedure in land expropriation matters.

Provisions of the first two paragraphs are not applicable to transfers carried out for the benefit of persons:

- [*Provisions declared inconsistent with the Constitution by Constitutional Council Decision No.2004-490 DC of 12<sup>th</sup> February 2004*]
- Who can prove that they have resided in French Polynesia for a sufficient length of time, or
- [*Provisions declared inconsistent with the Constitution by Constitutional Council Decision No.2004-490 DC of 12<sup>th</sup> February 2004*]
- [*Provisions declared inconsistent with the Constitution by Constitutional Council Decision No.2004-490 DC of 12<sup>th</sup> February 2004*]

- Who can prove that they have been married, have lived in concubinage or under the civil solidarity pact [*pacte civil de solidarité*] with the aforesaid persons for a sufficient length of time.

They are not applicable to legal persons having their registered office in French Polynesia and controlled, directly or indirectly, by the persons mentioned in the previous paragraph.

The conditions of application of this article are determined by decisions provided for in article 140 known as “country laws” [*loi du pays*]. They can especially provide for cases in which periods of time spent outside French Polynesia in order to fulfil the national service, to study or to follow a training or for family, professional or medical reasons are not, for persons who had previously their domicile there, a reason of interruption or suspension of the time limit taken into consideration in order to assess the conditions of residence required in the fifth paragraph.

## **Article 20**

French Polynesia may set fines for infringement of decisions defined in article 140 and known as “country laws” or for infringement of resolutions of the Assembly of French Polynesia, including flat fines within the framework defined by the criminal procedure code, in compliance with the classification of petty and minor crimes, and not exceeding the maximum penalty for similar infringements set by the statutes and regulations applicable in criminal matters. It may attach to such infringements additional penalties applicable to similar infringements under the statutes and regulations applicable in criminal matters.

French Polynesia may also introduce administrative penalties, in particular regarding tax, customs or economic matters.

Proceeds from such fines shall be paid into the budget of French Polynesia

## **Article 21**

French Polynesia may set prison sentences not exceeding the maximum penalty for similar infringements set by national statutes, for petty crimes against decisions provided for in article 140 known as “country laws”, subject to prior approval of the relevant resolution by law. Until the entry into force of the approval law, only the fines and additional penalties provided for in the resolution, if any, are applicable.

## **Article 22**

French Polynesia may provide for “*contraventions de grande voirie*”<sup>385</sup> to repress damage caused to the public domain for which it is responsible. These penalties may not

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<sup>385</sup> Penalties for damage to the public domain.

exceed the maximum penalty for similar infringements set by the statutes and regulations applicable in “*grande voirie*” matters.

Proceeds from such fines shall be paid into the budget of French Polynesia.

### **Article 23**

The right of negotiated settlement may be regulated by French Polynesia in all administrative, tax, customs and economic matters within its powers. When the settlement relates to facts amounting to an offence and if the settlement causes a public prosecution action to be abandoned, this may occur only after the approval of the Public Prosecutor.

### **Article 24**

The Assembly of French Polynesia sets up any rules applicable to the operation of casinos, gambling clubs, lotteries, raffles and bets in compliance with rules relating to the control and penalties provided for by the State.

### **Article 25**

I. – French Polynesia may set up companies to produce and broadcast audio-visual programmes.

II. – An agreement signed between the ‘Higher Council for Audio-visual Matters’<sup>386</sup>, and the Government of French Polynesia, binds French Polynesia to the audio-visual communication policy.

III. – The Government of French Polynesia is consulted in audio-visual communication matters:

- 1° By the High commissioner of the Republic on any decision under the responsibility of the Government of the Republic and specific to French Polynesia;
- 2° By the ‘Higher Council for Audio-Visual Matters’, on any regulatory or individual decision falling within its powers or concerning the national broadcasting company in charge of designing and scheduling television and radio programmes intended for broadcast overseas, when such decisions involve French Polynesia.

The opinion is deemed to have been given if it has not been issued within one month. This time-period may be reduced, if the matter is urgent, at the request of the High-Commissioner of the Republic or of the Higher Council for Audio-Visual Matters, as appropriate, but shall not be less than forty-eight hours.

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<sup>386</sup> *Conseil supérieur de l’audiovisuel*, a French national body.

## **Article 26**

French Polynesia organises its own training services and its own research services.

## **Article 27**

French Polynesia exercises its powers in compliance with the constraints imposed by national defence.

In this respect, the distribution of powers provided for in this organic law does prevent the State from:

- 1° As far as French Polynesia and its statutory bodies are concerned, taking the measures required to exercise its powers in defence matters, as laid down by statutory provisions applicable to the general organisation of the Nation in times of war and to the requisitions of goods and services;
- 2° Establishing the rules relating to labour law applicable to employees working in State statutory bodies related to national defence;
- 3° Establishing the rules relating to transportation, storage and delivery of oil products required for security and defence missions.

For the implementation of this article, the State may use, as needed, the departments and statutory bodies of French Polynesia.

## **Article 28**

Apart from decisions on advancement in rank, as well as those deriving from disciplinary power regarding sanctions or the first and second groups, when public servants of the State bodies for the administration of French Polynesia are appointed in the administration of the country, decisions concerning their specific position, during the term of their appointment, are made by the authority of French Polynesia on which they depend, and which, in particular, decides on their assignment in said departments and statutory bodies.

## **Article 29**

French Polynesia may set up semi-public companies that associate French Polynesia or its statutory bodies with one or more private persons and, possibly, other corporate bodies, under the conditions provided for by the laws applicable in French Polynesia for the latter. Standard articles of association for such companies are determined by resolution of the Assembly of French Polynesia.

French Polynesia, its statutory bodies or other corporate bodies governed by public law are, as shareholders, entitled to at least one representative on the board of directors or the supervisory board, appointed respectively by the Council of Ministers, the board of directors of the shareholding statutory body or the deliberative assembly of the shareholding legal person concerned.

### **Article 30**

French Polynesia may hold shares in the capital of private companies which provide a public service or a general interest service; for general interest grounds, it may also hold shares in the capital of commercial companies.

Such shareholding shall be the subject of an annual report attached to the administrative accounts of French Polynesia examined annually.

### **Part 3**

#### ***Participation of French Polynesia in the exercise of the powers of the State***

### **Article 31**

In the respect of guarantees granted throughout the national territory for the exercise of public liberties, under the control of the State, the institutions of French Polynesia are authorised to participate in the exercise of the powers it retains in the statutory and regulatory area pursuant to article 14:

- 1° Status and legal capacity of persons, parental authority, matrimonial regimes, inheritance and gifts;
- 2° Search and report of offences; criminal law provisions relating to games of chance;
- 3° Immigration control, exercise of the right of asylum, of removal of foreigners and of movement of citizens of the European Union;
- 4° Audio-visual communication;
- 5° Financial services of postal institutions.

### **Article 32**

I. – Decisions provided for in article 140 known as “country laws” falling within the scope of article 31 are adopted as follows, without prejudice to the provisions of Part 5 of Chapter II of Title IV and of Chapter II of Title VI.

The President of French Polynesia or the Speaker of the Assembly of French Polynesia, forwards the draft Government or private members’ decision provided for in article 140 known as “country law” to the Overseas Minister, who acknowledges receipt thereof without delay; from there on, this Minister and if necessary, other Ministers concerned, suggest to the Prime Minister, within two months, a draft order with a view to either totally or partially approve the draft decision, or deny such approval.

The order which denies approval states the reasons related thereto; it is notified, as appropriate, to the President of French Polynesia or to the Assembly of French Polynesia.

The order which grants the approval is forwarded, as appropriate, to the President of French Polynesia or to the Assembly of French Polynesia. The Assembly of French Polynesia may adopt the draft decision only in the same terms.

Orders mentioned in the second paragraph of this I become null and void if they are not ratified by law (*Provisions declared inconsistent with the Constitution by Constitutional Council Decision No. 2004-490 DC dated 12<sup>th</sup> February 2004*)

II. – Orders of the Council of Ministers of French Polynesia adopted in order to implement decisions provided for in article 140 known as “country laws” as provided for in I of this article and orders of the Council of Ministers covering regulatory matters defined in the previous article, are adopted as follows.

The President of French Polynesia or the Speaker of the Assembly of French Polynesia, forwards the draft Government or private members’ decision provided for in article 140 known as “country law” to the Overseas Minister, who acknowledges receipt thereof without delay; from there on, this Minister and if necessary, other Ministers concerned, suggest to the Prime Minister, within two months, a draft order with a view to either totally or partially approve the draft decision, or deny such approval.

The order which denies approval states the reasons related thereto; it is notified to the President of French Polynesia.

The order which grants the approval is forwarded to the President of French Polynesia. The order may enter into force only after deliberation by the Council of Ministers in the same terms and without amendment.

III. – Decisions provided for in article 140 known as “country laws” and orders of the Council of Ministers referred to in I and II of this article may be respectively amended by a law or ordinance or order which contain a mention expressly stating that same applies to French Polynesia.

IV. – Without prejudice to article 33 and to the third paragraph of article 36, individual decisions adopted pursuant to decisions mentioned in article 140 known as “country laws” and to orders referred to in this article are subject to the hierarchical control of the High Commissioner of the Republic. Their entry into force is subject to their receipt by the High Commissioner of the Republic.

### **Article 33**

Under the regulation enacted by French Polynesia pursuant to article 32, the High Commissioner of the Republic may object to the issuance of residence permits for foreigners by the Government of French Polynesia in the manner and time specified by an order.



## Article 34

I. – French Polynesia may take part in the exercise of police duties falling within the powers of the State in matters relating to the surveillance and occupation of the public domain of French Polynesia, road-traffic policing, maritime traffic policing within the internal waters and public or civil security duties.

For this purpose, career public servants of the territorial administration are appointed by the President of French Polynesia after approval by the High-Commissioner of the Republic and by the Public Prosecutor and after taking the oath before the court of first instance.

The High Commissioner of the Republic or the Public Prosecutor may suspend the agreement, after notice to the President of French Polynesia. These same authorities may withdraw it after consultation with the President of French Polynesia who has five days to give his opinion; at the end of such period, the opinion is deemed to have been given.

II. – Public servants referred to in the second paragraph of I may report offences against regulations relating to surveillance and occupation of the public domain of French Polynesia, road-traffic, maritime traffic within internal waters defined in a list drawn up as provided in II of article 32.

III. – At the request of the High-Commissioner of the Republic, public servants referred to in the second paragraph of I, after approval by the President of French Polynesia, may be associated with public or civil security duties the duration, subject and place of occurrence of which are stated in the request of the High-Commissioner of the Republic.

For this purpose, they are placed under the direct operational authority of the gendarmerie<sup>387</sup> chief or to the public security director, who determine the manner in which they will act.

## Article 35

Decisions provided for in article 140 known as “country laws” may contain, in the same limits and conditions as those defined by the law, provisions allowing public servants and sworn officials of the administration and public departments of French Polynesia, other than those defined in article 34, to search and report offences against decisions defined in article 140 known as “country laws”, resolutions of the Assembly of French Polynesia and regulatory orders of the Council of Ministers, which such administrations and public departments are especially in charge of controlling the implementation thereof.

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<sup>387</sup> State police of a military type.

These officials may report such offences. In investigating such offences they may ask any offender to prove their identity, carry out consignments, carry out samplings, provisional attachment of property, remove products from the marketplace, establish prohibitions and prescriptions, bring offenders before a judicial police officer.

They may also be authorised to pay visits with a judicial police officer being present for that purpose.

The President of French Polynesia appoints these officials after approval by the Public Prosecutor. They take the oath before the court of first instance. The agreement may be removed or suspended after notice to the President of French Polynesia.

Sworn officials of port authorities in charge of port policing may make any report and investigate infringements to regulations these authorities have to apply.

Sworn officials in charge of controlling the Social Security Fund may make any report and investigate infringements to regulations this authority has to apply.

### **Article 36**

The regulation laid down by French Polynesia pursuant to article 31 - 4° and to article 32 complies with the principles defined by the legislation relating to the freedom of communication.

Prior to their communication the Overseas Minister according to the provisions of article 32, the Higher Council for Audio-visual Matters is consulted by the Assembly of French Polynesia, or by the Council of Ministers of French Polynesia, respectively, on draft Government and private members' decisions defined in article 140 known as "country laws" and on draft orders on the Council of Ministers. The opinion is deemed to have been given if no opinion is issued within thirty days. The opinion is published in the Official Journal of the French Republic and in the Official Journal of French Polynesia.

Individual decisions adopted by the authorities of French Polynesia pursuant to the regulation referred to in the first paragraph and which normally fall within the powers of the Higher Council for Audio-visual Matters may be cancelled or reformed by the Higher Council for Audio-visual Matters at the request of the High-Commissioner of the Republic or any person justifying an interest in bringing in an action.

### **Article 37**

I. – The Government of French Polynesia is associated to the development of education contracts between the State and university institutions carrying out their teaching duties in French Polynesia. It is consulted for draft contracts between the State and research organisations established in French Polynesia. It can enter into objective and orientation agreements with these institutions or organisations.

II. – Along with the State, French Polynesia determines the charter of higher education and research in the manner described in the following paragraphs.

The Assembly of French Polynesia deliberates on recommendations for the establishment of training courses and research programmes submitted by the President of French Polynesia or by the High Commissioner of the Republic.

The charter of higher education and research, which, in particular, defines the location of universities and their reception capacities, is the subject of an agreement between the State and French Polynesia.

Failing an agreement, the charter of higher education and research is conducted by the State.

### **Article 38**

In matters falling within the powers of the State, the authorities of the Republic may give authority to the President of French Polynesia to negotiate and sign agreements with one or more states, territories or regional organisations of the Pacific and with regional organisations of the United Nations specialised agencies.

Where the provisions of the first paragraph are not applied, the President of French Polynesia or his representative may be associated with or take part, with the French delegation, in the negotiation and signing of agreements with one or more states, territories or regional organisations of the Pacific and with regional organisations of the United Nations specialised agencies.

The agreements referred to in the first paragraph are submitted for ratification or approval as provided for in articles 52 and 53 of the Constitution.

The President of French Polynesia may be authorised by the authorities of the Republic to represent the latter within international organisations.

### **Article 39**

In matters falling within the powers of French Polynesia, and in compliance with international commitments of the Republic, the President of French Polynesia may, after deliberation by the Council of Ministers, negotiate agreements with any state, territory or international organisation.

The authorities of the Republic which exercise power over foreign policy matters are advised of the intention of the President of French Polynesia to negotiate and, at their request, are represented within the delegation of French Polynesia in the negotiation. They have a one-month period from the notification of the intention to negotiate to object to the negotiation of agreements.

The relevant authorities of the Republic may give authority to the President of French Polynesia to sign agreements in the matters within the powers of the Republic.

These agreements are then submitted to the deliberation of the Assembly of French Polynesia and later submitted for ratification or approval as provided for in articles 52 and 53 of the Constitution.

#### **Article 40**

When the State takes the initiative of negotiating agreements which fall within the powers of French Polynesia, the President of French Polynesia or his representative is associated with and takes part in these negotiations in the French delegation.

#### **Article 41**

As part of the French delegation, the President of French Polynesia or his representative, takes part in negotiations relating to relations between the European Community and French Polynesia.

#### **Article 42**

French Polynesia, with the approval of the authorities of the Republic, may be a member or an associate member or an observer in international organisations of the Pacific.

Further, the President of French Polynesia or his representative, after the approval of the authorities of the Republic, may be associated, with the works of regional organisations of the Pacific in matters within the powers of French Polynesia.

French Polynesia is represented by its President or his representative.

### **Part 4**

#### ***Powers of the communes of French Polynesia***

#### **Article 43**

I. – Within the framework of rules laid down by the State and French Polynesia according to their respective powers, and without prejudice to the powers vested in them at the date of entry into force of this organic law, by statutes and regulations in force, the communes of French Polynesia exercise power over the following matters:

- 1° Municipal police;
- 2° Communes' road system;
- 3° Cemeteries;
- 4° Communes' transportation network;

- 5° Constructions, maintenance and functioning of primary schools;
- 6° Supply of drinkable water, without prejudice for French Polynesia to satisfy its own needs;
- 7° Collection and processing of domestic wastes;
- 8° Collection and processing of plant wastes;
- 9° Collection and processing of waste waters.

II. –Under the conditions determined by the decisions provided for in article 140 known as “country laws” and the regulation laid down by French Polynesia, subject to the assignment of the necessary resources to exercise these powers, the ‘communes’ may take actions in the following matters:

- 1° Economic assistance and aids;
- 2° Social assistance;
- 3° Town planning;
- 4° Culture and local heritage.

#### **Article 44**

In communes where French Polynesia does not provide sanitation services, French Polynesia may give the authority to communes or inter-communal co-operation statutory bodies to prescribe, or may compel said bodies to enable the connection of private effluents which do not meet the requirements of the receiving effluent, to the sanitation networks or to the wastewater treatment facilities they build or manage.

#### **Article 45**

Upon request of municipal councils, French Polynesia may authorise communes to produce and supply electricity within the area of their jurisdiction. This authorisation is not required for communes, which, at the date of enactment of this organic law, produce and supply electricity, within the area of their jurisdiction.

### **Part 5** ***Domain***

#### **Article 46**

The State, French Polynesia and the communes, each as appropriate, exercise their right of ownership over their public domain and their private domain.

## **Article 47**

French Polynesia's domain includes in particular vacant and ownerless property, including securities, shares and cash deposits subject to prescription after the time period provided for by the legislation applicable to the state domain, the property of people who die without heirs or whose estate has been abandoned, the area known as the 'fifty geometrical steps zone'<sup>388</sup> of the Marquesas Islands and all watercourses, lakes, underground waters and springs.

Subject to the rights of the State and of third parties, the maritime public domain of French Polynesia comprises the seashore, the soil and subsoil of internal waters, in particular roadsteads and lagoons and the soil and subsoil of territorial waters.

The provisions of the previous paragraph apply, on the date this organic law is published, subject to any right-of-way corridors necessary for the exercise of the powers of the State as long as such need is justified.

French Polynesia regulates and exercises the right of exploration and the right of exploitation of the living and non-living natural resources of internal waters, in particular roadsteads and lagoons, and soil, subsoil and overlying waters of the territorial sea and of the Exclusive Economic Zone, in compliance with international commitments.

## **Part 6**

### ***Relations between public authorities***

## **Article 48**

The authorities of French Polynesia may delegate to mayors powers in order to take individual measures for the implementation of decisions defined in article 140 known as "country laws" and regulations laid down by these authorities.

Delegation of powers occurs only after approval by the municipal council of the concerned commune and is followed by the assignment of the resources required for the exercise of the powers contained in the delegation.

## **Article 49**

French Polynesia sets the rules relating to public contracts and delegations of public service of communes, their groupings and statutory bodies in compliance with the principle of equal treatment of tenderers and transparency of proceedings.

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<sup>388</sup> Strip of land 81.2 metres wide, stretching inland from the high water mark.

## **Article 50**

In the communes having a town-planning document effective against third parties, the Government of French Polynesia may, through an order adopted on request of or after approval by the municipal council, vest the mayor, acting on behalf of the commune, with the authority either to process and issue individual authorisations of occupation of the land and town-planning certificates, or only issue such authorisations and certificates, in compliance with the laws in force in French Polynesia.

## **Article 51**

Programmes of social housing built, acquired or improved with the financial assistance of the State are the subject of agreements between the State and French Polynesia. These agreements also provide for the information brought to the mayor of the concerned commune about the principles which govern the allotment of the aforesaid housing units.

As a compensation for a contribution in the form of a piece of land, financing or a financial commitment of the communes to achieve the social housing programmes, communes sign specific agreements with the State and French Polynesia. In particular, these agreements define the booking procedures for such housing units.

## **Article 52**

An inter-communal equalisation fund receives a share of the taxes, duties and fees collected for the general budget of French Polynesia.

This share, that may not be lower than 15% of the said resources, is established by an order, after consultation with the Assembly of French Polynesia and the Council of Ministers of French Polynesia, taking into account the respective expenses of French Polynesia and of the communes. When the administrative accounts of French Polynesia show that the proceeds of the taxes, duties and fees actually collected are lower than the proceeds planned in the initial budget, the amount of the difference is registered as a deduction from the base of the inter-communal tax equalisation fund of the year following the one when the administrative accounts were adopted.

The inter-communal tax equalisation fund may also receive subsidies from the State intended for all the communes.

The inter-communal tax equalisation fund is managed by a local finance committee of French Polynesia jointly chaired by the High Commissioner of the Republic and the President of French Polynesia. This committee comprises representatives of commune', of the Government of French Polynesia, of the Assembly of French Polynesia and of the State. Representatives of the territorial authorities represent the majority of the members of the committee.

This committee allocates the resources of the fund between the communes, on the one hand according to the proportional representation of the number of their inhabitants, and on the other hand according to their expenses. It may decide to allocate an allowance to groupings of communes for investment operations or for expenditure in the recurrent section having an inter-communal interest.

An order of the Council of State lays down the conditions under which this article is implemented and especially the conditions for the election of representatives of the communes and of the Assembly of French Polynesia to the local finance committee. It also lays down the conditions according to which the fund provides each commune with a minimum of resources.

### **Article 53**

French Polynesia establishes taxes or duties that are specific to communes, including on services provided.

The rates of such taxes and duties and the manner in which they are collected are determined by a resolution of the municipal council in compliance with the regulations established by French Polynesia.

Within the rules defined pursuant to article 14 - 10°, ‘communes’ may also establish fees for services provided.

### **Article 54**

In order to support their development, French Polynesia may provide financial and technical assistance to communes or their groupings.

French Polynesia may take part in the functioning of municipal departments by making available any staff member of its departments, Minister’s office or statutory bodies under agreements signed between the President of French Polynesia and the communes.

### **Article 55**

When French Polynesia signs an agreement with communes, communal or inter-communal co-operation bodies, after a request or an agreement of their governing bodies for the achievement of collective facilities or the management of public services falling within its powers, the agreement provides for the financial assistance of French Polynesia.

The communes or their groupings may sign an agreement with French Polynesia for the achievement of collective facilities or the management of public services falling within its powers. In that case, works are executed according to the regulations applicable to French Polynesia. The agreement provides for the financial assistance of the ‘communes’.



## **Article 56**

After assent of the Assembly of French Polynesia, the initial domain of the communes of French Polynesia is established by orders which allocate to each of them a part of the domain of French Polynesia.

The domain established in that way may be extended by resolutions of the Assembly of French Polynesia, after assent of the concerned municipal council.

**Part 7**  
***Cultural identity***

**Article 57**

French is the official language of French Polynesia. Its use is imperative for corporate bodies governed by public law, for persons governed by private law who exercise a function of public service and users in their relations with public administrations and departments.

The Tahitian language is a fundamental element of cultural identity. As a factor of social cohesion and a daily communication tool, it is acknowledged and must be preserved, as well as the other Polynesian languages, along with the language of the Republic, in order to guarantee the cultural diversity which makes the wealth of French Polynesia.

The French, Tahitian, Marquesan, Paumotu and Mangarevan languages are the languages of French Polynesia. Natural and legal persons governed by private law use them freely in their deeds and agreements; these may not be considered as null and void because they are not drawn up in the official language.

The Tahitian language is a subject taught during usual school hours in nursery, primary and secondary schools, and higher education establishments.

Upon decision of the Assembly of French Polynesia, the Tahitian language may be replaced in certain schools or educational establishments by one of the other French Polynesian languages.

The study of and teaching methods for Tahitian language and culture are taught at teachers' training establishments.

**Article 58**

A college of experts composed of individuals having acquired special skills in land matters is set up.

Its composition, its organisation and its operation are determined by resolution of the Assembly of French Polynesia, which appoints the members thereof.

This college may be consulted by the President of French Polynesia, by the President of the Assembly of French Polynesia or by the High Commissioner on any issue relating to land ownership and tenure in French Polynesia.

It nominates persons with skills in land ownership and tenure matters for approval as court assessors in land ownership and tenure matters or as legal experts at the general meeting of the judges of the Court of Appeal.

## **Chapter II**

### ***Procedures for the assignment of powers***

#### **Article 59**

The State compensates the expenditure corresponding to the exercise of the new powers granted to French Polynesia through this organic law.

Any net increase for French Polynesia in the expenditure resulting from the powers assigned is accompanied by the concomitant payment by the State of a financial compensation enabling the normal exercise of such powers. The amount of this compensation is determined with reference to the annual expenses made by the State, at the date of the assignment, in matters within its powers; this compensation evolves every year like the comprehensive allowance for the recurrent section allocated to communes.

The expenditure corresponding to the exercise of powers assigned is the subject of an assessment prior to the assignment of said powers. An order lays down the conditions for such assessment. Such expenditure is compensated through a comprehensive compensation appropriation entered in the budget of the State. Every year, the Finance Act specifies the amount of the comprehensive compensation appropriation.

An advisory commission for the assessment of expenditure is created in French Polynesia. It is chaired by a judge from the Territorial Chamber of Accounts of French Polynesia; it comprises a representative of the State, of the Government of French Polynesia and of the Assembly of French Polynesia. It is consulted on the assessment of the expenditure corresponding to the powers assigned.

#### **Article 60**

Movable and immovable property belonging to the State and intended for the exercise of powers of the State assigned to French Polynesia are also assigned to French Polynesia free of charge.

Movable and immovable property belonging to the State and made available to French Polynesia pursuant to agreements entered into under previous laws relating to the assignment of powers are also assigned free of charge.

Leases relating to immovable property rented by the State for the exercise of powers of the State assigned to French Polynesia are assigned free of charge, whether such assignment results from this organic law or from agreements entered into under previous laws relating to the assignment of powers.

These assignments do not involve any indemnification, duty, tax, salary or fee.

French Polynesia replaces the State in its all rights and obligations resulting from agreements and public contracts the State has entered into for the improvement, maintenance and preservation of the above property and for the functioning of the departments.

The State acknowledges such substitutions and notifies them to its co-contracting parties.

## **Article 61**

Departments or parts of departments of the State exclusively in charge of the implementation of a power assigned to French Polynesia by this organic law are assigned to the latter. The procedures and date of assignments are defined by an order.

For any department or part of department, an agreement between the High Commissioner and the President of French Polynesia lays down the conditions of the implementation of such assignments.

## **Article 62**

I. – State public servants exercising their functions in a department or a part of department assigned to French Polynesia pursuant to the provisions of this chapter and who are not yet bound to the latter through statutory or contractual provisions are automatically made available to French Polynesia. The aforesaid State public servants are placed at the disposal of French Polynesia, notwithstanding articles 41 and 42 of law No. 84-16 of 11<sup>th</sup> January 1984 enacting statutory provisions relating to the State Public service. They remain governed by the legislation and regulations that are applicable to them.

II. – However State public servants exercising their functions in departments or parts of departments assigned may, when they are not subject to a rule limiting the duration of their stay in French Polynesia, opt within two years, from the date of entry into effect of the assignment, for the maintenance of their status of State public servant or for the status of public servant of French Polynesia.

If the State public servant chooses the status of public servant of French Polynesia, his application is accepted within a maximum period of two years from the date of receipt, in accordance with the conditions defined by the general status of territorial public servants.

If the State public servant chooses the maintenance of his status of State public servant, he may, within the period defined in the first article of this II:

- 1° Either apply for a long term secondment in a position of French Polynesia in which he exercises his functions; in such a case, he has priority for secondment.  
If the secondment is terminated, at the request of the authority to which the public servant has been seconded and for a cause other than professional inadequacy or disciplinary grounds, the public servant concerned is reinstated to a position of the

State provided there are positions available. When no position is available, the authority which terminated the secondment keeps paying him, at the latest until the date the secondment was to end;

- 2° Or ask to be appointed to a State position; the application is accepted within a maximum period of two years from the date of receipt subject to available positions. The President of the Government may be consulted to obtain an opinion. When no position is available, the public servant remains placed at the disposal of French Polynesia. The public servant concerned has six months to confirm or modify his initial option. After this period, he is deemed to have confirmed this option. If the public servant modifies his initial option, the request is accepted within the year following this new option.

III. – Public servants who did not use their right of option within the time-period defined in II are deemed to have chosen to maintain their status of State public servant and to have requested their secondment according to the conditions defined in II - 1°.

Public servants who have chosen, within the time-period defined in II, to maintain their status of State public servant without having used the right of option defined in II are deemed, after the expiry of the relevant time-period, to have requested their secondment according to the conditions defined in II - 1°.

## **TITLE IV THE INSTITUTIONS**

### **Chapter I *The President and the Government of French Polynesia***

#### **Part 1 *Powers and responsibilities of the President and of the Government***

#### **Article 63**

The Government of French Polynesia is the executive body of French Polynesia; it conducts the policy of French Polynesia.

It has the administration of French Polynesia at its disposal.

It is responsible to the Assembly of French Polynesia in accordance with the terms and procedures set out in article 156.

#### **Article 64**

The President of French Polynesia represents French Polynesia. He supervises the action of the Government.

He enacts decisions defined in article 140 known as “country laws”.

He signs the decisions adopted by the Council of Ministers.

The President of French Polynesia is responsible for the implementation of the decisions defined in article 140 known as “country laws” and of resolutions of the Assembly of French Polynesia and of its Standing Committee. He has power to make regulations for the implementation of decisions of the Council of Ministers.

The President of French Polynesia is the head of the administration of French Polynesia. Subject to the provisions of article 93, he makes appointments to all positions in the administration of French Polynesia, except for those falling within the powers of the President of the Assembly of French Polynesia.

Subject to the provisions of article 90, the President of French Polynesia adopts non-regulatory decisions necessary for the implementation of decisions defined in article 140 known as “country laws”, resolutions and regulations of the Assembly of French Polynesia.

The President of French Polynesia is the authorising officer of the budget of French Polynesia.

The President of French Polynesia may delegate his authorising officer powers. The President of French Polynesia may send a requisition to the accountant of French Polynesia under the conditions set by article LO 274-5 of the ‘Code of Financial Courts’, but may not delegate this power.

#### **Article 65**

The President of French Polynesia is responsible for the publication in the Official Journal of French Polynesia of the decisions falling within the powers of the institutions of French Polynesia.

#### **Article 66**

Decisions of the President of French Polynesia are counter-signed by the Ministers responsible for their implementation, except those defined in articles 39, 65, 73 and 81.

#### **Article 67**

The President of French Polynesia may delegate some of his powers to the Vice-President and to the Ministers.

#### **Article 68**

The High Commissioner of the Republic informs the President of French Polynesia of measures taken in law and order matters and internal security matters.

The President of French Polynesia is also associated with the preparation and implementation of measures taken by the High Commissioner relating to the co-ordination and requisition of resources for civil security matters.

## **Part 2**

### ***Election of the President***

#### **Article 69**

The President of French Polynesia is elected by secret ballot by the members of the Assembly from their numbers.

The President of French Polynesia may also be elected by the members of the Assembly from outside their numbers if at least one quarter of the representatives at the Assembly of French Polynesia proposes his candidacy; each representative may propose one candidate only. In such a case, candidates must meet the requirements for eligibility at the Assembly of French Polynesia. In case of doubt on the eligibility of a candidate, the High Commissioner of the Republic may approach the administrative court, which has forty-eight hours to decide.

The Assembly of French Polynesia may validly carry out the election only if three-fifths of the members are present. If this quorum is not reached, the meeting is held automatically three days later, not counting Sundays and public holidays, whatever the number of members present. Voting is individual.

Candidacies are given to the President of the Assembly of French Polynesia on the fifth day before the planned election date at the latest. Each candidate makes a policy statement to the Assembly before the opening of the first ballot.

The President is elected by an absolute majority of the votes of the members of the Assembly. If this absolute majority is not reached on the first ballot, a second ballot is held. Only the two candidates who received the greatest number of votes in the first ballot, account being taken of any withdrawal of candidates with more votes, may stand in the second ballot. In the event of a tie in the votes on the second ballot, the oldest candidate is elected.

#### **Article 70**

The President of the Assembly of French Polynesia announces the results of the election of the President of French Polynesia and forwards them immediately to the High Commissioner.

The results of the election of the President of French Polynesia may be challenged by any Representative at the Assembly of French Polynesia, by any candidate to the election or by the High-Commissioner, before the Council of State which rules on the dispute within five days from said proclamation.

#### **Article 71**



The election of the President of French Polynesia takes place within fifteen days following the opening of the first session of the Assembly of French Polynesia, as provided for in article 118.

In the event of a vacancy or after the passing of a vote of no confidence, the Assembly of French Polynesia elects the President of French Polynesia within fifteen days from the occurrence of the vacancy or from the passing of the vote of no confidence. If the Assembly is not in session, it automatically meets in extraordinary session.

Until the election of the new President of French Polynesia, the Government deals with routine business.

## **Article 72**

The President of French Polynesia remains in office until the expiry of the term of office of the Assembly that elected such President, subject to the provisions of the second paragraph of article 74 and of articles 75, 77, 80 and 156.

## **Part 3**

### ***Composition and formation of the Government***

## **Article 73**

Within five days following his election, the President of French Polynesia notifies the High Commissioner and the President of the Assembly of French Polynesia that he has made an order appointing a Vice-President to act on the President's behalf in the event of absence or incapacity, appointing the other Ministers and assigning them their respective portfolios. The President of the Assembly of French Polynesia immediately notifies the Representatives at the Assembly of French Polynesia of such order.

Should the President of French Polynesia not give notification of such order within the above-mentioned time-period, the President is considered as having resigned. The President of the Assembly of French Polynesia gives formal acknowledgement of such resignation.

The appointment of the Vice-President and the other Ministers takes effect from the notification of the order referred to in the first paragraph.

The responsibilities of each Minister are determined by order of the President of French Polynesia, which is communicated to the High Commissioner and to the President of the Assembly of French Polynesia

## **Article 74**

The President of French Polynesia and the other members of the Government must meet the conditions for election of Representatives to the Assembly of French Polynesia.

The President of French Polynesia or any member of the Government, who, for reasons arising during his term of office, is in breach of the provisions of the first paragraph or is disqualified as a voter or eligible person, is declared to have resigned by order of the High Commissioner.

### **Article 75**

The President of French Polynesia and other members of the Government of French Polynesia are subject to the rules regarding conflicts of interest applicable to Representatives at the Assembly of French Polynesia.

The functions of the President of French Polynesia or of a member of the Government are also incompatible with the functions and activities referred to in articles LO 143, LO 145, LO 146 and LO 146-1 of the Electoral Code<sup>389</sup>.

For the implementation of the above provisions of the Electoral Code, the word: “député” (*member of the French National Assembly*) is replaced by the words: “membre du gouvernement de la Polynésie française” (*member of the Government of French Polynesia*).

### **Article 76**

Neither the President of French Polynesia nor any member of the Government of French Polynesia may, while in office, accept membership of a board of directors or board of trustees or any consulting duty in any of the bodies, companies or businesses referred to in Article L.O. 146 of the Electoral Code. Such prohibition does not apply when the President of French Polynesia or any member of the Government sits as the representative of French Polynesia or as the representative of a territorial statutory body and when no payment is made for such duties.

### **Article 77**

If the President of French Polynesia is, when elected, or if the Vice-President or any of the Ministers is, when appointed, in any situation of conflict of interest as described in articles 75 and 76, they must state their choice to the High Commissioner within one month of taking office.

If the cause of the conflict of interest has arisen after the election or appointment, the right of option provided for in the previous paragraph is open for the month following the occurrence of the reason for the conflict of interest.

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<sup>389</sup> A French national statute.

Should such option not be taken within the time specified, the President of French Polynesia, the Vice-President or the Minister concerned is deemed to have resigned from office as President or member of the Government of French Polynesia.

Any option so taken or lack of option so taken is notified by order of the High Commissioner. Such order is notified to the President of French Polynesia, to the President of the Assembly of French Polynesia and, if necessary, to the member of the Government concerned.

### **Article 78**

When a member of the Assembly has vacated a seat in the Assembly of French Polynesia on being elected President of French Polynesia or appointed as Vice-President of the Government or as a Minister and subsequently relinquishes his duties in the Government of French Polynesia, such member returns to his original seat at the Assembly of French Polynesia to replace the Assembly member elected in the following position on the same list.

### **Article 79**

I. – The President of French Polynesia or the member of the Government of French Polynesia who is a public servant at the time of his election or appointment is placed outside the employing administration as provided for in the relevant regulations. Subject to the provisions of article 78, such member can, upon leaving office, be reinstated on request, possibly as a supernumerary, to the administration he belonged to prior to appointment to the Government of French Polynesia or if, being governed by private or public law, such member is employed by a business or a company belonging to the public sector.

II. – The President of French Polynesia or the member of the Government of French Polynesia who is a salaried employee at the time of his appointment may benefit from a suspension of his employment contract. Such suspension is automatically granted when the salaried employee proves he has at least one year of seniority in the business, at the time of his appointment.

### **Article 80**

The President of French Polynesia gives notice of the resignation of the Government of French Polynesia to the President of the Assembly of French Polynesia, who formally acknowledges such resignation and immediately notifies the High Commissioner thereof.

In the event of the resignation or death of the President of French Polynesia or when the President is absent or unable to act, and this is acknowledged by the Council of Ministers, for more than three months following the start of the Vice-President's

interim duties, the Government of French Polynesia is automatically considered to have resigned and is replaced as provided for in articles 2 and 3 of this chapter.

### **Article 81**

Any resignation of a Minister is submitted to the President of French Polynesia, who officially acknowledges such resignation and informs the President of the Assembly of French Polynesia and the High Commissioner thereof.

Any change in the composition of the Government or in the allocation of portfolios within the Government is decided by order of the President of French Polynesia. Such order is notified to the High Commissioner and to the President of the Assembly of French Polynesia. The appointment of new Ministers and the assignment of the Ministers to new responsibilities take effect only from the date of such notification. If the composition of the Government is not consistent with the provisions of article 73, the President of French Polynesia has fifteen days from the date of notification to comply with these provisions and to notify the order to the High Commissioner and to the President of the Assembly of French Polynesia. Otherwise, the Government is considered as having resigned and the provisions of article 74 are applied.

### **Article 82**

Appeals against orders defined in articles 73, 74, 77 and 81 are laid down before the Council of State, which considers the issue as a contentious matter. They are suspensive, except in cases referred to in articles 73 and 81 or when the President of French Polynesia or any other member of the Government of French Polynesia is automatically declared to have resigned after a criminal conviction against him has become final and then automatically leads to a loss of civil and political rights, and family rights.

## **Part 4**

### ***Rules of procedure***

### **Article 83**

The Government of French Polynesia meets as a Council of Ministers in the capital of French Polynesia. The President of French Polynesia calls meetings of the Council. The Council of Ministers may organise certain sessions at another venue.

The meetings of the Council of Ministers are chaired by the President of French Polynesia or by the Vice-President, or, in the absence of the latter, by a minister appointed for this purpose by the President of French Polynesia.

The Council of Ministers may validly deliberate only on matters appearing on the agenda.

#### **Article 84**

The President of French Polynesia sets the agenda of the Council of Ministers. He sends a copy thereof to the High Commissioner before the meeting. Except in emergencies, such copy must arrive at the High Commissioner's office at least twenty-four hours before the meeting.

When the opinion of the Government of French Polynesia is requested by the Overseas Minister or by the High Commissioner, the relevant matters are included in the agenda of the first Council of Ministers meeting following receipt of such request.

The High Commissioner addresses the Council of Ministers upon the request of the Overseas Minister, when the matters referred to in the previous paragraph are to be considered by the Council of Ministers.

In any other cases, with the agreement of the President of French Polynesia, the High Commissioner may address the Council of Ministers.

#### **Article 85**

The meetings of the Council of Ministers are not open to the public. Information thereon is provided through official notices.

#### **Article 86**

The President of French Polynesia and the other members of the Government of French Polynesia, in the same way as public servants or public service employees and the staff who assist them, must observe the confidentiality of any information they may have acquired in the course of their duties.

#### **Article 87**

The President of French Polynesia and the other members of the Government of French Polynesia receive a monthly allowance in an amount set by the Assembly of French Polynesia with reference to the salary of the public servants working in the French Polynesia. The Council of Ministers sets the conditions for the reimbursement of travel and living expenses incurred by the President of French Polynesia and the other members of the Government in their official duties, sets the amount of an annual fixed-rate entertainment allowance and also determines the social security benefits regime.

The President of French Polynesia and the other members of the Government of French Polynesia receive their allowance for six months after ceasing their functions, unless the provisions of article 78 have been applied to them or unless they have resumed paid employment.

## **Article 88**

The Assembly of French Polynesia approves the appropriations necessary for the operation of the Government of French Polynesia. These appropriations are mandatory expenditure.

**Part 5**  
***Responsibilities of the Council of Ministers and of the Ministers***

**Article 89**

The Council of Ministers is collegially responsible for matters within the powers of the Government, as defined in this part.

The Council of Ministers establishes draft decisions provided for in article 140 known as “country laws”, after consultation with the High Council of French Polynesia, as well as other draft resolutions to be submitted to the Assembly of French Polynesia or to its Standing Committee.

The Council of Ministers adopts the regulations required for the implementation of decisions provided for in article 140 known as “country laws” as well as other resolutions of the Assembly of French Polynesia and of its Standing Committee.

The Council of Ministers also adopts orders relating to the participation of French Polynesia in the exercise of the powers of the State provided for in article 31.

**Article 90**

Subject to the jurisdiction of the decisions provided for by article 140 known as “country laws”, the Council of Ministers sets the rules applicable to the following matters:

- 1° Establishment and organisation of departments, statutory bodies and public interest groupings of French Polynesia;
- 2° Teaching in the schools under the responsibility of French Polynesia;
- 3° Local language teaching in all educational establishments;
- 4° Scholarships, grants, bonuses or awards for contests or competitions, special aids and teaching allowances paid out of the budget of French Polynesia;
- 5° General organisation of trade shows and wholesale markets;
- 6° Prices, tariffs and domestic trade;
- 7° Tariffs and tax assessment and tax collection rules for services provided;
- 8° Import quotas;
- 9° Certification of private aerodromes;

10° Opening, organisation and scheduling of competitive examinations for admission to employment in the public service and public institutions of French Polynesia; implementation of pay scales for public servants of French Polynesia; remuneration scale for the personnel of ministerial departments;

11° Safety of sea and internal waters traffic, *[provisions declared inconsistent with the Constitution by Constitutional Council Decision No.2004-490 DC of 12<sup>th</sup> February 2004]*; piloting of ships;

12° Ship driving, ship registration, nautical activities;

13° *[Provisions declared inconsistent with the Constitution by Constitutional Council Decision No.2004-490 DC of 12<sup>th</sup> February 2004]*;

14° Establishment of the legal time and of the seasonal legal time;

15° Road traffic;

16° Codification of the regulations of French Polynesia and updating of the codes;

17° Ceilings of remuneration subject to contribution and contribution rates for the financing of the social security benefits regime;

18° Amount of the social security benefits for the various social security regimes.

## **Article 91**

Within the limits of the powers of French Polynesia, the Council of Ministers:

- 1° Establishes, regulates and sets up the rates applicable to services provided by organisations representing economic and cultural interests in French Polynesia;
- 2° Establishes, regulates and sets up rates applicable to services provided by organisations representing the interests of authors, composers and publishers;
- 3° Authorises the signing of agreements to be executed with public service managers and establishes the conditions applicable thereto;
- 4° Determines the nature of and rates applicable to the services provided by public service departments acting as public corporations and to transfers of substances, equipment and materials;
- 5° Approves the rates and fees applied by the Post and Telecommunications Office of French Polynesia;
- 6° Assigns radio frequencies within the powers of French Polynesia;
- 7° Establishes the rates applicable to the management of radio frequencies within the powers of French Polynesia;



- 8° Establishes programmes of research on and processing of statistical data;
- 9° Issues air service licences of airlines established in French Polynesia, issues the corresponding operating permits for international flights other than those mentioned in article 14 - 8° and approves the corresponding operating schedules and international air travel charges related thereto, in compliance with the international commitments of the Republic;
- 10° Authorises foreign investments;
- 11° Authorises concessions for exploration and exploitation rights over natural marine resources;
- 12° Determines the administrative rights-of-way for the public land domain and public construction works of French Polynesia subject to the conditions and within the limits set by the Assembly of French Polynesia;
- 13° Approves the opening of territorial aerodromes to public air traffic;
- 14° Approves constitutive agreements of public interest groupings in which French Polynesia or its public statutory bodies take part;
- 15° Establishes the conditions of supply, storage and delivery as well as the prices of liquid and gaseous hydrocarbons;
- 16° Determines the purpose and the terms of execution or exploitation arrangements for public construction works and public works;
- 17° Prioritises the works listed in the budget of French Polynesia;
- 18° Makes public interest and assignability orders when expropriation is pursued on behalf of French Polynesia;
- 19° Adopts measures relating to the management and disposal of the public heritage and public domain-related interests of French Polynesia under the conditions and within the limits set by the Assembly of French Polynesia;
- 20° Exercises the right of first option provided for in article 19;
- 21° Accepts or refuses donations and legacies to French Polynesia;
- 22° Gives authority to the President of French Polynesia, or a Minister especially appointed for this purpose, to enter into agreements for loans, including bond loans or loan security, within the commitment ceilings set by the budgetary resolutions of the Assembly of French Polynesia;
- 23° Invests French Polynesia's unassigned funds and authorises the investment of the unassigned funds of its statutory bodies in French Government securities or in French Government-backed securities;

- 24° Within the limit of the budgetary appropriations voted by the Assembly of French Polynesia, authorises French Polynesia to hold shares in the capital of the companies mentioned in article 30 and in the capital of semi-public companies, including credit institutions governed by the monetary and financial code; authorises loan agreements or current account advances to said companies;
- 25° Decides to institute proceedings or to defend a matter before the courts on behalf of French Polynesia, including proceedings instituted against resolutions of the Assembly of French Polynesia or of its Standing Committee; settles disputes subject to the provisions of article 23;
- 26° Creates the offices and appoints officers of the law;
- 27° Issues work permits and professional membership cards for foreigners;
- 28° Authorises the opening of gambling houses and casinos under the conditions set by article 24;
- 29° Ascertains the state of natural disaster.

## **Article 92**

The Council of Ministers may delegate to the President or to the relevant Minister the power to make decisions in the following fields:

- 1° Management of the public heritage and domain-related interests of French Polynesia;
- 2° Acceptation or refusal of donations and legacies to French Polynesia;
- 3° Court proceedings to institute or support on behalf of French Polynesia and dispute settlement;
- 4° Certification of private aerodromes;
- 5° Codification of regulations of French Polynesia and annual updating of the codes;
- 6° Issuing of work permits and professional membership cards for foreigners.
- 7° Priority of the works listed in the budget of French Polynesia;
- 8° Fishing licences;
- 9° Establishment of the offices and appointments of officers of the law;
- 10° Investment of the unassigned funds mentioned in article 91 – 23°;
- 11° Assignment of radio frequencies.

### **Article 93**

The Council of Ministers appoints the Government Secretary General, the Deputy Secretaries General, the heads of departments, the directors of boards or public statutory bodies of French Polynesia, the representatives of the Government of French Polynesia to the above boards or bodies and to public interest groupings. They are removed in the same way. These posts are subject to the decision of the Government of French Polynesia.

Within the statutes of these boards, the Council of Ministers also appoints the representative(s) of French Polynesia to the Supervisory Board of the 'Overseas Currency Issuing Institute',<sup>390</sup> the director and the accountant of the Social Security Fund as well as specific collectors and public accountants from departments and public statutory bodies of French Polynesia, except the public accountant, representative of the State acting as paymaster of French Polynesia.

### **Article 94**

For infringements of the regulations it enacts in the matters within its powers, the Council of Ministers may set administrative penalties as well as flat fines, within the framework defined by the criminal procedure code, and petty offence penalties, which shall not exceed the maximum penalty for similar infringements under the laws and regulations applicable in criminal matters. Proceeds from such fines are paid into the budget of French Polynesia.

### **Article 95**

The individual responsibilities of the Ministers are exercised by delegation from the President of French Polynesia and in accordance with the decisions made by the Council of Ministers. Each Minister is responsible to the Council of Ministers for the management of the business and, if necessary, for the functioning of the administrative departments for which he is responsible; he shall keep the Council of Ministers regularly informed thereof.

### **Article 96**

The President of French Polynesia and the other members of the Government directly send to the heads of departments of French Polynesia and, pursuant to the agreements mentioned in article 169, to the heads of the State departments, all the necessary instructions for the execution of the tasks that they assign to such departments. They supervise the implementation of such tasks.

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<sup>390</sup> *Institut d'émission d'outre-mer*: this institution has the same role as a local central bank.

They may, under their own supervision and responsibility, delegate their powers of signature to the persons in charge of the departments of French Polynesia or of State departments or to the members of their ministerial office.

### **Article 97**

The Council of Ministers is consulted by the Overseas Minister or by the High Commissioner on the following issues or in the following matters:

- 1° Preparation of operational rescue plans necessary to deal with major hazards and disasters and co-ordination and requisition of public safety resources;
- 2° Air service within the powers of the State;
- 3° Regulation on immigration control and issuing of residence permits;
- 4° Establishment, discontinuation of the communes and their groupings, modification of the territorial boundaries of communes, associated communes and groupings of communes; transfer of the chief-town of communes and associated communes;
- 5° Appointment of the public accountant, representative of the State, acting as the paymaster of French Polynesia.

The Council of Ministers has one month to give its opinion. At the request of the High Commissioner, in case of emergency this period is fifteen days.

The provisions of this article are not applicable either to Government bills or private members' bills relating to the above-mentioned issues and matters, or to draft ordinances relating to such issues and matters.

### **Article 98**

The Council of Ministers may express wishes on matters within the powers of the State. These wishes are published in the Official Journal of French Polynesia.

### **Article 99**

The Council of Ministers is informed of draft international commitments within the powers of the State or relating to the movements of persons between French Polynesia and foreign countries.

### **Article 100**

The Council of Ministers is informed of the decisions made by the authorities of the Republic in monetary matters.

It receives the budget document, and appendices thereto, of each commune of French Polynesia, after adoption by the municipal council.

### **Article 101**

An advisory committee on credit to the Council of Ministers is established.

This committee is composed in equal proportions of:

- 1° Representatives of the State;
- 2° Representatives of the Government of French Polynesia;
- 3° Representatives of the banking and financial institutions carrying on an activity in French Polynesia;
- 4° Representatives of the professional and trade union organisations concerned.

An order determines the organisation and operational procedures of the committee.

## **Chapter II** ***The Assembly of French Polynesia***

### **Article 102**

The Assembly of French Polynesia meets to deal with the business of French Polynesia through resolutions. The Assembly of French Polynesia exercises the powers of the community within the domain of the law.

All the matters within the powers of French Polynesia fall within the powers of the Assembly of French Polynesia, except for those assigned by this organic law to the Council of Ministers or to the President of French Polynesia.

The Assembly of French Polynesia approves the budget and accounts of French Polynesia.

The Assembly of French Polynesia controls the action of the President and of the Government of French Polynesia.

## **Part 1** ***Composition and formation***

### **Article 103**

The Assembly of French Polynesia is elected by direct universal suffrage.



## **Article 104**

The Assembly of French Polynesia consists of fifty-seven members elected for five years and who may be re-elected. It is renewed completely.

The powers of the assembly of French Polynesia expire upon the first meeting of the newly-elected assembly pursuant to the provisions of the first paragraph of article 107 - I. Such provision is not applicable in the event of dissolution.

French Polynesia is divided into electoral districts. Each district has a minimum representation figure. This minimum is three seats. Seats are apportioned in the following districts as follows:

- 1° The electoral district of the Windward group consists of the following communes: Arue, Faaa, Hitiaa O Te Ra, Mahina, Moorea-Maiao, Paea, Papara, Papeete, Pirae, Punaauia, Taïarapu-Est, Taïarapu-Ouest and Teva I Uta. It elects thirty-seven representatives;
- 2° The electoral district of the Leeward group consists of the following communes: Bora Bora, Huahine, Maupiti, Tahaa, Taputapuatea, Tumaraa and Uturoa. It elects eight representatives;
- 3° The electoral district of the West Tuamotu group consists of the following communes: Arutua, Fakarava, Manihi, Rangiroa and Takaroa. It elects three representatives;
- 4° The electoral district of the Gambier and East Tuamotu group consists of the following communes: Anaa, Fangatau, Gambier, Hao, Hikueru, Makemo, Napuka, Nukutavake, Pukapuka, Reao, Tatakoto and Tureia. It elects three representatives;
- 5° The electoral district of the Marquesas group consists of the following communes: Fatu Hiva, Hiva Oa, Nuku Hiva, Tahuata, Ua Huka and Ua Pou. It elects three representatives;
- 6° The electoral district of the Austral group consists of the following communes: Raivavae, Rapa, Rimatara, Rurutu and Tubuai. It elects three representatives.

The boundaries of the communes to which the preceding provisions refer are those which result from the provisions in force at the date of enactment of this Organic Law.

## **Article 105**

I. - The election of the Representatives at the Assembly of French Polynesia is carried out, in each district, through a single party-list vote without addition or deletion of names and without modification of the order in which names are listed.

The list which received a majority of expressed votes is allotted a number of seats equal to the third of the number of vacant seats rounded up to the nearest integer.

Once such allotment has been made, the other seats are distributed between all the lists according to the proportional representation system by using the highest average method.

If several lists have the same average for the allotment of the last seat, such seat is allotted to the list which obtained the highest number of votes. Should the number of votes be the same, the seat is allotted to the oldest of the candidates likely to be declared elected.

II. - Only the lists which received at least 3% of expressed votes are eligible for seat allotment.

Seats are allotted to candidates according to the order of presentation on each list.

### **Article 106**

Each list is composed alternately of a candidate of each sex.

Each list comprises a number of candidates equal to the number of vacant seats, increased by the same number as the number of vacant seats, within the limit of ten.

No one may be a candidate on more than one list.

### **Article 107**

I. - Elections for the complete renewal of the Assembly of French Polynesia are organised within two months before the expiry of the term of office of the outgoing members.

They are organised within three months following the complete cancellation of the electoral operations, the resignation of all the members of the Assembly or the dissolution of the Assembly. Such time-period starts, either from the reading of the order of the Council of State, or from the receipt of the resignations by the President of the Assembly, or from the publication of the order of dissolution in the Official Gazette of the French Republic.

Electors are called to vote by an order. Such order is published in the Official Journal of French Polynesia at least four weeks before the date of the ballot.

II. - When the seat of a Representative at the Assembly of French Polynesia is vacant for whatever reason, such vacancy is filled by the candidate coming immediately after the last elected representative on the list which the outgoing member comes from.

When the implementation of this rule does not fill a vacancy, within three months a by-election is carried out, under a single-ballot uninominal majority poll when one seat is vacant, a majority list poll when two seats are vacant, and under the provisions of



article 105 when three seats or more are vacant. New representatives are elected for the remaining term of office.

However, no by-election may take place within 6 months before the normal expiry of the term of office of the Representatives at the Assembly of French Polynesia.

Electors are called to vote by an order of the High Commissioner after consultation with the President of French Polynesia. The order is published in the Official Journal of French Polynesia at least four weeks before the date of the ballot.

### **Article 108**

Persons older than twenty-one years of age, in possession of their civil and political rights, not disqualified by law as voters and registered on an electoral roll in French Polynesia or proving they meet the conditions for such registration at the date of the ballot, may be elected to the Assembly of French Polynesia.

### **Article 109**

I. - The following persons may not be elected to the Assembly of French Polynesia:

- 1° For one year from the judicial decision notifying ineligibility, the President and the members of the Assembly, the President of French Polynesia and the others members of the Government of French Polynesia who did not lodge one of the statements provided for in Title I of Act No. 88-277 of 11<sup>th</sup> March 1988 relating to the financial transparency of the politic life;
- 2° Persons deprived of their eligibility right by a conclusive judgement (*res judicata*) pursuant to the laws which authorise such deprivation;
- 3° High Commissioners of the Republic, Secretaries General, Deputy Secretaries General of the High Commissioner's Office, Principal Private Secretaries to the High Commissioner and heads of administrative subdivisions holding office or having held office in French Polynesia for less than three years;
- 4° Persons declared ineligible pursuant to article L. 118-3 of the electoral code;
- 5° The Ombudsman and the Child Advocate, except if they held the same office before their appointment.

II. – In addition, the following persons may not be elected as members of the Assembly of French Polynesia if they hold office in French Polynesia or if they have held office for less than six months:

- 1° Judges from administrative courts and from judicial courts;
- 2° Members of the State Inspection and Control bodies;

- 3° Directors and heads of State departments;
- 4° The Government Secretary General of French Polynesia, and the Secretaries General of institutions; general directors, general inspectors, inspectors, directors, deputy directors of French Polynesia or of one of its statutory bodies and the Principal Private Secretary to the President of French Polynesia.

III. – Exclusively in the electoral district where they hold or have held office for less than six months, the following persons may not be elected as members of the Assembly of French Polynesia:

- 1° Officers of the Army, the Navy, the Air Force, and the staff of the ‘Gendarmerie’ in post in French Polynesia;
- 2° Civil servants of the police corps in post in French Polynesia;
- 3° Heads of administrative districts of French Polynesia;
- 4° Public servants and accountants of French Polynesia acting as civil servants employed for the assessment, collection and recovery of direct or indirect taxes and for the payment of public expenditure of any nature.

#### **Article 110**

Employers must grant to their employees who are candidates to the Assembly of French Polynesia enough time to participate in the election campaign within the limit of ten working days.

Upon request of the person concerned, the duration of the leave is deducted from the annual paid leave within the limit of the number of days to which he is entitled at the date of the ballot. When they are deducted from the annual paid leave, days of leave are not paid; they are compensated for as agreed with the employer.

The duration of these leaves are considered equivalent to a period of actual work for the determination of the rights to paid leaves and seniority rights.

#### **Article 111**

I. – The position of Representative at the Assembly of French Polynesia is incompatible:

- 1° With the office of President of French Polynesia or of member of the Government or member of the Economic, Social and Cultural Council;
- 2° With the office of member of an assembly or of member of an executive in an authority having a specific status ruled by the first paragraph of article 72 of the Constitution, of an authority mentioned in the last paragraph of article 73 of the Constitution, of another overseas authority ruled by article 74 of the Constitution or

of the authority ruled by Title XIII of the Constitution, Such functions are also incompatible with the office of member of a general council<sup>391</sup>, of member of a regional council<sup>392</sup>, of member of Paris Council<sup>393</sup> or of member of the Assembly of Corsica<sup>394</sup>;

- 3° With the functions of professional soldier or similar categories in post or serving beyond the legal duration;
- 4° With the office of judge of administrative courts or judicial courts and with non-elective public functions;
- 5° With the office of director or chairman of statutory bodies, when such functions are remunerated.

II. – A Representative at the Assembly of French Polynesia may not cumulate his office with more than one of the following offices: member of a municipal council, member of the French National Assembly or of the French Senate, Representative at the European Parliament.

If a candidate intended to replace a Representative at the Assembly of French Polynesia finds himself in one of the conflicts of interest mentioned in this II, he has a thirty-day period from the vacancy to put an end to the said conflict of interest by resigning either from the office or from the function of his choice. Should such option not be taken within the time specified, the High Commissioner notifies the conflict of interest and the replacement is effected by the following candidate according to the order of the list.

III. – A Representative at the Assembly of French Polynesia elected in another electoral district of French Polynesia automatically stops representing the first of the two electoral districts in which he has been elected. However, if a dispute arises from the new election, the vacancy of the seat is proclaimed only as from the decision of the Council of State ruling on the dispute; until such decision is issued, the elected member may take part in the works of the Assembly on account of his new term of office only.

## Article 112

I. – Any Representative at the Assembly of French Polynesia whose ineligibility is revealed after the expiry of the time-period during which his election may be contested or who, during his term of office, is in one of the cases where he is disqualified as a voter, is declared to have resigned by order of the High Commissioner, either automatically, or after representations from any elector.

II. – Any Representative at the Assembly of French Polynesia who, at the time of his election, is in one of the cases of conflict of interest as laid down in this Head, has a

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<sup>391</sup> A French institution

<sup>392</sup> A French institution

<sup>393</sup> A French institution

<sup>394</sup> A French institution

one-month period from the date when his election became definitive, either to resign from his office or put an end to the situation causing the conflict of interest with said office. He notifies his option in writing to the High Commissioner who informs the President of the concerned assembly thereof. Should such option not be taken within the time-period specified, he is deemed to have resigned from his office by order of the High Commissioner, either automatically, or after representations from any elector.

If the cause of the conflict of interest arises subsequently to the election, the right of option is open under the same conditions. Should such option not be taken within one month following the occurrence of the reason for the conflict of interest, the Representative at the Assembly of French Polynesia is deemed to have resigned from his office by order of the High Commissioner, either automatically, or after representations from any elector.

### **Article 113**

I. – The Representative at the Assembly of French Polynesia who is a public servant at the time of his election is placed outside the employing administration or body as provided for in the relevant regulations or contract. He can, upon leaving office, be reinstated on request, possibly as a supernumerary, to the administration or body he belonged to prior to appointment to the Assembly of French Polynesia, or in the business belonging to the public sector which employed him under public or private law.

II. – When the Representative at the Assembly of French Polynesia is a salaried employee at the date of his election, he may, upon his request, benefit from a suspension of his employment contract. Such suspension is automatically granted when the salaried employee proves he has at least one year of seniority in the business, at the time of the election.

### **Article 114**

Notice of the resignation of a Representative at the Assembly of French Polynesia is given to the President of the Assembly of French Polynesia, who immediately notifies the High Commissioner and the President of French Polynesia thereof. Such resignation takes effect from the receipt thereof by the President of the Assembly.

### **Article 115**

The Representative at the Assembly of French Polynesia who misses an ordinary session without a valid reason accepted by the Assembly of French Polynesia is automatically considered to have resigned by the Assembly at the last sitting of the session.

The Representative at the Assembly of French Polynesia presumably considered absent within the meaning of article 112 of the Civil Code is temporarily replaced at the Assembly, from the implementation of the judgement notifying the presumed absence,

by the candidate immediately following the last person elected on the list to which the presumed absent member belongs.

### **Article 116**

Elections to the Assembly of French Polynesia may be contested within fifteen days following the announcement of the results, by any candidate or elector of the electoral district, and the case referred to the Council of State, which considers the issue as a contentious matter.

The High Commissioner has also the right to do so if he considers that the legally prescribed conditions and conventions have not been respected.

Any candidate officially declared as Representative at the Assembly of French Polynesia pursuant to the first paragraph of article 107 - II may be contested within fifteen days from the date such candidate replaced the Representative at the Assembly of French Polynesia whose seat became vacant.

Notice by the Council of State of the ineligibility of one or more candidates results in the cancellation of the election of the candidate or candidates declared ineligible only. The Council of State announces the election of the following candidate or candidates on the list.

The Representative at the Assembly of French Polynesia whose election is contested remains in office until a conclusive decision is issued on the claim.

### **Article 117**

Appeals lodged against orders mentioned in article 112 and against resolutions mentioned in article 115 are laid down before the Council of State, which considers the issue as a contentious matter. Such appeals have a suspensive effect. However, appeals do not have a suspensive effect when a Representative at the Assembly of French Polynesia is automatically declared to have resigned after a final criminal conviction has been issued against him and consequently results in his loss of civil, political and family rights.

## **Part 2** ***Rules of procedure***

### **Article 118**

The Assembly of French Polynesia meets in the capital of French Polynesia. Some meetings may be scheduled in another location.

It automatically meets on the second Thursday following the election of its members under the chairmanship of its oldest member.

## **Article 119**

The Assembly of French Polynesia holds two ordinary sessions each year, which automatically open on the dates and for durations specified by resolution at the beginning of the term of office.

The sessions are opened and closed under the conditions provided for by the Standing Orders of the Assembly of French Polynesia. If the Assembly of French Polynesia has not met in accordance with the above provisions, the High Commissioner officially gives notice to the President of the Assembly to summon the Assembly within the next forty-eight hours. Failing this, the High Commissioner summons the Assembly to meet in ordinary session.

## **Article 120**

The Assembly of French Polynesia meets in extraordinary session when so summoned by its President in response to a written request, either by the President of French Polynesia, or by an absolute majority of its members, or, in the event of exceptional circumstances, by the High Commissioner.

The request determines the date of opening and the agenda of the session. The request presented by the President of French Polynesia or by a majority of the Representatives at the Assembly of French Polynesia is notified to the High Commissioner.

Should the Assembly of French Polynesia not meet on the day determined on the request, the High Commissioner officially gives notice to the President of the Assembly to summon the Assembly within the next forty-eight hours. Failing this, the High Commissioner summons the Assembly to meet in extraordinary session without delay.

The duration of each extraordinary session may not exceed one month.

The cumulative duration of the extraordinary sessions held between two ordinary sessions may not exceed two months.

The provisions of the two previous paragraphs are not applicable to the extraordinary sessions held at the request of the High Commissioner.

## **Article 121**

The Assembly of French Polynesia elects its President and its officers each year with proportional representation of the political groups under the conditions set by its Standing Orders.

## **Article 122**

The Assembly of French Polynesia may deliberate only if more than half of the members are present at the opening of the sitting.

If the quorum is not reached at the opening of the sitting, the sitting is postponed to the following day, not counting Sundays and public holidays; it may then be held whatever the number of members present.

In the cases provided for in the two previous paragraphs, the names of the absent members are recorded in the proceedings.

Voting by proxy is authorised within the limit of one proxy per Representative at the Assembly of French Polynesia. This method is however not permitted for the election of the President of French Polynesia, of the Speaker and the officers of the Assembly of French Polynesia or for voting on a no-confidence motion.

## **Article 123**

The Assembly of French Polynesia draws up its Standing Orders. These Orders lay down the procedures not provided for in this Head. These Orders are published in the Official Journal of French Polynesia. They may be referred to the Council of State, which considers the issue as a contentious matter.

## **Article 124**

The Standing Orders set the conditions for the constitution and for the functioning of political groups, as well as the resources made available to them.

## **Article 125**

The Assembly sets the agenda for its work subject to the provisions of article 153 and draws up a record of each of its meetings.

## **Article 126**

The Representatives at the Assembly of French Polynesia receive a monthly allowance in an amount set by the Assembly of French Polynesia with reference to the salary of the public servants of French Polynesia. This allowance is paid until the first meeting of the Assembly as provided for in the second paragraph of article 118.

Such allowance may be additional to that payable to a member of the French Parliament as provided for in Article 4 of Ordinance No. 58-1210 dated 13<sup>th</sup> December 1958 enacting the Organic Law relating to the allowance of the members of the French Parliament.

The Assembly of French Polynesia also sets the conditions for the reimbursement of travel and living expenses of the Representatives at the Assembly of French Polynesia in their official duties and their social security benefits regime, as well as the amount of an annual fixed-rate allowance for entertainment expenses possibly allocated to the Speaker of the Assembly and to the Chairperson of the Standing Committee.

In its Standing Orders, the Assembly of French Polynesia provides for the conditions under which all or part of the allowance referred to in the first paragraph of this article is withheld when a member of the Assembly of French Polynesia has failed to attend a determined number of meetings of the Assembly or of its committees, without a valid reason.

### **Article 127**

I. – Each year the Assembly of French Polynesia elects a Standing Committee from its members and with proportional representation of the groups, using the system of the highest average.

The Standing Committee elects a Chairperson, a Vice-Chairperson and a Secretary. This vote is individual.

The Standing Committee sets its agenda, subject to the provisions of article 153.

II. - Between sessions, the Standing Committee:

- 1° Meets to deal with the business referred to it by the Assembly of French Polynesia or referred directly to it by the Government of French Polynesia when the latter has declared such to be urgent;
- 2° Gives opinions on matters for which consultation of the Assembly of French Polynesia by the State is required;
- 3° Adopts resolutions referred to in article 133 and in article 135.

The Standing Committee has no authority to adopt decisions referred to in article 140 known as “country laws”, the annual budget and the administrative accounts of French Polynesia, to vote on motions of no confidence or to decide to use the local referendum.

The Standing Committee may carry out appropriation transfers from one chapter to another only if they occur within the same section of the budget and if they are maintained within the limit of one quarter of the total appropriation of the chapters concerned. It may however adopt appropriations corresponding to resources allocated beyond that limit.

III. – The Standing Orders of the Assembly determine the rules of procedure of the Standing Committee.



## **Article 128**

The meetings of the Assembly of French Polynesia are public, except if decided otherwise by an absolute majority of the members present or represented. The President may decide that a meeting shall be broadcast through audio-visual communication systems.

Complete records of the meetings of the Assembly of French Polynesia are published in the Official Journal of French Polynesia.

## **Article 129**

The Assembly of French Polynesia enjoys financial autonomy. The budget of the Assembly of French Polynesia uses the same format and is implemented in the same way and according to the same rules as the budget of French Polynesia. Changes are approved by the officers of the Assembly within the same limits as those set in the last paragraph of article 127 - II.

The President of the Assembly is the authorising officer for the budget of the Assembly; he may delegate his authorising officer powers to a questeur (officer of the Assembly). He may send a requisition to the accountant of French Polynesia under the conditions set in article LO 274-5 of the 'Code of Financial Courts', but may not delegate this power.

The necessary appropriations for the budget of the Assembly are the subject of proposals prepared by a committee whose members are appointed by the Assembly of French Polynesia. Such proposals are submitted to the President of French Polynesia, at the latest on 15<sup>th</sup> October, and included in the draft budget of the French Polynesia, to which an explanatory report is annexed.

The evolution of the operating budget of the Assembly from one year to the next may not, on a constant representation basis, exceed the predictable evolution of ordinary receipts as communicated to the Assembly, at the latest on 1<sup>st</sup> October, by the President of French Polynesia.

## **Part 3**

### ***Responsibilities of the Assembly***

## **Article 130**

Any Representative at the Assembly of French Polynesia, within the framework of his function, has the right to be informed of the matters which are the subject of a draft decision submitted either by the Government or by private members as provided for by article 140 and known as "country law" or other resolutions.

For this purpose, the Representatives receive, at least twelve days before the sitting for a draft decision submitted either by the Government or by private members as

provided for by article 140 and known as “country law”, and at least four days before the sitting for a draft resolution drawn up by the Government or by private members, a report on each item included in the agenda.

### **Article 131**

At least once a month, a sitting is reserved in priority for representatives’ questions and the answers of the President and of the members of the Government.

### **Article 132**

The Assembly of French Polynesia may set up commissions of enquiry containing proportional representation of the political groups.

The rules of procedure of commissions of enquiry are determined by a resolution of the Assembly of French Polynesia.

### **Article 133**

In the matters within the powers of the State, the Assembly of French Polynesia or its Standing Committee may adopt resolutions with a view either to extending metropolitan laws or regulations, or repealing, amending or supplementing the statutory or regulatory provisions applicable to French Polynesia.

These resolutions are addressed, as appropriate, by the Speaker of the Assembly of French Polynesia or by the Chairperson of its Standing Committee to the President of French Polynesia and to the High Commissioner. The latter forwards same to the Overseas Minister.

These resolutions are published in the Official Journal of French Polynesia.

### **Article 134**

The Assembly of French Polynesia is consulted on the establishment and discontinuation of communes of French Polynesia.

It is also consulted, in the event of disagreement of the Council of Ministers of French Polynesia or of the relevant municipal councils, on the modification of the territorial boundaries of the communes and associated communes and the transfer of their chief town.

### **Article 135**

The High Commissioner submits to the Assembly of French Polynesia draft European Community and European Union decisions relating to the association of overseas countries to the European Community.

The Assembly of French Polynesia may vote motions, which are addressed by its President to the President of French Polynesia and to the High Commissioner.

## **Part 4**

### ***Responsibilities of the Speaker of the Assembly***

### **Article 136**

The Speaker of the Assembly alone exercises policing powers inside the Assembly chamber. He may have any person who disturbs order expelled from the Chamber. In the event of a clear offence, he may resort to arrests; he draws up an official report thereof and the case is immediately referred to the Public Prosecutor.

Where necessary, the Speaker of the Assembly of French Polynesia may call upon the High Commissioner to secure the assistance of the disciplined forces.

### **Article 137**

The Speaker of the Assembly of French Polynesia appoints the Assembly's officials. The officials are hired in compliance with the rules applicable to the officers employed by the government departments of French Polynesia. All management decisions related to such staff are made by the Speaker of the Assembly.

The Speaker of the Assembly of French Polynesia decides to institute proceedings or to defend before the courts on behalf of the Assembly of French Polynesia, without prejudice to the application of Article 91 (25°).

### **Article 138**

The Speaker of the Assembly of French Polynesia may delegate his power of signature to the Vice-Presidents, to the persons in charge of administrative departments, or to the members of his office.

## **Part 5**

### ***“Country laws” and resolutions***

### **Article 139**

The Assembly of French Polynesia adopts decisions provided for in article 140 known as “country laws” and resolutions.

### **Article 140**

The decisions of the Assembly of French Polynesia, known as “country laws”, over which the Council of State exerts specific jurisdictional control, are those which, falling under the domain of the law, fall either within the powers of French Polynesia, or are adopted under the participation of French Polynesia in State powers and they regard the following matters:

- 1° Civil law;
- 2° Fundamental principles of commercial obligations;
- 3° Base, rate and collection rules for taxes of any kind;
- 4° Labour law, trade union and social security law, including access for foreigners to the labour market;
- 5° Public health law;

- 6° Family and social action law;
- 7° Fundamental guarantees granted to civil servants of French Polynesia;
- 8° Development and town planning law;
- 9° Environment law;
- 10° Domain law of French Polynesia;
- 11° Mining law;
- 12° Rules relating to local employment, pursuant to article 18;
- 13° Rules relating to the declaration of transfers *inter vivos* of landed properties located in French Polynesia and to the exercise of the right of first option by French Polynesia, pursuant to article 19;
- 14° Relations between French Polynesia and the communes as provided for in Part 6, Chapter I, Title III;
- 15° Agreements executed pursuant to article 39, when they pertain to matters within the powers defined by this article;
- 16° Rules relating to the publication of the decisions of the institutions of French Polynesia;
- 17° Matters mentioned in article 31.

The decisions adopted pursuant to this article may, when the general interest justifies it, be applicable to outstanding contracts.

#### **Article 141**

The initiative for the decisions provided for in article 140 known as “country laws” and other resolutions jointly rests with the Government and the Representatives at the Assembly of French Polynesia.

Draft decisions drawn up by the Government provided for in article 140 known as “country laws” are submitted to the High Council of French Polynesia in order to obtain its opinion before they are adopted by the Council of Ministers.

Private members’ draft decisions provided for in article 140 known as “country laws” are submitted to the High Council of French Polynesia in order to obtain its opinion prior to the first reading thereof. The Assembly of French Polynesia may not cast a vote before the High Council has given its opinion. In a case of emergency, upon the request of the President of French Polynesia or of the Speaker of the Assembly, the opinion is deemed to have been given after a one-month period.

Any draft decision drawn up by the Government or by members of the Assembly provided for in article 140 known as “country law” or any draft resolution drawn up by the Government or by members of the Assembly, comes with an explanatory note.

#### **Article 142**

For each draft decision drawn up by the Government or by members of the Assembly provided for in article 140 known as a “country law”, a rapporteur is appointed by the Assembly of French Polynesia among its members.

No draft decision drawn up by the Government or by members of the Assembly provided for in article 140 known as a “country law”, may be discussed and submitted to the vote if it has not been the subject of a written report, pursuant to article 130, submitted, printed and published in the conditions set by the its Standing Orders.

Decisions provided for in article 140 known as “country laws” are adopted by the Assembly of French Polynesia by public ballot, by a majority of its members.

#### **Article 143**

The decisions of the Assembly of French Polynesia and the Standing Committee are forwarded, by their President or Vice-President, or Chairperson or their Vice-Chairperson, each as appropriate, without delay and at the latest on the second working day following their adoption, to the President of French Polynesia and to the High Commissioner. The record is communicated to the President of French Polynesia within eight days.

During the eight days which follow the adoption of a resolution, the Council of Ministers may submit such resolution or some of its provisions to the Assembly for a new reading.

During the eight days which follow the adoption of a decision as provided for in article 140 and known as “country law”, the High Commissioner of the French Republic and the Council of Ministers may submit such decision or some of its provisions to the Assembly for a new reading.

In the cases provided for in the preceding paragraphs, the new reading may not be refused; it may not occur less than eight days after the request. If the Assembly is not in session, it is especially convened for this purpose, and the provisions relating to the duration of the sessions provided for in article 120 may not apply.

#### **Article 144**

I. - The budget of French Polynesia is approved as being in real balance.

The budget of French Polynesia is in balance when the recurrent section and the investment section are respectively approved as being in balance and when the

collection of the revenue of the recurrent section for the benefit of the investment section, added to the revenue of this section itself, excluding proceeds from loans, and possibly added also to the amounts appropriated to depreciation and provision accounts, provides sufficient resources to cover the reimbursement in capital of the annual loan repayments falling due during the financial year.

The only obligatory expenditure for French Polynesia is that necessary for the payment of current liabilities and any expenditure that this organic law has expressly specified.

No increase in expenditure or reduction in receipts may be adopted if it is not offset in the estimated revenue or if it is not accompanied by a proposal for increasing or introducing a tax or finding equivalent savings.

II. - The budget of French Polynesia is approved according to the procedures provided for by Article L.O. 273-1 of the 'Code of Financial Courts' When it is not in real balance, the procedure provided for by Article L.O. 273-2 of the aforesaid Code is applied.

If a mandatory expenditure item has been omitted or if the appropriation corresponding to this expenditure in the budget of French Polynesia is insufficient, the procedure provided for by Article L.O. 273-3 of the aforesaid Code is applied.

#### **Article 145**

When the budget of French Polynesia has been adopted, the decisions provided for in article 140 known as "country laws" and the resolutions adopted by the Assembly of French Polynesia relating to direct taxation or comparable taxes as well as the resolutions adopted in the same matters by its Standing Committee come into force on the 1<sup>st</sup> of January which follows the opening of the budgetary session, even though they were not published before that date.

#### **Article 146**

Any decision provided for in article 140 known as "country law" and any resolution of the Assembly of French Polynesia, whatever the subject, which is adopted outside the time of the sessions or outside the venue of the meetings, is null and void.

### **Chapter III**

#### ***The Economic, Social and Cultural Council***

#### **Article 147**

The Economic, Social and Cultural Council is composed of representatives of professional bodies, trade unions, organisations and associations that contribute to the economic, social and cultural life of French Polynesia.

Each category of activity is represented, within the Economic, Social and Cultural Council, by a number of representatives corresponding to the weight of this activity in the economic, social and cultural life of French Polynesia.



## **Article 148**

The members of the Economic, Social and Cultural Council must be of French nationality, be older than eighteen years of age, be qualified voters and have carried on the activity they represent for more than two years. Their term of office is four years. The Council is renewed completely.

The members of the French Government and Parliament, the President of French Polynesia and the other members of the Government of French Polynesia, the Representatives at the Assembly of French Polynesia, the mayors, delegated and deputy mayors, the representatives of the European Parliament as well as the holders of the functions and offices mentioned in article 111 - I - 2° and in article 109 - II - 4° may not be members of the Economic, Social and Cultural Council.

Article 149.— Resolutions of the Assembly of French Polynesia set:

- 1° The number of the members of the Economic, Social and Cultural Council;
- 2° The list of groupings, organisations and associations represented within the Economic, Social and Cultural Council;
- 3° The method of appointment of their representatives by these groupings and associations;
- 4° The number of seats allocated to each of them;
- 5° The amount of the allowances paid to the members of the Economic, Social and Cultural Council for attendance at plenary meetings and committee meetings;
- 6° The rules for the organisation and functioning of the Economic, Social and Cultural Council which are not provided for by this organic law.

## **Article 150**

The Economic, Social and Cultural Council elects its Chairperson.

The Economic, Social and Cultural Council meets upon the initiative of its Chairperson, its officers or a majority of its members. The meetings of the Economic, Social and Cultural Council are public.

The Economic, Social and Cultural Council adopts its Standing Orders, which are published in the Government Gazette of French Polynesia. The Standing Orders may be referred to the Administrative Court.

## **Article 151**

I. - The Economic, Social and Cultural Council is consulted on economic and social projects of French Polynesia.

II. - The Economic, Social and Cultural Council is consulted on draft decisions drawn up by the Government and on private members' draft decisions provided for in article 140 known as "country laws" and relating to economic or social matters. To this purpose, it is consulted, for draft decisions drawn up by the Government, by the President of French Polynesia, and, for private members' draft decisions, by the President of the Assembly of French Polynesia.

The Economic, Social and Cultural Council may be consulted, by the Government of French Polynesia or by the Assembly of French Polynesia, on other draft decisions drawn up by the Government and on private members' draft decisions provided for in article 140 known as "country laws" or on Government draft resolutions or private members' draft resolutions on any issue relating to economic, social or cultural matters.

In such cases, the Economic, Social and Cultural Council issues its opinion within one month. If the matter is declared urgent, as the case may be, by the Government or by the Assembly, the opinion is issued within fifteen days. At the expiry of such time-period, the opinion is deemed to have been issued.

III. - When a majority of two-thirds of its members are in favour, the Economic, Social and Cultural Council, decides to carry out studies on issues within its powers.

IV. - The reports and opinions of the Economic, Social and Cultural Council are made public.

## **Article 152**

The operation of the Economic, Social and Cultural Council is funded through a specific appropriation which constitutes an obligatory expenditure entered in the budget of French Polynesia.

The Chairperson is the authorising officer of the budget of the Economic, Social and Cultural Council. He may delegate his authorising officer powers to an officer. He may send a requisition to the accountant of French Polynesia under the conditions set by article L.O. 274-5 of the Code of Financial Courts, but may not delegate this power.

The Chairperson of the Economic, Social and Cultural Council manages the administrative staff of the departments of the Council. He may delegate his power of signature to the Secretary General and to the administrative officials of the Council.

## **Chapter IV** ***Relations between institutions***

## **Article 153**

The Council of Ministers may give priority on the agenda of the Assembly of French Polynesia, notwithstanding the provisions of article 125, or on the agenda of the Standing Committee, notwithstanding the provisions of article 127 - I, to draft decisions provided for in article 140 known as “country laws” or draft resolutions which, in its opinion, require urgent discussion.

Notwithstanding these provisions, the High Commissioner may give priority on the agenda of the Assembly of French Polynesia or of its Standing Committee to an issue on which they must be consulted.

The President of French Polynesia and the High Commissioner are informed of the agenda of the Assembly and its committees before the relevant meetings.

#### **Article 154**

With the agreement with the President of the Assembly of French Polynesia, the High Commissioner may address the Assembly of French Polynesia.

The High Commissioner may also address the Assembly of French Polynesia on the request of the Minister responsible for overseas matters.

The President of French Polynesia and the Ministers attend by right the meetings of the Assembly or of its Standing Committee, and committees. They may speak on the issues on the agenda. They may be assisted by commissioners.

#### **Article 155**

Each year the President of French Polynesia communicates to the Assembly of French Polynesia:

- 1° For approval, a draft order containing the accounts of the past financial year before the opening of the budgetary session;
- 2° A report on the activity of the Government during the past calendar year, on the economic and financial position of French Polynesia and on the status of the public utilities.

#### **Article 156**

The Assembly of French Polynesia may challenge the Government of French Polynesia by putting a motion of no confidence to the vote. Such motion is admissible only if it is signed by at least one-fifth of the Representatives at the Assembly of French Polynesia.

The Assembly of French Polynesia automatically meets two clear days after the motion of no confidence has been tabled. Voting thereon takes place during the next two days; if the quorum is not reached, the vote is postponed until the following day.

The time-periods specified in this paragraph do not include Sundays and public holidays.

Only the votes supporting the motion of no confidence are counted; such a motion may be adopted only by an absolute majority of the Representatives at the Assembly of French Polynesia. No Representative at the Assembly of French Polynesia may sign more than two motions of no confidence in any session.

The passing of a motion of no confidence ends the functions of the Government of French Polynesia. The latter however deals with routine business until the election of the new President of French Polynesia.

### **Article 157**

When the functioning of the institutions of French Polynesia proves impossible, the Assembly of French Polynesia may be dissolved by an order of the President of the Republic stating the reasons for such dissolution, and adopted by the French Council of Ministers, after consultation with the President of the Assembly of French Polynesia and the President of French Polynesia.

The Assembly of French Polynesia may also be dissolved by an order adopted by the Council of Ministers, on the request of the Government of French Polynesia.

The decision of dissolution is notified to the Government of French Polynesia and to the Parliament.

The dissolution order sets the date for new elections.

The Government of French Polynesia deals with routine business until the election of the new President of French Polynesia.

## **Chapter V**

### ***Participation of electors to community life***

#### **Part 1**

### ***Petition set up by electors of French Polynesia***

### **Article 158**

The Assembly of French Polynesia may be requested to consider any matter within its powers by way of a petition.

The petition may be submitted on an individual or collective basis. It must come in writing, in whatever form, and must be drawn up in the same terms and be signed by one-tenth of the voters registered on the electoral rolls of French Polynesia. It must be dated and must include the name, first name, address of each petitioner and his registration number on the electoral rolls.

The petition is addressed to the President of the Assembly of French Polynesia. The officers of the Assembly decide on the admissibility of the petition by a decision stating the reasons related thereto, which may be referred to the administrative court.

When the petition is admissible, the President of the Assembly of French Polynesia reports thereon at the next session of the Assembly.

## **Part 2**

### ***Local referendum in French Polynesia***

#### **Article 159**

I. - The Assembly of French Polynesia may, [*Provisions declared inconsistent with the Constitution by Constitutional Council Decision No.2004-490 DC dated 12<sup>th</sup> February 2004.*] submit to a local referendum any draft decision drawn up by the Government or by Members of the Assembly provided for in article 140 known as “country law” or any draft resolution drawn up by the Government or by Members of the Assembly dealing with a matter within its powers, except, on the one hand, opinions it has to issue on National Government or private members’ bills and draft ordinances, and on the other hand, resolutions it may adopt pursuant to articles 133 and 135.

The Council of Ministers may submit to a local referendum, after the approval of the Assembly of French Polynesia, any draft regulatory decision falling under its responsibility.

II. - The Assembly of French Polynesia or the Council of Ministers, as the case may be, in a single resolution or order, establishes the organisation of the referendum, sets the date thereof, which may not occur less than two months after the decision has been forwarded to the High Commissioner of the Republic, convenes the electors and specifies which draft decision or draft resolution is submitted to the approval of the electors.

Within eight days at most, the resolution or the order adopted pursuant to the preceding paragraph is forwarded by the President of French Polynesia to the High Commissioner of the Republic.

The High Commissioner of the Republic has a ten-day period following the receipt of the resolution or order to submit it to the Council of State if he considers it to be illegal. In his action, he may also request a suspension.

Within one month, the judge in summary procedure of the Council of State issues a non-appealable decision on the request for suspension. The request is accepted if one of the grounds put forward seems, at this stage of the proceedings, likely to entail a serious doubt regarding the legality of the contested decision or draft resolution or draft decision submitted to the referendum.

When the resolution or the order organising the local referendum or the draft resolution or draft decision submitted to the referendum is likely to compromise the exercise of a public or individual liberty, the judge in summary procedure of the Council of State pronounces the suspension thereof within forty-eight hours.

*[Provisions declared inconsistent with the Constitution by Constitutional Council Decision No.2004-490 DC dated 12<sup>th</sup> February 2004.]*

III. - The resolution or the order organising a local referendum is notified, within fifteen days following its receipt, by the High Commissioner of the Republic to the mayors of the communes of French Polynesia, except if the request of suspension has been accepted.

The mayors organise the vote. If a mayor refuses to proceed to such organisation, the High Commissioner of the Republic, after giving official notice thereof, proceeds to the organisation of the vote.

IV. - The expenditure related to the organisation of the referendum is a mandatory expenditure item of French Polynesia.

The expenditure resulting from the election meetings held in the communes for the organisation of a referendum decided by French Polynesia is refunded to them by French Polynesia, on a fixed-rate basis, through an appropriation calculated according to the number of electors registered in the commune's electoral rolls and the number of polling stations therein. The rates for such appropriation are set by an order.

V. - French Polynesia may not organise any local referendum:

- 1° As from the first day of the sixth month preceding the day when all of its Assembly is to be renewed;
- 2° During the campaign or the polling days for:
  - the election of the President of the Republic;
  - a referendum decided by the President of the Republic;
  - a poll organised in French Polynesia pursuant to article 72-4 of the Constitution;
  - the complete renewal of the Members of the French National Assembly;
  - the renewal of Senators elected in French Polynesia;
  - the election of members of the European Parliament;
  - the complete renewal of the members of municipal councils.

The resolution organising a local referendum becomes null and void in the cases provided for in this section V or in the event of a dissolution of the Assembly of French

Polynesia, resignation of all of its members or final cancellation of their election, resignation of the Government or adoption of a motion of no-confidence.

French Polynesia may not organise several local referendums relating to the same subject within a time-period shorter than one year.

VI. - The draft decision submitted to local referendum is adopted if at least half of the registered voters participated in the poll and if the draft decision was supported by the majority of expressed votes.

The decision adopted through the referendum system is subject to the rules of publicity and control applicable to the decisions of the Assembly or of the Council of Ministers of French Polynesia.

VII. - An information dossier on the subject of the referendum decided by French Polynesia is placed at the disposal of the public.

VIII. - The campaign for the local referendum is opened on the second Monday preceding the poll at zero hour. It is closed the day before the poll at midnight.

It is organised by French Polynesia under the conditions defined in chapter V - Title I, Book I of the electoral code, except for article L 52-3. For the application of these provisions, it should be read as follows: “group, party or grouping entitled to take part in the campaign” *instead of*: “candidate” and “list of candidates”.

The prohibitions provided for by article L 50-1, by the third paragraph of article L 51 and by article L 52-1 of the electoral code are applicable to any propaganda relating to the referendum as of the adoption by the Assembly of French Polynesia of the resolution or order adopted by the Council of Ministers as referred to in I or II.

The provisions of the law No.77-808 of 19<sup>th</sup> July 1977 relating to the publication and the diffusion of certain opinion polls are applicable to local referendums.

IX. - The Council of Ministers of French Polynesia, upon their request, authorises the participation in the campaign of:

- political groups established at the Assembly of French Polynesia;
- political parties and groupings whose lists of candidates obtained at least 5% of expressed votes at the last renewal of the Assembly of French Polynesia.

Each elected representative or candidate may be attached to one party or political grouping only.

X. - In French Polynesia, the national utility in charge of the public service of overseas audio-visual communication places at the disposal of the parties and political groupings authorised to take part in the campaign its broadcasting capacity for the local referendum pursuant to section IX under the following conditions:

- 1° A duration of three hours of broadcasting on television and three hours on the radio is placed at the disposal of the political groups of the Assembly of French Polynesia or of the political parties and groupings to which they declared they were attached. The 'Higher Council for Audio-visual Matters',<sup>395</sup> determines the time allotted to each political group according to the number of its representatives. Groups may decide to use their speaking time jointly. Each group has a minimal duration of five minutes on television and five minutes on the radio;
- 2° A maximum duration of thirty minutes of broadcasting on television and thirty minutes on the radio is placed at the disposal of the political parties and groupings which are not represented at the Assembly of French Polynesia, by the 'Higher Council for Audio-visual Matters'. It is distributed in equal shares between each political party or grouping and may not exceed five minutes on television and five minutes on the radio;
- 3° The conditions of production, scheduling and broadcasting of the programmes are set by the 'Higher Council for Audio-visual Matters'. The latter sends recommendations to the owners of the other authorised audio-visual communication services in French Polynesia.

XI. - The only persons that may take part in the vote are voters of French nationality registered on the electoral rolls in French Polynesia under the conditions provided for by articles L 30 to L 40 of the Electoral Code.

XII - The preparatory operations for the poll, the ballot operations, the census of the votes and the proclamation of the results are carried out under the conditions provided for by Book I - Title I - Chapter VI of the Electoral Code, except for articles L 56, L 57, L 58, L 66, L 68 (second paragraph) and L 85-1.

For the implementation of the third paragraph of article L. 65 of the same code, it should be read as follows: "les réponses portées sur les bulletins sont relevées" (the answers on the ballot papers are collected) *instead of*: "les noms portés sur les bulletins sont relevés" (the names on the ballot papers are collected); "des feuilles de pointage" (score sheets) *instead of*: "lists"; "des réponses contradictoires" (contradictory answers) *instead of*: "des listes et des noms différents" (different lists and names); "la même réponse" (the same answer) *instead of*: "la même liste ou le même candidat" (the same list or the same candidate).

Ballot papers other than those provided by French Polynesia, ballot papers found in the ballot box without an envelope or in an illegal envelope, ballot papers or envelopes carrying internal or external signs of recognition, ballot papers or envelopes carrying any mention are not taken into account for the result of the counting of votes. They are appended to the official report as well as the illegal envelopes and are signed by the members of the polling station. Each ballot paper or envelope appended bears a mention stating the cause why it has been appended.

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<sup>395</sup> *Conseil supérieur de l'audiovisuel*, a French national body.



XIII. - The provisions of Book I - Title I - Chapter VII of the Electoral Code apply to the local referendum except for articles L. 88-1, L. 95 and 1° to 5° of sections I, II et III of article L. 113-1.

For the implementation of these provisions, it should be read as follows: “groupe, parti ou groupement politique habilité à participer à la campagne” (*political group, party or grouping authorised to take part in the campaign*) instead of: “candidat” and “liste de candidats” (*candidate and list of candidates*).

XIV. - The provisions of the Electoral Code mentioned in this article apply to the conditions set by articles L. 386, L. 390, L. 391 and L. 392 of the aforesaid Code.

XV. - The legality of the local referendum may be challenged in the conditions, forms and time-periods provided for in article 116 of this organic law and relating to the claims against the election of the members of the Assembly of French Polynesia.

XVI. - An order of the Council of State lays down the conditions under which this article is implemented.

**Chapter VI**  
***Provisions applying jointly to the President***  
***of French Polynesia, to the members of the Government***  
***of French Polynesia and to the Representatives at the Assembly***  
***of French Polynesia***

**Article 160**

The President and the other members of the Government of French Polynesia, and Representatives at the Assembly of French Polynesia must, within the time-period required, lodge a statement of personal interests as provided for by the legislation relating to the financial transparency of political life.

**Article 161**

French Polynesia is legally liable for accidents suffered by the President of French Polynesia, the Ministers and the Representatives at the Assembly of French Polynesia during the performance of their duties.

**Article 162**

French Polynesia must grant its protection to the President of French Polynesia, to the Ministers or to the President of the Assembly of French Polynesia, or to any person who has stopped exercising one of these functions, when they are the subject of criminal prosecutions for facts which do not have the character of a fault that may be dissociated from the exercise of their functions.

The President of French Polynesia, the Ministers and the President of the Assembly of French Polynesia also enjoy, in the exercise of their functions, a material protection set up by French Polynesia in accordance with the rules set by the Penal Code, special statutes and this organic law.

French Polynesia must protect the President of French Polynesia, the Ministers and the President of the Assembly of French Polynesia against violence, threats or insults which they might suffer in the exercise of their functions and, if necessary, repair the damage which resulted therefrom.

## **Chapter VII**

### ***The High Council of French Polynesia***

#### **Article 163**

A High Council of French Polynesia is established. In particular it is in charge of advising the President of French Polynesia and the Government about the elaboration of the decisions provided for in article 140 known as “country laws”, resolutions and regulatory decisions.

The High Council of French Polynesia is obligatorily consulted on draft decisions drawn up by the Government provided for in article 140 known as “country laws” and on private members’ draft decisions provided for in article 140 known as “country laws” before they are included in the agenda of the Assembly of French Polynesia.

The High Council issues its opinion on draft regulatory orders and on any other draft text for which its opinion is required by the provisions of the decisions provided for in article 140 known as “country laws” which are submitted to it by the Government.

When consulted on a draft text, the High Council of French Polynesia delivers its opinion to the authority which consulted it and proposes the modifications it deems necessary.

Further, it prepares and draws up the texts when requested to do so.

It may be consulted by the President of French Polynesia on difficulties which may arise in administrative matters.

With the agreement with the President of French Polynesia, the High Commissioner of the Republic may consult the High Council on his draft regulatory orders when the latter apply, pursuant to a legislative provision, to a matter which depends, by analogy with the jurisdiction in force in Metropolitan France, on orders of the Council of State.

The opinions of the High Council are communicated to third parties only if a decision of the authority for which they are intended has been made.

#### **Article 164**

The President and the members of the High Council of French Polynesia are appointed according to their skills in legal matters, among judges of the administrative or judicial courts not exercising their functions in French Polynesia and not having exercised any functions in French Polynesia over the past two years, university professors dealing with legal disciplines and lawyers registered with the Bar Association, category ‘A’ civil servants and persons who have exercised these functions.

They are appointed by an order adopted by the Council of Ministers, for a six-year non-renewable term of office, in compliance with the statutory rules of their body if necessary. They may be dismissed from their duties only on disciplinary grounds.

#### **Article 165**

An order adopted by the Council of Ministers determines the conditions for the implementation of this chapter.

### **TITLE V THE HIGH COMMISSIONER AND THE ACTION OF THE STATE**

#### **Chapter I *The High Commissioner of the Republic***

#### **Article 166**

The High Commissioner ensures that the authorities of French Polynesia exercise their powers legitimately and that the measures they take are lawful.

#### **Article 167**

Where decisions made on matters within the powers of French Polynesia are not published within fifteen days in the Government Gazette of French Polynesia or decisions provided for in article 140 known as “country laws” are not enacted, the High Commissioner publishes or enacts same without delay, respectively.

#### **Chapter II *Co-ordination between the State and French Polynesia***

#### **Article 168**

Co-ordination between the action of State and French Polynesian departments is conducted jointly by the High Commissioner and the President of French Polynesia.

The High Commissioner and the President of French Polynesia sign on behalf of the State and of French Polynesia, respectively, the agreements referred to in the first and second paragraphs of article 169 and in article 170.

### **Chapter III**

#### ***State support***

#### **Article 169**

Upon the request of French Polynesia and under agreements, the State, within the framework of the relevant appropriation acts, may provide financial and technical assistance to economic and social investments, in particular to promotion and training schemes.

Agreements between the State and French Polynesia lay down the conditions under which, as needed, officials and departments of the State are made available to French Polynesia.

If the needs of the public utilities of French Polynesia require the assistance of French public or statutory bodies, the arrangements for such assistance are set out in agreements between such bodies and French Polynesia. Such assistance is submitted to a prior opinion of the High Commissioner which must be informed thereof.

#### **Article 170**

In the area of secondary school education, the State and French Polynesia may enter into agreements in order to specify their respective obligations, in particular, with regard to staff pay scales.

### **TITLE VI**

#### **JURISDICTIONAL, FINANCIAL AND BUDGETARY CONTROL**

#### **Chapter I**

##### ***Legality control by the Administrative Court***

#### **Article 171**

I. - The decisions of the President of French Polynesia, of the Council of Ministers and of Ministers are automatically applicable upon publication in the Official Journal of French Polynesia or notification to the persons concerned and, for the decisions referred to in II, upon communication to the High Commissioner by the President of French Polynesia.

The decisions of the Assembly of French Polynesia, of its Standing Committee and of its President and Chairperson are automatically applicable upon publication in the Official Journal of French Polynesia or notification to the persons concerned and, for the decisions referred to in II, upon communication to the High Commissioner by the

Speaker of the Assembly of French Polynesia or by the Chairperson of its Standing Committee.

The decisions mentioned in II may be communicated by any means, including electronic means, in compliance with the procedures laid down by an order of the Council of State.

II. - The following decisions must be communicated to the High Commissioner, pursuant to I:

A. - For the President of French Polynesia, the Council of Ministers and the Ministers:

- 1° Decisions in the regulation form which fall within their powers;
- 2° All decisions mentioned in articles 16 and 17 and in 6°, 9° à 15°, 18°, 20°, 23°, 24° and 26° to 28° of article 91;
- 3° Individual authorisations to occupy lands;
- 4° Individual decisions relating to the appointment, retirement of office, removal and dismissal of officials of French Polynesia;
- 5° Agreements relating to contracts, except for contracts entered into without prior formality because of their amount, and to the floating of loans as well as agreements for concession-holding or agricultural lease-holding of public institutions with an industrial and commercial character;
- 6° Requisitions sent to the accountant by the President of French Polynesia;
- 7° Decisions in the exercise of prerogatives of public power, made by semi-public companies on behalf of French Polynesia;
- 8° Authorisations or declarations delivered or drawn up pursuant to the regulation relating to industrial facilities for environmental protection because of the dangers or nuisance which they may cause either for the convenience of the neighbourhood, or for health, safety, public health, or for agriculture, or for the preservation of the environment and nature, or for the preservation of sites and monuments.

B. - For the Assembly of French Polynesia:

1° Its resolutions, other than the decisions provided for in article 140 known as “country laws”, and those adopted by its Standing Committee by delegation from the Assembly;

2° Individual decisions of its President relating to the appointment, retirement of office, removal and dismissal of officials of the Assembly of French Polynesia;

3° Requisitions sent to the accountant by the President of the Assembly French Polynesia.

III. - Decisions adopted on behalf of French Polynesia other than those referred to in II, are automatically applicable upon publication or notification to the persons concerned.

IV. - Decisions adopted by the institutions of French Polynesia relating to private law are not subject to the provisions of this Head and remain governed by the specific provisions of private law.

V. - The requisitions sent to the accountant and adopted by the Chairperson of the Economic, Social and Cultural Council are automatically applicable upon communication to the High Commissioner of the Republic.

VI. - The President of French Polynesia, the Ministers, the Speaker of the assembly of French Polynesia, the Chairperson of the Standing Committee, the Chairperson of the Economic, Social and Cultural Council certify, under their responsibility, each as appropriate, the enforceable character of the decisions they issue.

The proof of receipt of the decisions by the High Commissioner may be brought by any means. The acknowledgement of receipt which is immediately issued can be used for such purpose, but is not a requirement for the enforceable character of the decisions.

## **Article 172**

The High Commissioner refers to the Administrative Court the decisions of the President of French Polynesia, of the Council of Ministers or of the Ministers, the resolutions of the Assembly of French Polynesia other than the decisions provided for in article 140 known as “country laws”, its Standing Committee or its office, the decisions of the Speaker of the Assembly of French Polynesia, the decisions of the Chairperson of the Economic, Social and Cultural Council, which, according to him, are not lawful, within two months from the transmission thereof.

When the High Commissioner refers a decision to the Administrative Court, he informs without delay the originator thereof and provides any information on the alleged illegalities. At the request of the President of French Polynesia, of the Speaker of the Assembly of French Polynesia, the Chairperson of its Standing Committee or of the Chairperson of the Economic, Social and Cultural Council, as appropriate, the High Commissioner may notify his intention not to refer a decision to the Administrative Court.

In his action, the High Commissioner may also request a suspension. Such request is accepted if one of the grounds put forward, at this stage of the proceedings, seems likely to entail a serious doubt regarding the legality of the contested decision. The Administrative Court issues its decision within a month.

Until the Court has ruled, the request for suspension in matters of town planning, contracts and delegations of public service lodged by the High Commissioner within ten days following the receipt of the decision results in the suspension thereof. At the expiry

of a time-period of one month, if the Court has not ruled, the decision becomes enforceable again.

When the contested decision is likely to compromise the exercise of a public or individual liberty, the president of the Administrative Court or an *ad hoc* judge of the Court appointed for this purpose pronounces the suspension thereof within forty-eight hours. The decision relating to the suspension may be appealed to the Council of State within fifteen days from notification. In this case, the President of the litigation department of the Council of State or a member of the Council of State appointed for this purpose issues a decision within forty-eight hours.

Appeals lodged against judgements of the Administrative Court and against decisions relating to suspension requests provided for in the preceding paragraphs issued in proceedings initiated by the High Commissioner are submitted by the latter.

If the High Commissioner deems that a decision adopted by the institutions of French Polynesia, whether subject or not to the obligation of transmission, is likely to seriously compromise the operation or the integrity of a facility or building related to national defence, he may request the cancellation thereof for this sole reason. He refers the decision concerned within two months following its transmission, or its publication or its notification, to the Council of State, which rules in litigation matters. In his action, he may, if necessary, include a request for suspension. The President of the litigation department of the Council of State, a member of the Council of State appointed for this purpose, issues a decision within forty-eight hours.

### **Article 173**

In addition to the possibility to directly institute proceedings, a natural or legal person affected by a decision of the institutions of French Polynesia may, within two months from the date of entry into force, ask the High Commissioner to implement the procedure referred to in article 172.

For the decisions mentioned in article 171 - II, such request may not cause an extension of the time-limit for litigation proceedings available to the High Commissioner pursuant to article 172.

When the request relates to the decisions mentioned in article 171 - III, the High Commissioner may refer the decision concerned to the Administrative Court within two months of its referral by the natural or legal person affected.

### **Article 174**

When an action filed with the Administrative Court alleges abuse of power or illegality in the decisions mentioned in article 171 - A - 1° and II - B - 1° of article 171, and such action is based on a serious ground alleging the inaccurate application of the distribution of powers between the State, French Polynesia and the communes, or if such a matter comes automatically before the Court, the Administrative Court refers the case without delay for opinion to the Council of State, by a decision that may not be



challenged. The Council of State considers the issue raised within three months and any decision on the content is deferred until its opinion is issued or, failing this, until the expiry of the three-month period. The Administrative Court rules within two months as from the publication of the opinion in the Official Journal of French Polynesia or from the expiry of the time-period available to the Council of State.

## **Article 175**

The President of French Polynesia or the Speaker of the Assembly of French Polynesia may approach the Administrative Court for an opinion. When such opinion relates to the distribution of powers between the State, French Polynesia or the communes, the request for an opinion is considered by the Council of State, to which it is referred without delay.

The High Commissioner is immediately notified thereof by the originator of the request.

## **Chapter II**

### ***The specific jurisdictional control of “country laws”***

## **Article 176**

I. - At the expiry of the eight-day period following the adoption of a decision provided for in article 140 known as “country law” or the next day following the vote after the new reading provided for in article 143, the High Commissioner, the President of French Polynesia, the Speaker of the Assembly of French Polynesia or six Representatives at the Assembly of French Polynesia may refer this decision to the Council of State.

They have a fifteen-day time-period to do so. When a decision provided for in article 140 known as “country law” is referred to the Council of State upon the initiative of Representatives at the Assembly of French Polynesia, the Council is approached by one or more letters comprising on the whole the signatures of six members of the Assembly of French Polynesia at least.

Each referral contains a presentation of the legal practical grounds put forward which support it; the Council of State immediately informs the other relevant authorities which have the right to refer cases thereof; the latter may submit remarks within ten days.

II. - At the expiry of the eight-day period following the adoption of a decision provided for in article 140 known as “country law” or the next day following the vote after the new reading provided for in article 143, the decision provided for in article 140 known as “country law” is published in the Government Gazette of French Polynesia for information purposes in order to allow natural or legal persons, within one month of such publication, to refer this decision to the Council of State.

The proceedings instituted by natural or legal persons is admissible if such persons justify an interest in bringing an action.

As soon as it is approached, the Registry Office of the Council of State notifies the President of French Polynesia thereof before the expiry of the ten-day time-period provided for in article 178.

III. - The Council of State issues its decision on the compliance of the decisions provided for in article 140 known as “country laws” with the Constitution, organic laws, international commitments and general principles of the law. The contentious procedure applicable to the specific jurisdictional control of such decisions is the one which is applicable in actions for abuse of power referred to the Council of State.

The decisions provided for in article 140 known as “country laws” may no longer be challenged by an action before any other court.

### **Article 177**

The Council of State issues its decision within three months from the referral of the case. Its decision is published in the Official Journal of the French Republic and the Official Journal of French Polynesia.

If the Council of State decides that a decision provided for in article 140 known as “country law” contains a provision that is not consistent with the Constitution, organic laws, or international commitments or with the general principles of the law, and may not be separated from the whole of the decision, the latter may not be enacted.

If the Council of State decides that a decision provided for in article 140 known as “country law” contains a provision that is not consistent with the Constitution, organic laws, or international commitments or with the general principles of the law, but does not indicate that it may not be separated from the whole of the decision, only such provision may not be enacted.

In the case provided for in the preceding paragraph, the President of French Polynesia may, within ten days of the publication of the Council of State decision in the Government Gazette of French Polynesia, submit the provision concerned to a new reading of the Assembly of French Polynesia, in order to ensure the compliance thereof with the norms mentioned in the second paragraph.

### **Article 178**

At the expiry of the one month time-period mentioned in article 176 - II to refer the case to the Council of State or following the publication in the Official Journal of French Polynesia of the decision of the said council indicating the total or partial compliance of the decision provided for in article 140 known as “country law” with the norms mentioned in the second paragraph of article 177, the President of French Polynesia has ten days to enact it, subject to the reservations laid down in the third and fourth paragraphs of the aforesaid article.

He forwards the enactment decision to the High Commissioner. The decision provided for in article 140 known as “country law” is published, for information purposes, in the Official Journal of the French Republic.

### **Article 179**

When, in a dispute before a court, a party alleges, by way of a serious ground, that a decision provided for in article 140 known as “country law” is inconsistent with the Constitution, organic laws, international commitments, or with the general principles of the law, and that this issue governs the outcome of the dispute, the validity of the procedure or constitutes the gravamen of the proceedings, the court refers the case without delay to the Council of State, by a decision that may not be challenged. The Council of State considers the issue raised within three months. When the issue is referred to the Council of State, the court defers any decision on the content thereof. It may however decide differently whenever the law, because of the urgency, provides for a time-period to issue a decision. In all cases it may take the necessary emergency or precautionary measures. The refusal to refer the issue to the Council of State may not be challenged separately from the decision ruling on whole or part of the dispute.

### **Article 180**

The decisions provided for in article 140 known as “country laws” may not be challenged by an action after they have been enacted.

When the Council of State declares that they do not fall within the scope defined in article 140, the provisions of a decision provided for in article 140 known as “country law” may be modified by the relevant competent authorities. The Council of State is approached by the President of French Polynesia, the President of the assembly of French Polynesia or the Minister responsible for overseas matters. It informs the other relevant authorities which have the right to refer cases thereof. Such authorities may present remarks within fifteen days. The Council of State issues a decision within three months.

## **Chapter III**

### ***Information of the Assembly of French Polynesia on jurisdictional decisions concerning French Polynesia***

### **Article 181**

The President of the Assembly of French Polynesia informs the members of the Assembly, at the next meeting of the Assembly following the notification made to it, of the decisions of the administrative or judicial courts which have ruled on the legality of the decisions of the institutions of French Polynesia.

**Chapter IV**  
***Budgetary and accounting provisions***  
***And provisions relating to the Territorial Chamber of Accounts***

**Article 182**

A system of prior approval of commitments of expenditure of French Polynesia and its administrative public bodies, of the Assembly of French Polynesia, and of the Economic, Social and Cultural Council is introduced. Such approval takes the form of a resolution of the Assembly of French Polynesia.

**Article 183**

The control exercised by the accountant of French Polynesia over payment orders is carried out according to the procedures defined in article L.O. 274-4 of the Code of Financial Courts.

Other control procedures are set by the Assembly of French Polynesia.

When the accountant of French Polynesia notifies his decision to suspend the payment of an expenditure item, he may be requisitioned to pay only under the conditions and according to the procedures defined in article L.O. 274-5 of the Code of Financial Courts.

**Article 184**

The accountants of French Polynesia and of its statutory bodies must produce their accounts before the Territorial Chamber of Accounts ruling by decision, as provided for by article L.O. 272-32 of the Code of Financial Courts.

**Article 185**

The auditing of the accounts of French Polynesia and its statutory bodies as well as the inspection of their management are subject to the provisions, equivalent to organic law provisions, of Title VII of Book II of the Code of Financial Courts.

**Article 186**

Book II – Title VII (Legislative part) of the Code of the Financial Courts is amended as follows:

I. - In article LO 272-12 two paragraphs are inserted to read as follows:

“Elle peut également, dans le cadre du contrôle des comptes de l’autorité délégante, vérifier auprès de délégataires de services publics les comptes qu’ils ont produits aux autorités délégantes. (*It also may, as part of the control of the accounts of the delegating authority, check with delegates of public bodies the accounts which they submitted to the delegating authorities*).

“L’examen de la gestion porte sur la régularité des actes de gestion, sur l’économie des moyens mis en œuvre et sur l’évaluation des résultats atteints par rapport aux objectifs fixés par l’organe délibérant. L’opportunité de ces objectifs ne peut faire l’objet d’observations.” (*Management inspection bears on the lawfulness of management decisions, on the economy of the means implemented and on the evaluation of the results achieved compared to the objectives laid down by the deliberating body. The appropriateness of these objectives may not be the subject of observations*).

II. - After part 4 of chapter II, a part 4 *bis* titled “*Du contrôle de certaines conventions*” (Control of some agreements) is inserted, including an article LO 272-38-1 to read as follows:

“*Article LO 272-38-1.— Les conventions relatives aux marchés et aux délégations de service public conclues par la Polynésie française et ses établissements publics peuvent être transmises par le haut-commissaire à la chambre territoriale des comptes. Le haut-commissaire en informe l’autorité signataire de la convention. (Agreements relating to public contracts and delegations of public service entered into by French Polynesia and its statutory bodies may be forwarded by the High Commissioner to the Territorial Chamber of Accounts. The High Commissioner informs the authority which signed the agreement thereof.)*

“La chambre territoriale des comptes formule ses observations dans un délai d’un mois à compter de sa saisine. L’avis de la chambre territoriale des comptes est transmis au gouvernement de la Polynésie française ou à l’établissement public intéressé ainsi qu’au haut-commissaire. (*The Territorial Chamber of Accounts issues its observations within one month after it has been consulted. The opinion of the Territorial Chamber of Accounts is forwarded to the Government of French Polynesia or to the statutory body concerned and to the High Commissioner.*)

“L’ordonnateur ou son représentant peut, à sa demande, présenter oralement ses observations et être assisté par une personne de son choix. L’organe délibérant est informé de l’avis de la chambre territoriale des comptes dès sa plus prochaine réunion.” (*The authorising officer or his representative may, at his request, orally present his observations and be assisted by a person of his choice. The deliberating body is informed of the opinion of the Territorial Chamber of Accounts at its very next meeting.*)

III. - Article LO 272-40 reads as follows:

“*Article LO 272-40.— La chambre territoriale des comptes est habilitée à se faire communiquer tous documents, de quelque nature que ce soit, relatifs à la gestion de la Polynésie française, de ses établissements publics et des autres organismes soumis à son contrôle.*” (*The Territorial Chamber of Accounts is entitled to require any documents of*

*any type, relating to the management of French Polynesia, of its statutory bodies and of other organisations under its control.)*

IV. - After article L. 272-41-1, an article LO 272-41-2 is inserted to read as follows:

*“Article LO 272-41-2.— Lorsqu’à l’occasion de ses contrôles, la chambre territoriale des comptes relève des faits de nature à justifier une amélioration des règles de droit dont l’édiction entre dans la compétence de la Polynésie française, elle peut demander à son président d’adresser une communication au Président de la Polynésie française ou au président de l’assemblée de la Polynésie française.” (When during its controls, the Territorial Chamber of Accounts notices facts likely to justify an improvement of legal provisions the drafting of which falls within the power of French Polynesia, it may ask its Chairperson to send a communication to the President of French Polynesia or to the President of the Assembly of French Polynesia.)*

## **TITLE VII MISCELLANEOUS PROVISIONS**

### **Article 187**

The whole of the property, rights and obligations of the territory of French Polynesia passes onto the overseas authority of French Polynesia.

The whole of the rights and obligations of the State related to the powers assigned to French Polynesia pursuant to the provisions of this organic law is passed onto the overseas authority of French Polynesia.

### **Article 188**

An organic law will establish the date of entry into force of the second, third and fourth paragraphs of article 47, except for the Exclusive Economic Zone, with regard to Mururoa and Fangataufa lagoons.

### **Article 189**

The Statistical Institute of French Polynesia maintains a general database of voters registered on the electoral rolls of French Polynesia, including for elections of municipal councils and of representatives at the European Parliament, in order to control registration on the electoral rolls.

For the exercise of such responsibilities, the Statistical Institute acts on behalf of the State. It is placed under the authority of the High Commissioner of the Republic.

An agreement between the State and French Polynesia determines the implementation of this article in compliance with the legislation in force relating to data processing, databases and liberties.

### **Article 190**

I. - The provisions equivalent to organic law provisions in force in French Polynesia upon the date of enactment of this organic law and which are not inconsistent therewith, remain applicable.

II. - In all provisions equivalent to organic law provisions in force:

- 1° Any reference to the colony or to the territory of the French Establishments in Oceania or to the territory of French Polynesia is replaced by the reference to French Polynesia when these provisions are intended to apply to the territory defined in the first paragraph of article 1;

- 2° Any reference to the colony or the territory of the French Establishments in Oceania or to the territory of French Polynesia is replaced by the reference to the overseas authority of French Polynesia when these provisions are intended to apply to the territorial authority instituted by the second paragraph of the same article;
- 3° Any reference to the President of the Government of French Polynesia is replaced by the reference to the President of French Polynesia;
- 4° Any reference to the Governor, when dealing with the responsibilities of the State, is replaced by the reference to the High Commissioner of the Republic;
- 5° Any reference to members of the Territorial Assembly is replaced by the reference to the Representatives at the Assembly of French Polynesia.

III. - Upon the date of publication of this organic law, the legislative provisions applicable to the powers of State public servants which were, in whole or in part, assigned to French Polynesia, remain applicable.

### **Article 191**

Ordinance No. 58-1270 dated 22<sup>nd</sup> December 1958 enacting the Organic Law relating to the status of judges is amended as follows:

- 1° In the third paragraph of article 9, the words: “de l’assemblée territoriale de Polynésie française ou de” (*of the territorial Assembly of French Polynesia or of*) are replaced by the words: “de représentant à l’assemblée de la Polynésie française ou de membre de” (*of Representative at the Assembly of French Polynesia or member of*);
- 2° After article 9-1, an article 9-1-1 is inserted to read as follows:

“Article 9-1-1.— Les magistrats et anciens magistrats ne peuvent occuper un emploi au service de la Polynésie française ou de ses établissements publics lorsqu’ils ont exercé leurs fonctions en Polynésie française depuis moins de deux ans.” (*Judges and former judges may not work at the service of French Polynesia or in its statutory bodies when they have held office in French Polynesia for less than two years.*)

### **Article 192**

The thirteenth paragraph (8°) of article 7 of Ordinance No. 58-1360 of 29<sup>th</sup> December 1958 enacting the Organic Law relating to the Economic, Social and Cultural Council is amended to read as follows:

“8° Neuf représentants des activités économiques et sociales des départements et régions d’outre-mer, des collectivités d’outre-mer et de la Nouvelle-Calédonie;” (*Nine representatives of the economic and social activities of the overseas ‘departments’ and regions, overseas authorities and New Caledonia.*)



## Article 193

I. - Before article L. 385 of the electoral code, an article LO 384-1 is inserted to read as follows:

*“Article LO 384-1.— Les dispositions ayant valeur de loi organique du présent code sont applicables en Nouvelle-Calédonie, en Polynésie française et dans les îles Wallis et Futuna. Pour leur application, il y a lieu de lire : (The provisions equivalent to organic law provisions of this code are applicable in New Caledonia, French Polynesia and in the islands of Wallis and Futuna. For their implementation, it should be read as follows:)*

“1° For New Caledonia:

- “a) “Nouvelle-Calédonie” (*New Caledonia*) instead of: “département” (*‘department’*);
- “b) “haut-commissaire de la République” (*High Commissioner of the Republic*) and “services du haut-commissaire de la République” (*High Commissioner’s offices*) instead of: “préfet” (*prefect*) and “préfecture” (*prefecture*);
- “c) “commissaire délégué de la République” (*delegated commissioner of the Republic*) instead of: “sous-préfet” (*sub-prefect*);

“2° For French Polynesia:

- “a) “Polynésie française” (*French Polynesia*) instead of: “département” (*‘department’*);
- “b) haut-commissaire de la République” (*High Commissioner of the Republic*) and “services du haut-commissaire de la République” (*High Commissioner’s offices*) instead of: “préfet” (*prefect*) and “préfecture” (*prefecture*);
- “c) “chef de subdivision administrative” (*head of administrative subdivision*) instead of: “sous-préfet” (*sub-prefect*);
- “d) “tribunal de première instance” (*court of first instance*) instead of: “tribunal d’instance” (*district court*) and “tribunal de grande instance” (*county court*);

“3° For the islands of Wallis and Futuna:

- “a) “Wallis-et-Futuna” (*Wallis and Futuna*) instead of: “département” (*‘department’*);
- “b) “administrateur supérieur” (*higher administrator*) and “services de l’administrateur supérieur” (*higher administrator’s offices*) instead of: “préfet” (*prefect*) and “préfecture” (*prefecture*);
- “c) “chef de circonscription territoriale” (*head of territorial district*) instead of: “sous-préfet.” (*sub-prefect*)

II. - Title II of Book V of the same code is amended as follows:

1° Before article L. 394, an article LO 393-1 is inserted to read as follows:

*“Article LO 393-1.— Deux députés à l’Assemblée nationale sont élus en Nouvelle-Calédonie. (Two members of the French National Assembly are elected in New Caledonia.)*

*“Deux députés à l’Assemblée nationale sont élus en Polynésie française. (Two members of the French National Assembly are elected in French Polynesia.)*

*“Un député à l’Assemblée nationale est élu dans les îles Wallis-et-Futuna.” (One member of the French National Assembly is elected in the islands of Wallis and Futuna.)*

2° After article L. 394, two articles LO 394-1 and LO 394-2 are inserted to read as follows:

*“Article LO 394-1.— Les dispositions ayant valeur de loi organique du titre II du livre Ier, à l’exception de l’article LO 119, sont applicables à l’élection des députés en Nouvelle-Calédonie, en Polynésie française et dans les îles Wallis et Futuna. (The provisions equivalent to organic law provisions of Title II of Book I, except for article LO 119, are applicable to the election of the members of the French National Assembly in New Caledonia, French Polynesia and in the islands of Wallis and Futuna.)*

*“Article LO 394-2.— Pour l’application des dispositions des articles LO 131 et LO 133, un décret pris après avis conforme du Conseil d’Etat déterminera celles des fonctions exercées en Nouvelle-Calédonie, en Polynésie française ou dans les îles Wallis et Futuna qui sont assimilées, quelle que soit la collectivité dont elles relèvent, aux fonctions énumérées auxdits articles.” (For the implementation of the provisions of articles LO 131 and LO 133, an order adopted after obtaining the assent of the Council of State will determine those functions exercised in New Caledonia, French Polynesia or in the islands of Wallis and Futuna which, whatever the authority on which they depend, are considered equivalent to the functions listed in the said articles.)*

III. - Before article L. 407 of the same code, an article LO 406-1 is inserted to read as follows:

*“Article LO 406-1.— La composition et la formation de l’assemblée de la Polynésie française sont régies par les dispositions de la section 1 du chapitre II du titre IV de la loi organique n° 2004-192 du 27 février 2004 portant statut d’autonomie de la Polynésie française ci-après reproduites : (The composition and formation of the Assembly of French Polynesia are governed by the provisions of part 1 of chapter II of Title IV of the Organic Law No. 2004-192 dated 27<sup>th</sup> February 2004 establishing the autonomy status of French Polynesia, as reproduced hereafter:)*

*“Article 103.— The Assembly of French Polynesia is elected by direct universal suffrage.*

*“Article 104.—* The Assembly of French Polynesia consists of fifty-seven members elected for five years and who may be re-elected. It is renewed completely.

“The powers of the assembly of French Polynesia expire upon the first meeting of the newly-elected assembly pursuant to the provisions of the first paragraph of article 107 - I. Such provision is not applicable in the event of dissolution.

“French Polynesia is divided into electoral districts. Each district has a minimum representation figure. This minimum is three seats. Seats are apportioned in the following districts as follows:

“1° The electoral district of the Windward group consists of the following communes: Arue, Faaa, Hitiaa O Te Ra, Mahina, Moorea-Maiao, Paea, Papara, Papeete, Pirae, Punaauia, Taiarapu-Est, Taiarapu-Ouest and Teva I Uta. It elects thirty-seven representatives;

“2° The electoral district of the Leeward group consists of the following communes: Bora Bora, Huahine, Maupiti, Tahaa, Taputapuatea, Tumaraa and Uturoa. It elects eight representatives;

“3° The electoral district of the West Tuamotu group consists of the following communes: Arutua, Fakarava, Manihi, Rangiroa and Takaroa. It elects three representatives;

“4° The electoral district of the Gambier and East Tuamotu group consists of the following ‘communes’: Anaa, Fangatau, Gambier, Hao, Hikueru, Makemo, Napuka, Nukutavake, Pukapuka, Reao, Tatakoto and Tureia. It elects three representatives;

“5° The electoral district of the Marquesas group consists of the following communes: Fatu Hiva, Hiva Oa, Nuku Hiva, Tahuata, Ua Huka and Ua Pou. It elects three representatives;

“6° The electoral district of the Austral group consists of the following communes: Raivavae, Rapa, Rimatara, Rurutu and Tubuai. It elects three representatives.

“The boundaries of the communes to which the preceding provisions refer are those which result from the provisions in force at the date of enactment of this Organic Law.

*“Article 105.— I. -* The election of the Representatives at the Assembly of French Polynesia is carried out, in each district, through a single party-list vote without addition or deletion of names and without modification of the order in which names are listed.

“The list which received a majority of expressed votes is allotted a number of seats equal to the third of the number of vacant seats rounded up to the nearest integer.

“Once such allotment has been made, the other seats are distributed between all the lists according to the proportional representation system by using the highest average method.

“If several lists have the same average for the allotment of the last seat, such seat is allotted to the list which obtained the highest number of votes. Should the number of votes be the same, the seat is allotted to the oldest of the candidates likely to be declared elected.

“II. - Only the lists which received at least 3% of expressed votes are eligible for seat allotment.

“Seats are allotted to candidates according to the order of presentation on each list.

“*Article 106.*— Each list is composed alternately of a candidate of each sex.

“Each list comprises a number of candidates equal to the number of vacant seats, increased by the same number as the number of vacant seats, within the limit of ten.

“No one may be a candidate on more than one list.

“*Article 107.*— *I.* - Elections for the complete renewal of the Assembly of French Polynesia are organised within two months before the expiry of the term of office of the outgoing members.

“They are organised within three months following the complete cancellation of the electoral operations, the resignation of all the members of the Assembly or the dissolution of the Assembly. Such time-period starts, either from the reading of the order of the Council of State, or from the receipt of the resignations by the President of the Assembly, or from the publication of the order of dissolution in the Official Gazette of the French Republic.

“Electors are called to vote by an order. Such order is published in the Government Gazette of French Polynesia at least four weeks before the date of the ballot.

“II. - When the seat of a Representative at the Assembly of French Polynesia is vacant for whatever reason, such vacancy is filled by the candidate coming immediately after the last elected representative on the list which the outgoing member comes from.

“When the implementation of this rule does not fill a vacancy, within three months a by-election is carried out, under a single-ballot uninominal majority poll when one seat is vacant, a majority list poll when two seats are vacant, and under the provisions of article 105 when three seats or more are vacant. New representatives are elected for the remaining term of office.

“However, no by-election may take place within 6 months before the normal expiry of the term of office of the Representatives at the Assembly of French Polynesia.

“Electors are called to vote by an order of the High Commissioner after consultation with the President of French Polynesia. The order is published in the Government Gazette of French Polynesia at least four weeks before the date of the ballot.

“Article 108.— Persons older than twenty-one years of age, in possession of their civil and political rights, not disqualified by law as voters and registered on an electoral roll in French Polynesia or proving they meet the conditions for such registration at the date of the ballot, may be elected to the Assembly of French Polynesia.

“Article 109.— I. - The following persons may not be elected to the Assembly of French Polynesia:

- “1° For one year from the judicial decision notifying ineligibility, the President and the members of the Assembly, the President of French Polynesia and the others members of the Government of French Polynesia who did not lodge one of the statements provided for in Title I of Act No. 88-277 of 11<sup>th</sup> March 1988 relating to the financial transparency of the politic life;
- “2° Persons deprived of their eligibility right by a conclusive judgement (*res judicata*) pursuant to the laws which authorise such deprivation;
- “3° High Commissioners of the Republic, Secretaries General, Deputy Secretaries General of the High Commissioner’s Office, Principal Private Secretaries to the High Commissioner and heads of administrative subdivisions holding office or having held office in French Polynesia for less than three years;
- “4° Persons declared ineligible pursuant to article L. 118-3 of the electoral code;
- “5° The Ombudsman and the Child Advocate, except if they held the same office before their appointment.

“II. – In addition, the following persons may not be elected as members of the Assembly of French Polynesia if they hold office in French Polynesia or if they have held office for less than six months:

- “1° Judges from administrative courts and from judicial courts;
- “2° Members of the State Inspection and Control bodies;
- “3° Directors and heads of State departments;
- “4° The Government Secretary General of French Polynesia, and the Secretaries General of institutions; general directors, general inspectors, inspectors, directors, deputy directors of French Polynesia or of one of its statutory bodies and the Principal Private Secretary to the President of French Polynesia.

“III. – Exclusively in the electoral district where they hold or have held office for less than six months, the following persons may not be elected as members of the Assembly of French Polynesia:

- “1° Officers of the Army, the Navy, the Air Force, and the staff of the ‘Gendarmerie’ in post in French Polynesia;
- “2° Civil servants of the police corps in post in French Polynesia;

“3° Heads of administrative districts of French Polynesia;

“4° Public servants and accountants of French Polynesia acting as civil servants employed for the assessment, collection and recovery of direct or indirect taxes and for the payment of public expenditure of any nature.

“*Article 110.*— Employers must grant to their employees who are candidates to the Assembly of French Polynesia enough time to participate in the election campaign within the limit of ten working days.

“Upon request of the person concerned, the duration of the leave is deducted from the annual paid leave within the limit of the number of days to which he is entitled at the date of the ballot. When they are deducted from the annual paid leave, days of leave are not paid; they are compensated for as agreed with the employer.

“The duration of these leaves are considered equivalent to a period of actual work for the determination of the rights to paid leaves and seniority rights.

“*Article 111.— I.* – The position of Representative at the Assembly of French Polynesia is incompatible:

“1° With the office of President of French Polynesia or of member of the Government or member of the Economic, Social and Cultural Council;

“2° With the office of member of an assembly or of member of an executive in an authority having a specific status ruled by the first paragraph of article 72 of the Constitution, of an authority mentioned in the last paragraph of article 73 of the Constitution, of another overseas authority ruled by article 74 of the Constitution or of the authority ruled by Title XIII of the Constitution, Such functions are also incompatible with the office of member of a general council<sup>396</sup>, of member of a regional council<sup>397</sup>, of member of Paris Council<sup>398</sup> or of member of the Assembly of Corsica<sup>399</sup>;

“3° With the functions of professional soldier or similar categories in post or serving beyond the legal duration;

“4° With the office of judge of administrative courts or judicial courts and with non-elective public functions;

“5° With the office of director or chairman of statutory bodies, when such functions are remunerated.

“II. – A Representative at the Assembly of French Polynesia may not cumulate his office with more than one of the following offices: member of a municipal council,

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<sup>396</sup> A French institution

<sup>397</sup> A French institution

<sup>398</sup> A French institution

<sup>399</sup> A French institution

member of the French National Assembly or of the French Senate, Representative at the European Parliament.

“If a candidate intended to replace a Representative at the Assembly of French Polynesia finds himself in one of the conflicts of interest mentioned in this II, he has a thirty-day period from the vacancy to put an end to the said conflict of interest by resigning either from the office or from the function of his choice. Should such option not be taken within the time specified, the High Commissioner notifies the conflict of interest and the replacement is effected by the following candidate according to the order of the list.

“III. – A Representative at the Assembly of French Polynesia elected in another electoral district of French Polynesia automatically stops representing the first of the two electoral districts in which he has been elected. However, if a dispute arises from the new election, the vacancy of the seat is proclaimed only as from the decision of the Council of State, which considers the issue as a contentious matter; until such decision is issued, the elected member may take part in the works of the Assembly on account of his new term of office only.

“*Article 112.— I. – Any Representative at the Assembly of French Polynesia whose ineligibility is revealed after the expiry of the time-period during which his election may be contested or who, during his term of office, is in one of the cases where he is disqualified as a voter, is declared to have resigned by order of the High Commissioner, either automatically, or after representations from any elector.*

“II. – Any Representative at the Assembly of French Polynesia who, at the time of his election, is in one of the cases of conflict of interest as laid down in this Head, has a one-month period from the date when his election became definitive, either to resign from his office or put an end to the situation causing the conflict of interest with said office. He notifies his option in writing to the High Commissioner who informs the President of the concerned assembly thereof. Should such option not be taken within the time-period specified, he is deemed to have resigned from his office by order of the High Commissioner, either automatically, or after representations from any elector.

“If the cause of the conflict of interest arises subsequently to the election, the right of option is open under the same conditions. Should such option not be taken within one month following the occurrence of the reason for the conflict of interest, the Representative at the Assembly of French Polynesia is deemed to have resigned from his office by order of the High Commissioner, either automatically, or after representations from any elector.

“*Article 113.—I. – The Representative at the Assembly of French Polynesia who is a public servant at the time of his election is placed outside the employing administration or body as provided for in the relevant regulations or contract. He can, upon leaving office, be reinstated on request, possibly as a supernumerary, to the administration or body he belonged to prior to appointment to the Assembly of French Polynesia, or in the business belonging to the public sector which employed him under public or private law.*

“II. – When the Representative at the Assembly of French Polynesia is a salaried employee at the date of his election, he may, upon his request, benefit from a suspension of his employment contract. Such suspension is automatically granted when the salaried employee proves he has at least one year of seniority in the business, at the time of the election.

“*Article 114.*— Notice of the resignation of a Representative at the Assembly of French Polynesia is given to the President of the Assembly of French Polynesia, who immediately notifies the High Commissioner and the President of French Polynesia thereof. Such resignation takes effect from the receipt thereof by the President of the Assembly.

“*Article 115.*—The Representative at the Assembly of French Polynesia who misses an ordinary session without a valid reason accepted by the Assembly of French Polynesia is automatically considered to have resigned by the Assembly at the last sitting of the session.

“The Representative at the Assembly of French Polynesia presumably considered absent within the meaning of article 112 of the Civil Code is temporarily replaced at the Assembly, from the implementation of the judgement notifying the presumed absence, by the candidate immediately following the last person elected on the list to which the presumed absent member belongs.

“*Article 116.*— Elections to the Assembly of French Polynesia may be contested within fifteen days following the announcement of the results, by any candidate or elector of the electoral district, and the case referred to the Council of State, which considers the issue as a contentious matter.

“The High Commissioner has also the right to do so if he considers that the legally prescribed conditions and conventions have not been respected.

“Any candidate officially declared as Representative at the Assembly of French Polynesia pursuant to the first paragraph of article 107 - II may be contested within fifteen days from the date such candidate replaced the Representative at the Assembly of French Polynesia whose seat became vacant.

“Notice by the Council of State of the ineligibility of one or more candidates results in the cancellation of the election of the candidate or candidates declared ineligible only. The Council of State announces the election of the following candidate or candidates on the list.

“The Representative at the Assembly of French Polynesia whose election is contested remains in office until a conclusive decision is issued on the claim.

“*Article 117.*— Appeals lodged against orders mentioned in article 112 and against resolutions mentioned in article 115 are laid down before the Council of State, which considers the issue as a contentious matter. Such appeals have a suspensive effect. However, appeals do not have a suspensive effect when a Representative at the Assembly of French Polynesia is automatically declared to have resigned after a final



criminal conviction has been issued against him and consequently results in his loss of civil, political and family rights.

IV. - In Title I of Book V of the same code, after article L. 392, an article LO 392-1 is inserted to read as follows:

*“Article LO 392-1.— Le fichier général des électeurs inscrits sur les listes électorales de la Polynésie française est régi par les dispositions de l’article 189 de la loi organique n° 2004-192 du 27 février 2004 portant statut d’autonomie de la Polynésie française ci-après reproduites : (The general database of electors registered on the electoral rolls of French Polynesia is governed by the provisions of article 189 of the organic law NO. 2004-192 dated 27<sup>th</sup> February 2004 relating to the autonomy status of French Polynesia, as reproduced hereafter:)*

*“Article 189.— The Statistical Institute of French Polynesia maintains a general database of voters registered on the electoral rolls of French Polynesia, including for elections of municipal councils and of representatives at the European Parliament, in order to control registration on the electoral rolls.*

*“For the exercise of such responsibilities, the Statistical Institute acts on behalf of the State. It is placed under the authority of the High Commissioner of the Republic.*

*“An agreement between the State and French Polynesia determines the implementation of this article in compliance with the legislation in force relating to data processing, databases and liberties.*

## **Article 194**

I. - In the second paragraph of article 3 - I of Act No. 62-1292 dated 6<sup>th</sup> November 1962 relating to the election of the President of the Republic by universal suffrage, the words: “ou des communautés de communes et” (*or communities of communes and*) are replaced by the words: “les présidents des communautés de communes, le Président de la Polynésie française et” (*the presidents of communities of communes, the President of French Polynesia and*).

II. - In part I of the same article, the words: “territoires d’outre-mer” (*overseas territories*) are replaced by the words: “collectivités d’outre-mer” (*overseas authorities*) and the words: “territoire d’outre-mer” (*overseas territory*) are replaced by the words: “d’une même collectivité d’outre-mer” (*of a same overseas authority*).

III. - A paragraph is inserted in Part II of the same paragraph to read as follows:

*“In French Polynesia, notwithstanding article L. 55 of the electoral code, the ballot is carried out on a Saturday.”*

## **Article 195**

In articles 7 and 12 of the law No. 92-108 dated 3<sup>rd</sup> February 1992 relating to the conditions of exercise of local responsibilities, the words: “des assemblées territoriales de la Polynésie française et de Wallis-et-Futuna” (*of the territorial Assemblies of French Polynesia and Wallis and Futuna*) are replaced by the words: “de l’assemblée de la Polynésie française et de l’assemblée territoriale de Wallis-et-Futuna” (*of the Assembly of French Polynesia and of the territorial Assembly of Wallis and Futuna*).

## **Article 196**

All provisions that are inconsistent with this organic law are repealed and in particular:

- 1° Whenever they apply to French Polynesia:
  - a) The order dated 25<sup>th</sup> June 1934 relating to the conveyance of real estate in the French Establishments in Oceania;
  - b) The order No. 45-889 dated 3<sup>rd</sup> May 1945 relating to the policing powers of general governors, governors, higher residents and heads of territory;
  - c) The law No. 52-130 dated 6<sup>th</sup> February 1952 relating to the formation of group assemblies and local assemblies of French Western Africa and of Togo, of French Equatorial Africa and of Cameroon, of Madagascar and of the Comoros islands;
  - d) The law No. 70-589 dated 9<sup>th</sup> July 1970 relating to civil status under ordinary law in overseas territories;
- 2° Articles 1 to 12 of the law No. 52-1175 dated 21<sup>st</sup> October 1952 relating to the composition and formation of the territorial Assembly of French Polynesia;
- 3° The law No. 57-836 of 26<sup>th</sup> July 1957 relating to the composition and formation of the territorial Assembly of French Polynesia;
- 4° Articles 6, 10 and 20 of the law No. 71-1028 of 24<sup>th</sup> December 1971 relating to the establishment and organisation of the communes in the territory of French Polynesia;
- 5° Article 48 of the law No. 84-820 dated 6<sup>th</sup> September 1984 relating to the status of French Polynesia;
- 6° Articles 1, 2, 2-1 and 3 of the organic law No. 85-689 dated 10<sup>th</sup> July 1985 relating to the election of members of the French National Assembly and Senators in the overseas territories and in New Caledonia;
- 7° Part V of article 33 of the law No. 86-16 dated 6<sup>th</sup> January 1986 relating to the organisation of the regions and amending the provisions relating to the functioning of General Councils;

- 8° The organic law No. 96-312 dated 12<sup>th</sup> April 1996 relating to the autonomy status of French Polynesia;
- 9° Articles 9 to 12 of the organic law No. 2000-294 dated 5<sup>th</sup> April 2000 relating to conflicts of interest between elected offices;
- 10° Article 1 of the organic law No. 2000-612 dated 4<sup>th</sup> July 2000 relating to the promotion of equal access of women and men to the offices of member of the provincial assemblies and of the Congress of New Caledonia, of the Assembly of French Polynesia and of the territorial Assembly of the islands Wallis and Futuna.

### **Article 197**

I. - The term of office of the Senator elected in the former territory of French Polynesia expires at the same date as that of senators included in category 'A' as provided for by article LO 276 of the electoral code.

II. - The President of the Government, the members of the Government and the members of the Assembly of French Polynesia in office at the date of enactment of this organic law automatically become, President of French Polynesia, members of the Government of French Polynesia and Representatives at the Assembly of French Polynesia, respectively. They immediately exercise the powers which are vested in them by this organic law until the expiry of their term of office.

### **Article 198**

Orders of the Council of State lay down the conditions under which, as needed, this organic law is implemented.

This Act shall be executed as a law of the State.

Done in Paris, on 27 February 2004.

By Jacques CHIRAC,  
*President of the Republic.*

Jean-Pierre RAFFARIN,  
*Prime Minister*

Nicolas SARKOZY,  
*Minister of the Interior, Internal Security and  
Local liberties*

François FILLON,  
*Minister of Social Affairs, Labour and  
Solidarity*

Dominique de VILLEPIN, <i>Foreign Minister</i>	Dominique PERBEN, <i>Minister of Justice</i>
Luc FERRY, <i>Minister for Youth, National Education and Research</i>	Michèle ALLIOT-MARIE <i>Defence Minister</i>
Gilles de ROBIEN, <i>Minister for Capital Works, Transport, Housing, Tourism and Marine Affairs</i>	Francis MER, <i>Minister of the Economy, Finance and Industry</i>
Jean-François MATTEI, <i>Minister for Health, Family and the Disabled</i>	Roselyne BACHELOT-NARQUIN, <i>Minister for Ecology and Sustainable Development</i>
Jean-Paul DELEVOYE, <i>Minister for the Civil Service, State Reform and Town and Country Planning</i>	Jean-Jacques AILLAGON, <i>Minister of Culture and Communication</i>
Alain LAMBERT, <i>Minister of Budget and Budgetary Reform</i>	Brigitte GIRARDIN, <i>Overseas Minister</i>

(1) Law No. 2004-192

Preparatory work:

Senate:

Draft organic law No. 38 (2003-2004);

Report by Mr. Lucien Lanier, on behalf of the Law Commission, No. 107 (2003-2004);

Discussion and adoption, after it has been declared an urgent matter, on 18<sup>th</sup> December 2003.

National Assembly:

Draft organic law adopted by the Senate, No. 1323;

Report by Mr. Jérôme Bignon, on behalf of the Law Commission, No. 1336;

Discussion on 13<sup>th</sup> and 14<sup>th</sup> January 2004 and adoption on 14<sup>th</sup> January 2004.

Senate:

Government bill amended by the National Assembly on first reading, No. 150 (2003-2004);

Report by Mr. Lucien Lanier, on behalf of the Joint Committee, No. 169 (2003-2004);

Discussion and adoption on 29<sup>th</sup> January 2004.

National Assembly:

Report by Mr. Jérôme Bignon, on behalf of the Joint Committee, No. 1373;

Discussion and adoption on 29<sup>th</sup> January 2004.

- Constitutional Council:

Decision No. 2004-490 DC of 12<sup>th</sup> February 2004 gazetted today

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- II. Décision du Conseil Constitutionnel n° 90-277 DC, 25/07/1990, Recueil p. 70, RJC p. I-406
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- I. ALAIN MOYRAND, *Cours de droit des institutions de Polynésie française 2001-2002* (Licence de droit), Université de Polynésie française (UPF)
- II. LOIC PRIEUR, *Cours de droit du littoral 2003-2004* (DEA Science Juridique de la mer), Université de Bretagne Occidentale (U.B.O)
- III. OLIVIER CAMY, *Cours de droit constitutionnel général*, Faculté de droit et de sciences politique de Bourgogne
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## VIII. INTERNET SOURCES

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<http://www.presidence.pf/>

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### C) University Websites

[www.droit.univ-nantes.fr/](http://www.droit.univ-nantes.fr/)

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