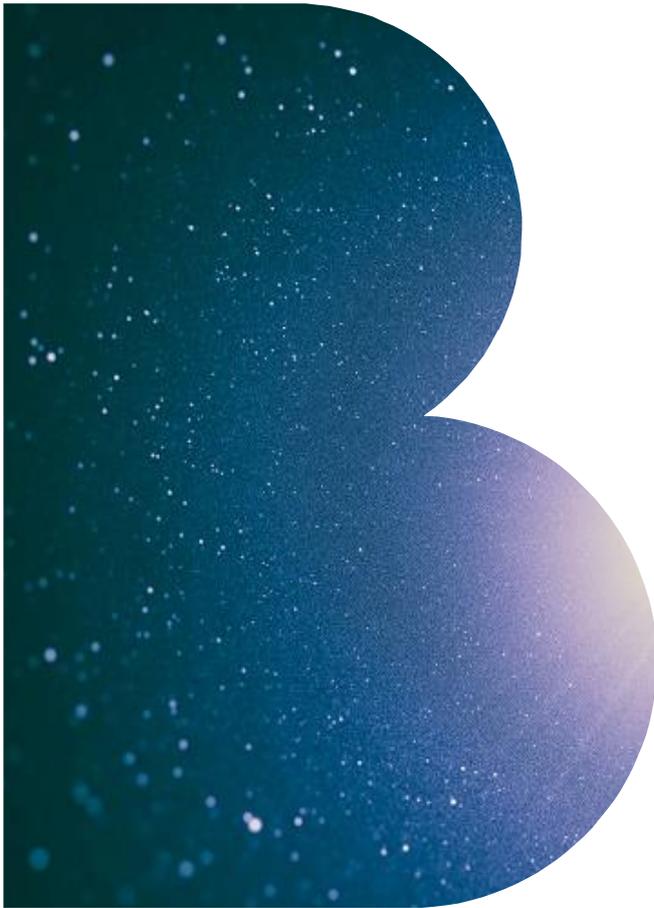


- *Courtesy Translation – Only the French version prevails* -



Audit Report

New Caledonia Decolonization Audit

27 May 2023

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1. Preamble

Since its foundation, the United Nations organisation has been a key player in the advancement of decolonisation processes around the world. Its expectations in this sphere are mainly articulated in UN General Assembly Resolution 15/14, (XV), adopted on 14 December 1960¹. In this resolution, also known as the Declaration on the Granting of Independence to Colonial Countries and Peoples, the UN proclaims the right of all peoples to self-determination. It provides that the territorial integrity and political sovereignty of each State must be unreservedly respected.

Resolution 15/41 (XV), adopted on 15 December 1960, complements Resolution 15/14 (XV) in setting out a framework for the application of the right to self-determination. It lists the options enabling a non-self-governing territory to achieve full self-government status. These options include integration with another State, free association with another state, Independence or any other political status freely decided on by the people concerned.

These two resolutions form the foundation of the UN's expectations in matters of decolonisation. They underscore the importance of allowing each People to freely determine its political status and pathway to economic, social and cultural development.

New Caledonia was on the list of non-self-governing territories established by the United Nations from 1946 to 1947, before being delisted. On 2 December 1986, the United Nations General Assembly reinscribed New Caledonia on this list, adopting Resolution 41/41/A which affirms “the inalienable right of the people of New Caledonia to self-determination and Independence.”²

The Matignon Accords, signed on 26 June 1988 and the Noumea Accord, signed on 5 May 1998, form the legal and political basis for the decolonisation process in New Caledonia. The Noumea Accord Preamble recognises the shadow and light of colonisation and the resulting lasting trauma for the Kanak community. It also recognises the “mistakes” made by the French state during colonisation and the “suffering” and “injustices” undergone. In addition, it highlights the importance of “sharing sovereignty” and building a “common destiny” between all the inhabitants of New Caledonia.

The Noumea Accord further provided for the organisation of three referenda on accession to full sovereignty for New Caledonia. These votes were held within the time frame provided for in the Accord.

In the context of the decolonisation of New Caledonia, the honouring of the commitments given by the parties concerned, set within the framework of the United Nations resolutions, represented an essential factor in the implementation of a peaceful, equitable and enduring process.

The purpose of this audit of the decolonisation of New Caledonia is to assess the effectiveness and equity of the process under way, in the light of the United Nations' expectations and the thrust of the Noumea Accord.

¹ Resolution 15/14 (XV) adopted by the General Assembly on 15 December 1960, UN

² Resolution 41/41/A adopted by the General Assembly on 2 December 1986, UN

2. Audit Methodology

2.1 Objectives and scope of the audit

In 2017, in the period preceding the first self-determination referendum, the pro-Independence political group 'Union Calédonienne-Front de libération nationale kanak et socialiste' (Caledonian Union-Kanak and Socialist National Liberation Front - UC-FLNKS) requested that an audit be carried out for the purpose of reviewing action taken by the State to accompany New Caledonia in the decolonisation process with reference to international law.

Accepted in principle by the Signatories' Committee, preparations were made for this process by the drafting of Terms of Reference (ToR), within a working group led by the State and bringing together all the political tendencies. The ToR were approved by the Signatories' Committee in 2019.

In accordance with the ToR, this audit of decolonisation in New Caledonia is based on the UN-defined framework for decolonisation processes. Not finalised in 2020, the process was re-initiated in 2021 and a public tender process was used to launch the audit work.

This audit of decolonisation in New Caledonia is, in accordance with the mandate, based on the framework defined by the UN regarding decolonisation processes. It will be relevant to the debate on New Caledonia's institutional future.

2.2 The UN benchmarks: the 7 dimensions of the audit assessment

This New Caledonia decolonisation audit is grounded in the framework defined by the United Nations Special Committee under which it is important to take care to "foster an environment favourable to the peaceful evolution of New Caledonia towards self-determination"; in order to do so, the scope of the audit is framed by the relevant United Nations resolutions, whether of a general nature, relating to decolonisation and self-determination, or specific to New Caledonia and its decolonisation process.

This UN decolonisation framework therefore forms the bedrock of the audit, which is structured into seven dimensions, as set out below.

1) Free choice of political/institutional status

"The creation of a sovereign and independent State, free association or integration with an independent State, or the acquisition of any other political status freely chosen by a people are ways for that people to exercise its right to self-determination" (UN General Assembly Resolution 26/25, 24 October 1970)

2) Free choice of economic, social and cultural development pathway

"The administering Powers should take the necessary steps to promote the political, economic, social, cultural and educational advancement of the peoples of the Non-Self-Governing Territories in order to facilitate for them the exercise of their right to self-determination, and should continue to transmit information to the United Nations in accordance with Article 73e of the Charter of the United Nations". (A/56/61 - Second International Decade for the Eradication of Colonialism, Report of the Secretary-General, Annex, 22 March 2001)

3) Sovereignty of peoples over their natural resources

"The administering Powers should implement measures to conserve natural resources, protect the environment and assist the peoples of the Non-Self-Governing Territories in attaining the maximum measure of economic self-sufficiency, ecological protection and social and educational development". (A/56/61 - Second International Decade for the Eradication of Colonialism, Report of the Secretary-General, Annex, 22 March 2001)

4) Non use of force

"States have the duty to refrain from acts of reprisal involving the use of force. Every State has the duty to refrain from any coercive measure which would deprive the peoples mentioned in the formulation of the principle of equal rights and self-determination of their right to self-determination, freedom and independence. The territory of a State may not be subject to military occupation resulting from the use of force contrary to the provisions of the Charter". (UN General Assembly Resolution 26/25, 24 October 1970)

5) International cooperation

The administering Powers should, in conformity with all the relevant resolutions and decisions of the General Assembly and bearing in mind Assembly resolution 1514 (XV) of 14 December 1960, facilitate the participation of the Territories under their administration in the programmes and activities of the specialized agencies, international financial institutions and other organizations of the United Nations system, and in those of the United Nations organs dealing with decolonization, including the Special Committee, as well as international and regional organizations." (A/56/61 - Second International Decade for the Eradication of Colonialism, Report of the Secretary-General, Annex, 22 March 2001)

6) Migratory flows

"The administering Powers should ensure that the exercise of the right of self-determination is not impeded by changes in the demographic composition due to immigration or displacement of populations in the territories under their administration". (A/56/61 - Second International Decade for the Eradication of Colonialism, Report of the Secretary-General, Annex, 22 March 2001)

7) Action plans for the eradication of colonialism

"The administering Powers should continue or renew their cooperation with the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples and participate actively in the work of that Committee.

"The administering Powers should facilitate regular United Nations visiting missions to each of the Territories. (A/56/61 - Second International Decade for the Eradication of Colonialism, Report of the Secretary-General, Annex, 22 March 2001)

2.3 Summary of the methodological process

The methodology used is consistent with the following principles:

- For analytical purposes, refer to the United Nations framework, set out in the appended detailed documentary sources;
- Deeply involve all stakeholders (political parties, local institutions, administrations, economic players, churches, NGOs) through 25 local in-person interviews;
- Request an opinion on the methodological aspects and the audit process from the qualified persons, identified by the High Commission of the Republic, while ensuring that the analysis process remains impartial;
- Factualise the conclusions of the assessment in the clearest possible way in a stand-alone reporting back document, to be shared with all the parties.

For this purpose, a three-phase approach was implemented:

- **Phase 1: “preparation and desktop study”** to identify, assemble and analyse the information required to carry out the audit (examination of documents framing decolonisation and factual data on the seven themes, preparation of an assessment prism and an interview guide);
- **Phase 2: “Diagnosis”** during which the in-person interviews are carried out in New Caledonia;
- **Final phase: “Formalisation and reporting back”**

2.4 Qualified persons

Two qualified persons, chosen by the High Commissioner, Mrs Keisha McGuire and M. Dominique Bussereau, were associated with the audit work. Their role was to provide an external and expert view in order to ensure the quality of the method used. They were associated prior to the mission and provided comments on the methodological approach. In particular, they contributed to the preparation of the list of persons to be met during the interviews. In addition, they attended almost half of the interviews held in New Caledonia, especially with political figures, NGO leaders and church representatives. Also, after the fieldwork, they offered comments on the audit report.

A lawyer and diplomat, Mrs Keisha McGuire is the permanent representative of Grenada to the United Nations. From 2019 à 2023, she chaired the C24, United Nations Special Committee on Decolonisation.

Dominique Bussereau, a former French minister and MP, is a connoisseur of New Caledonian issues and institutions. Since 1976, he has made more than 20 work visits to New Caledonia and in particular from 2014 chaired the Mission on the institutional future of New Caledonia at the French National Assembly.

2.5 Detailed bibliography appended

The bibliography on which relies the desktop study includes various sources, mainly official or academic, reliable, and up-to-date as long as possible.

2.6 Interviews

More than sixty people were met through 25 interviews conducted in New Caledonia for the purpose of this audit: state representatives, public agencies, elected officials and political representatives from various political parties, academic researchers, actors from the civil society (organizations, companies, worship representatives...).

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3. Free choice of institutional status

3.1 Decolonization criteria resulting from UN Resolutions

"The purposes of the United Nations are: to maintain international peace and security and to this end: [...] To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen the peace of the world."

Article 1 of the United Nations Charter dated 26 June 1945

"Members of the United Nations who have or who assume responsibility for the administration of territories whose populations are not yet fully self-governing recognize the principle of the primacy of the interests of the inhabitants of such territories. They accept as a sacred trust the obligation to promote to the fullest extent possible their prosperity, within the system of international peace and security established by the present Charter and, to this end:

a. to ensure, while respecting the culture of the populations in question, their political, economic and social progress, as well as the development of their education, to treat them with equity and to protect them against abuses;

b. to develop their capacity for self-government, to take into account the political aspirations of their peoples and to assist them in the progressive development of their free political institutions, to the extent appropriate to the particular conditions of each territory and its peoples and their varying degrees of development."

Article 73 of the United Nations Charter dated 26 June 1945

"It can be said that a non-self-governing territory has achieved full autonomy: a) When it has become an independent and sovereign State; b) When it has freely associated itself with an independent State ; c) When it has integrated into an independent State."

Principle VI of Resolution 15/41 of the UN General Assembly dated 15 December 1960

"The establishment of a sovereign and independent State, the free association or integration with an independent State, or the acquisition of any other political status freely chosen by a people constitute means for that people to exercise its right to self-determination."

UN General Assembly Resolution 26/25, dated 24 October 1970

3.2 Relevant contextual and historical considerations in the choice of institutional status and of economic, social and cultural development pathways by the people of New Caledonia

When France claimed New Caledonia in 1853, this event led to the colonization of the territory and of the Kanak people, particularly through the introduction of an 'Indigenous Status Code' in 1887. From 1904, the creation of 'Indigenous Reserves' restricted land occupation by Kanak groups to limited areas.

Over time, the indigenous Kanak population has thus undergone strong demographic and cultural pressure and has experienced economic and political marginalization.

Over the same period, New Caledonia became a penal colony, a singular characteristic among French colonies, while the discovery and exploitation of nickel led to the arrival of a labour force, mostly from Asia.

A period of revolt continuing until 1917 produced increasing political awareness among Kanaks, leading to demands for recognition of their rights. In 1928, the 'Labour Party' was established with the goal of fighting for Kanak workers' rights and more political autonomy.

After the Second World War, in 1946, New Caledonia's status changed from a colony to that of an Overseas Territory (TOM). That year, the Kanaks, hitherto 'French Subjects', were granted French citizenship and the right to vote, the full effects of which only occurred in 1957. At the same time, New Caledonia was included by the United Nations General Assembly in the list of non-self-governing territories, until 1947.

After a period when some of territory's self-governing prerogatives were withdrawn and political tension was growing, the 1970s and 1980s were marked by the emergence of the New Caledonian Independence movement, echoing the decolonization process under way in the world and reacting to the arrival of migrants from mainland France and the Pacific region. Violent clashes ensued between 1984 and 1988 between pro-Independence and anti-Independence factions. In December 1986, New Caledonia was reinscribed by the UN on the list of non-self-governing territories to be decolonized.

The 'Events' (1984-1988) were followed by a dialogue process between forces in the territory, endorsed by the Matignon-Oudinot Accords on 26 June 1988. These agreements provided for a decolonization and self-determination process for New Caledonia and a process of economic, political, social and cultural levelling-up, as well as a special status for the Kanak community and equitable wealth distribution.

The Noumea Accord, signed in 1998, strengthened this process by establishing a legal and political framework for New Caledonia for a 20-year period. The provisions included the establishment of new institutions, the devolution of many responsibilities to the territory, specific arrangements for natural resource management and provisions for self-determination of the territory specific arrangements for elections.

Since then, New Caledonia has seen a gradual transfer of responsibilities from the State to the collectivity and enjoys special status within the French Republic, as formalised under Head XIII of the Constitution.

3.3 Actions taken and means used by France since 1986, concerning the free choice of institutional status for New Caledonia

a) Devolution of responsibilities from the State to New Caledonia

In 1988, the Matignon-Oudinot Accords signed between the French Government, a pro-Independence delegation and a non-pro-Independence delegation agreed on the transfer of powers from the State to New Caledonia.

Then, in 1989, the three Assemblies: Southern Province, Northern Province and Loyalty Islands Province were created.

Continuing the process, in 1998, the Noumea Accord provided for the transfer of further responsibilities to New Caledonia and for more devolution over a 20-year period, with the aim of allowing the local authorities to gradually take in hand these new responsibilities.

The Organic Law dated 19 March 1999 relating to New Caledonia more precisely defined the modalities for the transfer of powers from the State to the local authorities of New Caledonia. The table below, prepared by ISEE, details the responsibilities transferred and the date they became effective.

| Répartition et échéancier des transferts de compétences issus de la loi organique de 1999 [1 à 3] | | |
|---|---|--|
| | Etat | Nouvelle-Calédonie |
| Défense | Défense, régime des matériels de guerre, armes et munitions, poudres et substances explosives. | |
| Justice | <p>Dr. pénal.</p> <p>Justice, organisation judiciaire, organisation de la profession d'avocat, frais de justice pénale et administrative ; Procédure pénale et procédure administrative contentieuse ; commissions d'office et service public pénitentiaire.</p> | <p>Possibilité d'assortir, sous certaines conditions, les infractions aux lois du pays et à ses règlements, de peines d'amendes et de peines d'emprisonnement.</p> <p>Procédure civile, aide juridictionnelle et administration des services chargés de la protection judiciaire de l'enfance.</p> <p>Réglementation des officiers publics et ministériels.</p> |
| Ordre public | Maintien de l'ordre. | Information sur les mesures prises en matière de maintien de l'ordre. |
| Monnaie | Monnaie, crédit, changes, relations financières avec l'étranger ; Trésor. | Consultation sur les décisions de la politique monétaire. |
| Relations extérieures | <p>Relations extérieures sous réserve, le cas échéant, des compétences dévolues à la Nouvelle-Calédonie.</p> <p>Conditions d'entrée et de séjour des étrangers.</p> | <p>Négociation et signature d'accords avec des Etats, territoires ou organismes régionaux du Pacifique et organismes régionaux dépendant des institutions spécialisées des Nations-Unies. Association ou participation au sein de la délégation française aux négociations et à la signature d'accords. Participation ou association aux négociations relatives aux relations entre la Communauté européenne et la Nouvelle-Calédonie. Possibilité d'être membre, membre associé ou observateur auprès d'organisations internationales.</p> <p>Possibilité d'avoir une représentation auprès d'Etats ou territoires du Pacifique.</p> <p>Possibilité de signature de conventions de coopération décentralisées avec des collectivités locales ou étrangères, leur groupement ou établissements publics.</p> <p>Consultation et information sur la réglementation relative à l'entrée et au séjour des étrangers et sur la délivrance des visas pour un séjour d'une durée supérieure à trois mois.</p> |
| Communication | <p>Communication audiovisuelle. (5)</p> <p>Liaisons et communications gouvernementales de défense et de sécurité en matière de postes et télécommunications ; réglementation des fréquences radio-électriques.</p> | <p>Consultation, notamment par le Conseil Supérieur de l'Audiovisuel, lorsque ses décisions intéressent la Nouvelle-Calédonie.</p> <p>Postes et télécommunications.</p> |
| Sécurité civile | | Fixation des règles et commandement des secours en cas de sinistre majeur. (4b) |
| Administration et Finances | <p>Fonction publique de l'Etat.</p> <p>Marchés publics et délégations de services publics de l'Etat et de ses établissements publics.</p> <p>Domaine de l'Etat.</p> <p>Contrôle de légalité et règles relatives à l'administration des provinces, des communes et de leurs établissements publics ; régime comptable et financier des collectivités publiques et de leurs établissements publics. (5)</p> | <p>Fonction publique de la Nouvelle-Calédonie et des communes.</p> <p>Réglementation des marchés publics et des délégations de service public.</p> <p>Droit domanial de la Nouvelle-Calédonie.</p> <p>Organisation des services et établissements publics de la Nouvelle-Calédonie.</p> |
| Enseignement et Recherche | <p>Contrôle budgétaire des provinces, communes et leurs établissements publics.</p> <p>Collation et délivrance des titres et diplômes.</p> <p>Enseignement supérieur (5) et recherche.</p> | <p>Statistiques intéressant la Nouvelle-Calédonie.</p> <p>Programmes d'enseignement, formation des maîtres et contrôle pédagogique du primaire. Formation professionnelle et attribution de diplômes à ce titre. Enseignement du 2nd degré public et privé, enseignement primaire privé, santé scolaire. (2)</p> <p>Consultation sur la création ou la suppression en Nouvelle-Calédonie de filières de formation de l'enseignement secondaire.</p> <p>Association et consultation sur les projets de contrat entre l'Etat et les organismes de recherche établis en Nouvelle-Calédonie ; création d'un conseil consultatif de la recherche.</p> |
| Droit civil | <p>Nationalité ; garantie des libertés publiques ; droits civiques ; régime électoral.</p> <p>Règles concernant l'état civil, droit des personnes, droit de la famille, droit des obligations, droit des biens, droit des contrats, droit des sûretés, droit patrimonial de la famille. (4)</p> <p>Droit de propriété et droits réels. (4a)</p> | <p>Statut civil coutumier.</p> <p>Régime des terres coutumières et palabres coutumiers, limites des aires coutumières.</p> |
| Économie et développement | Droit commercial. (4) | Commerce extérieur, régime douanier ; réglementation des investissements directs étrangers. Fiscalité (perception, création et affectation d'impôts, droits et taxes). Réglementation des professions libérales et commerciales. Droit des assurances. Tourisme. Réglementation des poids et mesures ; concurrence et répression des fraudes. Commerce des tabacs. Réglementation des prix et organisation des marchés. |
| Transport | <p>Desserte maritime entre la Nouvelle-Calédonie et les autres points du territoire de la République, statut des navires.</p> <p>Desserte aérienne entre la Nouvelle-Calédonie et les autres points du territoire de la République ; immatriculation des aéronefs ; sûreté en matière aérienne.</p> | <p>Desserte maritime d'intérêt territorial ; immatriculation des navires. Police et sécurité de la circulation maritime dans les eaux territoriales. (1)</p> <p>Desserte aérienne intérieure et internationale (sous réserve de la compétence de l'Etat dans les liaisons entre la Nouvelle-Calédonie et les autres points du territoire de la République).</p> <p>Équipements portuaires et aéroportuaires du domaine de la Nouvelle-Calédonie. Police et sécurité en matière de circulation aérienne intérieure. (3)</p> <p>Réseau routier de la Nouvelle-Calédonie, circulation routière et transports terrestres.</p> |
| Météorologie | | Météorologie. |
| Emploi et Formation professionnelle | | <p>Droit du travail (principes fondamentaux), droit syndical ; formation professionnelle et attribution des diplômes à ce titre ; inspection du travail.</p> <p>Réglementation des professions libérales et commerciales et des officiers publics et ministériels.</p> <p>Protection de l'emploi local. Accès au travail des étrangers.</p> |
| Action sociale et Santé | | Protection sociale, santé, hygiène publique ; contrôle sanitaire aux frontières. Droit de la mutualité. Établissements hospitaliers. |

| | | |
|---|--|--|
| Sport et Culture | | Réglementation des activités sportives et socio-éducatives ; infrastructures et manifestations sportives et culturelles. |
| Mines et énergies | Réglementation minière concernant les substances minérales mentionnées au 1 ^{er} de l'article 19 du décret 54-1110 du 13 novembre 1954, ainsi qu'aux installations qui en font usage. | Réglementation relative aux hydrocarbures, au nickel, au chrome et au cobalt. Schéma de mise en valeur des richesses minières. Production et transport d'énergie électrique. |
| Ressources naturelles, Environnement | Réserve de Sèche-Croissant. | Réglementation et exercice du droit d'exploration, d'exploitation, de gestion et de conservation des ressources naturelles biologiques et non biologiques de la zone économique exclusive. Réglementation zoosanitaire et phytosanitaire ; abattoirs. |
| Urbanisme et Habitat | | Principes directeurs du droit de l'urbanisme ; cadastre. |

Transfert effectif depuis 2000.

Compétences transférées : (1) en 2011, (2) au 1^{er} janvier 2012 - (3) au 1^{er} janvier 2013 - lois du pays du 28 décembre 2009.

(4) Compétences transférables par lois du pays adoptées le 30 décembre 2011. Transfert : (4a) au 1^{er} juillet 2013, (4b) au 1^{er} janvier 2014.

(5) Compétences transférables par vote d'une résolution et loi organique avant la fin de l'accord de Nouméa.

SOURCES [1] Loi organique modifiée n°99-209 et loi ordinaire n°99-210 du 19 mars relatives à la Nouvelle-Calédonie, JONC n°7363 du 24 mars 1999. [2] Accord de Nouméa, 1998. [3] Gouvernement de la Nouvelle-Calédonie, Cellule de transferts de compétences.

The devolution process was strengthened by the transfer, under Article 23 of the Organic Law, of the State's public agencies in New Caledonia.

The following table shows the public institutions transferred or to be transferred.

| Public institutions transferred or to be transferred (Article 23 of the Organic Law) | Decree providing for the transfer | Date set for transfer |
|--|--|-----------------------|
| Office of Posts and Telecommunications | Decree No. 2002-717 of 2 May 2002 | 1 January 2003 |
| Training Institute for Administrative Staff | Decree No. 2002-1061 of 1 August 2002 | 1 October 2003 |
| Rural development and land use agency | - | - |
| Agency for the development of Kanak culture | Decree no. 2011-1588 of 17 November 2011 | 1 January 2012 |
| Curriculum documentation center | Decree No. 2011-623 of 31 May 2011 | 1 January 2012 |

UN observations on the devolution of responsibilities

In 2009, the annual UN General Assembly welcomed the fact "that a unanimous agreement was reached in Paris on 8 December, 2008, on the transfer of powers to New Caledonia in 2009 and the holding of provincial elections in May 2009."³

The following year, the General Assembly took note "of the provisions of the Noumea Accord which aim to better take into account the Kanak identity in the political and social organization of New Caledonia and, in this respect, welcomed the fact that the New Caledonian Government on 18 August 2010 adopted the law on the anthem, motto and design of banknotes."⁴

In 2012, the UN noted that "during the Noumea Accord implementation monitoring committee meeting, which was held on 8 July, 2011 in the presence of the signatories, Members of Parliament, Presidents of Provinces and the

³ Resolution 69/102 adopted by the General Assembly on 10 December 2009, UN

⁴ Resolution 65/113 adopted by the General Assembly on 10 December 2010, UN

*President of the Customary Senate, the parties had taken note of the progress made in the transfer of responsibilities, in particular those relating to civil law, commercial law and the rules concerning civil status [...]". In this regard, the General Assembly welcomed the "agreements signed in October 2011 by the French authorities and the New Caledonian Government to organize the transfer of secondary education as of 1 January, 2012".*⁵

In 2014, the first visiting mission of the Special Committee on the Situation Regarding the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, a UN body, (referred to hereinafter as the 'Committee of 24', 'Special Committee' or 'C24') requested *"the Administering Power to develop clear and robust capacity-building programs to empower Caledonians to decide their future", through "education and training at the highest level"*, referring to the context of devolution from the State to New Caledonia as provided for by the Noumea Accord.⁶

After its second visit in 2018, the C24 again noted the *"concerns expressed by some interviewees"*, finding that this transfer of powers remained *"incomplete, despite the substantial efforts of the Signatories' Committee [encouraged] to address these concerns"*.⁷ However, it is important to note that all the mandatory transfers from the State to New Caledonia have taken place. Only the transfers of the Rural Development and Land Management Agency (ADRAF) and those covered by Article 27 of the Organic Law⁸ did not take place, in the absence of a request by a majority of Congress members.

Finally, in a working document on New Caledonia produced by the UN Secretariat in 2022, it reports C24 comments that *"under the terms of the Noumea Accord, France undertook to transfer certain responsibilities and a number of agencies to the Government of New Caledonia between 1998 and 2018, not including sovereignty-level powers. These transfers have all taken place, with the exception of those relating to the Rural Development and Land Management Agency. In accordance with the provisions of the Agreements, the referendum concerns the transfer of sovereignty powers, access to international full-responsibility status and the translation of citizenship into a nationality."*⁹

b) The referenda on the accession of New Caledonia to full sovereignty

The Nouméa Accord provides for the population to be consulted on the future of New Caledonia *"no later than 2018"* (Art. 76). In the event of rejection of New Caledonia's accession to full sovereignty, the Accord specifies that a *"second referendum may be organized [...] no later than two years after the first"* (Art. 76). In the event of a second rejection, a *"third referendum may be held"*.

Within this framework, three referenda were held in New Caledonia between 2018 and 2021. They contained the following question, put to the citizens of New Caledonia: *"Do you want New Caledonia to accede to full sovereignty and become Independent?"* This question was framed *"by consensus"* by the 17th meeting of the Signatories' Committee in Paris on 27 March 2018 *"under the chairmanship of French Prime Minister Edouard Philippe"*. *"The parties thus opted to bring together the three elements of the process into one question with the benefit of simplicity and clarity"*¹⁰.

The three referenda used an electoral system specific to New Caledonia and introduced under the Noumea Accord to ensure that only people concerned by the vote, as defined by criteria agreed by the partners, would be able to participate. This part of the report sets out the preparations, the socio-economic context and the outcomes of the three votes.

⁵ Resolution 67/130 adopted by the General Assembly on 18 December 2012, UN

⁶ Report of the United Nations Visiting Mission in New Caledonia, Special Committee, 18 June 2014

⁷ Report of the United Nations Visiting Mission in New Caledonia, Special Committee, 2 April 2018

⁸ Organic Law N° 99-209 dated 19 March 1999 relating to New Caledonia, Article 27, Légifrance

⁹ Working Document prepared by the Secretariat, UN Special Committee, 31 March 2022

¹⁰ UN Expert Group for the Referendum of 4 November 2018 in New Caledonia, Mission Report, November 2018

Issues raised by the composition of the electorate

Since the Noumea Accord¹¹, the New Caledonian electoral system has been based on 3 distinct electoral rolls, including two so-called 'restricted' electorates:

- The 'General Electoral Roll' (LEG): people enrolled on this list can vote in French national elections (presidential, legislative, European) and in municipal elections.
- The 'Special Electoral Roll for Provincial Assembly and Congress Elections' (LESP), which is more restricted than the LEG, allows registered persons to vote in elections for members of the Provincial Assemblies and Congress.
- The 'Special Electoral List for the Referendum' (LESC), more restricted than the LEG and the LESP: registered persons can participate in the referenda on the accession of New Caledonia to full sovereignty.

The conditions governing admission to the Special Electoral Roll for the Provincial Assembly and Congress Elections were the subject of a revision of the French Constitution in 2007.

The arrangements for inclusion on the Referendum roll led to an amendment to the Organic Law in 2018.

The following comparison charts, prepared as part of the Senate Legislative Report of February 7, 2018, state the requirements for inclusion on each of the rolls.¹²

¹¹ Senate Briefing Report N° 216 (2003-2004), 16 February 2004

¹² Draft Organic Law relating to the organisation of the Referendum on the accession to full sovereignty of New Caledonia, Report N° 287 (2017-2018), Senate, 7 February 2018

| Liste électorale générale (LEG) | Liste électorale spéciale à la consultation du 8 novembre 1998 relative à l'Accord de Nouméa (art. 76 de la Constitution, par renvoi à l'art. 2 de la loi n° 88-1028 du 9 novembre 1988) | Liste électorale spéciale à l'élection des membres du congrès et des assemblées de province (LESP) (Conditions alternatives – I de l'art. 188 de la loi organique n° 99-209) | Liste électorale spéciale à la consultation sur l'accès à la pleine souveraineté (LESC) (Conditions alternatives fixées par la loi organique n° 99-209) | |
|---|--|---|---|--|
| | | | Inscription sur demande (art. 218) | Inscription d'office (II de l'art. 218-2 ; en italiques, les dispositions projetées, qui figureraient dans un nouvel article 218-3) |
| Remplir les conditions fixées à l'article L. 2 du code électoral pour être électeur (« Sont électeurs les Françaises et Français âgés de dix-huit ans accomplis, jouissant de leurs droits civils et politiques et n'étant dans aucun cas d'incapacité prévu par la loi ») <i>et</i> remplir l'une des conditions fixées par l'article L. 11 du même code pour être inscrit sur la liste électorale d'une commune, à savoir : a) Y avoir son domicile réel ou y habiter depuis six mois au moins ; b) Figurer pour la cinquième année consécutive au rôle d'une des contributions directes communales (ou être le conjoint d'une personne satisfaisant cette condition) ; c) Être assujéti à une résidence obligatoire dans la commune en qualité de fonctionnaire public. | Être inscrit sur les listes électorales de Nouvelle-Calédonie à la date de la consultation et y avoir eu son domicile depuis le 6 novembre 1988. <i>(Les électeurs inscrits sur la liste électorale générale ne satisfaisant pas cette condition de domicile ont été inscrits sur un tableau annexe.)</i> | a) Avoir rempli les conditions pour être inscrit sur la liste électorale établie en vue de la consultation du 8 novembre 1998 ; b) Être inscrit sur le tableau annexe établi en 1998 et domicilié depuis dix ans en Nouvelle-Calédonie à la date de l'élection ; | a) Avoir été admis à participer à la consultation du 8 novembre 1998 ; b) N'ayant pas été inscrit sur la liste électorale pour la consultation du 8 novembre 1998, avoir rempli néanmoins la condition de domicile requise pour être électeur à cette consultation ; c) N'ayant pas pu être inscrit sur la liste électorale spéciale à la consultation du 8 novembre 1998 en raison du non-respect de la condition de domicile, justifier que son absence était due à des raisons familiales, professionnelles ou médicales ; d) Avoir eu le statut civil coutumier ou, né en Nouvelle-Calédonie, y avoir eu le centre de ses intérêts matériels et moraux ; | 1° Avoir été admis à participer à la consultation du 8 novembre 1998 ; 2° Avoir ou avoir eu le statut civil coutumier ; 3° Être né en Nouvelle-Calédonie et présumé y détenir le centre de ses intérêts matériels et moraux, dès lors que l'on satisfait l'une des conditions suivantes : a) Ayant rempli les conditions pour être inscrit sur les listes électorales établies en vue de la consultation du 8 novembre 1998, être inscrit sur la LESP au titre du a du I de l'article 188 ; b) Être inscrit sur la LESP au titre du b du même I ; c) Ayant atteint l'âge de la majorité après le 31 octobre 1998, avoir fait l'objet d'une inscription d'office sur la LESP au titre du c du même I ; d) Avoir été domicilié de manière continue durant trois ans en Nouvelle-Calédonie (disposition prévue à titre exceptionnel pour la consultation de 2018) ; |

| | | | | |
|--|--|--|---|--|
| | | c) Avoir atteint l'âge de la majorité après le 31 octobre 1998 et : - soit justifier de dix ans de domicile en Nouvelle-Calédonie en 1998 ; - soit avoir eu l'un de ses parents remplissant les conditions pour être électeur au scrutin du 8 novembre 1998 ; - soit avoir eu l'un de ses parents inscrit au tableau annexe et justifier d'une durée de domicile de dix ans en Nouvelle-Calédonie à la date de l'élection. <i>N.B. Sont inscrites d'office, en vertu de l'article L. 11-1 du code électoral, les personnes qui remplissent la condition d'âge depuis la dernière clôture définitive des listes électorales ou la remplissent avant la prochaine clôture définitive de ces listes, sous réserve qu'elles répondent aux autres conditions prescrites par la loi.</i> | e) Avoir l'un de ses parents né en Nouvelle-Calédonie et y avoir le centre de ses intérêts matériels et moraux ; f) Pouvoir justifier d'une durée de vingt ans de domicile continu en Nouvelle-Calédonie à la date de la consultation et au plus tard au 31 décembre 2014 ; g) Être né avant le 1 ^{er} janvier 1989 et avoir eu son domicile en Nouvelle-Calédonie de 1988 à 1998 ; h) Être né à compter du 1 ^{er} janvier 1989 et avoir atteint l'âge de la majorité à la date de la consultation et avoir eu l'un de ses parents qui satisfaisait aux conditions pour participer à la consultation du 8 novembre 1998. | 4° Répondre à la condition mentionnée au h de l'article 218 et : - avoir fait l'objet d'une inscription d'office sur la LESP ; - et avoir l'un de ses parents qui a été admis à participer à la consultation du 8 novembre 1998. <i>N.B. Sont également inscrites d'office, en vertu du III de l'article 218-2, les personnes âgées de dix-huit ans à la date de clôture des listes électorales et remplissant l'une des conditions fixées à l'article 218.</i> |
|--|--|--|---|--|

Source: Senate Information Report No. 216 (2003-2004), February 16, 2004

In its annual review in December 2008, the UN General Assembly recalled *"with satisfaction the measures taken by the French authorities to settle the question of registration on the electoral rolls with the adoption, by the Congress of the French Parliament, on February 19, 2007, of amendments to the French Constitution which allow New Caledonia to restrict the right to vote in local elections to voters who were registered on the electoral lists in 1998, when the Noumea Accord was signed, in order to guarantee a strong representation of the Kanak population."*¹³

In 2018, during the second C24 visiting mission, the President of Congress had reported the *"efforts made to make the voter rolls more inclusive."* The Secretary General of the High Commission himself considered that *"unlike the provincial electoral list, which had been challenged [...], the special voters list for the Referenda was generally less controversial, with relatively simple and more precise criteria.* This point was confirmed by the judges in the 'SAC's, according to whom the LESC presented few difficulties, apart from *"the registration of persons not previously included in the general electoral roll"*.

In the conclusions of its second mission in 2018, the Special Committee had observed that *"the electoral process in New Caledonia had improved significantly since 2014, particularly with regard to the modalities of registration on the electoral rolls and the arrangements for the ballot"*. It listed the registration of approximately 157,000 New Caledonians on the LESC for the referendum, plus 11,000 voters whose registration was to be reviewed, a process concluded in August 2018.

On this point, note should be taken of the provisions taken to simplify procedures relating to the ballot, having in particular made it possible to automatically register 96% of voters on the LESC or to create 'decentralised polling stations' in Noumea, for voters from the municipalities of Bélep, Ouvéa, Lifou, Maré and Isle of Pines residing on 'Grande Terre'. In addition, during the 3 referendum polls, and due to the health context, legal provisions were made to extend the registration period to vote in these delocalized voting venues, thus enabling the voters concerned to have more time to complete their procedures. In addition, voters who had already opted to vote at a decentralised polling place in 2018 had no new steps to take in 2020 and 2021, as their enrolment remained valid.¹⁴

The Special Committee had also noted *"the possibility of voting by proxy according to strict criteria, thus simplifying the conduct of the referendum. Finally, it reported the satisfaction of "the majority of the population and the authorities of the territory, including the political groups", having "expressed their confidence in the electoral process"*.

Finally, the C24 presented this progress as *"the result of an enhanced dialogue between the signatories of the Noumea Accord", indicating that the addition to the LESC of voters who met the criteria had been made possible by "the amendment made to the Organic Law by virtue of the French Constitution ».*

Subsequently, the UN electoral expert group deployed at the time of the first referendum in November 2018 had pointed out that *"the demand for 'exhaustive' registration, in particular of Kanaks, having not been fully taken into account, [...] a revision of the Organic Law of 1999 had been carried out on April 19, 2018."* At the time, the electoral experts observed that *"despite the exceptional efforts made by the State, some voters continued to be absent on the day of the referendum",* recalling finally that *"they had the possibility, until the date of the poll, to have their situation examined by the Supervisory Committee"*.¹⁵

¹³ Resolution 63/106 adopted by the General Assembly on 5 December 2008, UN

¹⁴ Official press release on decentralised voting stations, High Commission in New Caledonia, 23 September 2021

¹⁵ UN Expert Group for the Referendum of 4 November 2018 in New Caledonia, Mission Report, November 2018

The functioning of the administrative committees

In New Caledonia, 'Special Administrative Committees' (CAS), made up of judges, are responsible for examining applications for registration on the special electoral rolls. They are composed in a way designed to provide impartiality, with:

- A judge from the judiciary, appointed by the First President of the Court of Cassation, as Chair;
- A representative of the Mayor;
- A representative of the High Commissioner of the Republic in New Caledonia;
- Two voters from the 'Commune' concerned, appointed after seeking the advice of the Government of New Caledonia;
- A United Nations electoral expert, appointed after seeking the advice of the Congress of New Caledonia.

Each year the United Nations mission has produced a report and offered suggestions to improve the electoral processes. After each revision period this report is submitted to the High Commissioner of the Republic and the President of the Congress of New Caledonia.

UN observations on the preparations for and socio-political situation preceding the three referenda

In 2014, the first UN Special Committee visiting mission was tasked to "*gather first-hand information on the implementation of the Noumea Accord*" and "*review of the preparations for the provincial elections*" of May 2014.¹⁶

In this context, the C24 had in particular highlighted the measures taken by the High Commissioner aiming to "*prepare as well as possible the final phase of the implementation of the Nouméa Accord, in particular the establishment of the Special Electoral Roll which would be used during the referenda on the accession to full sovereignty*".

In March 2018, during its second visit, the Special Committee's mission concluded that preparations for the upcoming first referendum were "*well in hand and making good progress*". In this regard, it had been able to meet again with the signatories of the Nouméa Agreement and had thus noted their "*strong political will and their good faith, showing themselves involved and open to dialogue*". However, the C24 emphasized that efforts still needed to be made to clearly explain the issues at stake in this vote to the New Caledonian population, in order to "*ensure that the electoral process is acceptable to all parties*".¹⁷

The Special Committee's report also concluded that the situation in the run-up to the first consultation, while "*calm and peaceful*", remained "*uncertain and fragile given the divergence of opinion on the referendum*". In particular, the C24 members had noted "*intergenerational gaps*" regarding the referendum process and outcome, with the generation born after the events of the 1980s being "*less concerned about the self-determination process*".

Visit and observations of the UN electoral experts despatched during the three referenda

At the request of the French authorities, the UN agreed to deploy electoral experts to the country during the three referendum ballots to observe and monitor the process and to report their conclusions. These are summarized below.

¹⁶ Report of the United Nations Visiting Mission in New Caledonia, Special Committee, 18 June 2014

¹⁷ Report of the United Nations Visiting Mission in New Caledonia, Special Committee, 2 April 2018

Main observations from the first referendum¹⁸:

In general, the electoral expert group reported a "[...] remarkably calm and peaceful political and electoral environment", considering that the turnout "very high, even surprising for some, also showed that the future status of New Caledonia remained a crucial issue for a large majority of New Caledonians".

Among the factors cited in their conclusions, the electoral expert group had indicated that "the French Government had played a determining role in the success of the referendum, in particular through the personal commitment of the Prime Minister in the lead-up, during the negotiations on the date and the wording of the referendum question, and afterwards, by his trip to Noumea the day after the election to collect the reactions of the various political parties and call on them to dialogue". The UN experts had also reported "the good awareness work done by national institutions, political parties, media, churches and the Wise Persons Group".

The UN experts also highlighted the "vital" role of mayors in "the preparation, management and implementation of the ballot. They received and carried out the main instructions, especially those related to the preparation of the vote."

On the question of the electorate, the electoral experts concluded: "the LESC is consistent with the spirit of the Noumea Accord. It is quite inclusive and comprehensive. Efforts were indeed made by the authorities of France and New Caledonia (with the support of UN experts from 2016 onwards) to register all those who met the legal criteria through the various revisions of the electoral rolls, including through complementary revisions, the active search for voters eligible for automatic registration, the special polling station for voters without a formal address, the transparency of the revision operations carried out at the level of the special administrative committees, the peaceful nature of this process and the special measures to allow for the rectification of the LESC up to voting day, etc."

For its part, the second Special Committee Visiting Mission in 2018 had, however, noted some problems encountered concerning proxy voting (225 voters had declared that they had been given authority to vote by proxy, but the authorisation had not been received at the Town Hall), which had the effect of "depriving a number of voters of their right to vote".

Finally, among their recommendations, the UN electoral experts had in this regard urged the State and the stakeholders to "improve the general population census policy and civil status policy of New Caledonia" and to "carry out an audit of all the electoral rolls for the elections specific to New Caledonia".

Main observations from the second referendum¹⁹:

In the opinion of the UN group of electoral experts, "the second referendum was held in a more tense context. There was less consensus around the preparation arrangements as regards the date, the criteria for automatic registration on the CEL and the conditions for holding the ballot." Further, this referendum was part of a series of elections (provincial, European, municipal), some of which were marked by political tensions, some by high abstention rates and others by health restrictions, which, according to the same report, "generated tensions and electoral fatigue before the second referendum."

In terms of organization, the UN expert group noted "improvements in several areas compared to the organization of the first referendum" and praised the "efficiency and effectiveness" of the mayors' initiatives. It also noted that the delegates of the supervisory committees had been better trained, thanks to their fourteen-day stay in the territory. However, the experts noted that "the delivery of certain documents by the Office of Post and Telecommunications (OPT) remained inadequate for the rural and tribal areas".

Main observations from the third referendum²⁰:

¹⁸ Report of the United Nations Visiting Mission in New Caledonia, Special Committee, 18 June 2014

¹⁹ UN Expert Group for the Referendum of 4 October 2020 in New Caledonia, Mission Report, November 2020

²⁰ UN Expert Group for the Referendum of 12 December 2021 in New Caledonia, Mission Report, January 2022

The report from the third UN visiting electoral expert group in 2021 noted a "context of breakdown of consensus among stakeholders" and a "widening gap between loyalists and pro-Independence groups, particularly in the absence of dialogue", leading to a call for a boycott of the vote by the pro-Independence parties. The debate had crystallized in particular around the date planned for the referendum. The report stated that the matter "was referred to the judge for interim measures, but he rejected the request to postpone the ballot".

The UN electoral experts reported that "the State had maintained the date of 12 December, 2021, through a political choice by Emmanuel Macron to conclude the organization of the referenda before the end of his mandate, through a technical choice (this date is part of the Noumea Accord timetable) and by legal choice (since the date of the referendum is a state prerogative)". Furthermore, "since there is no minimum participation threshold or obligation to vote, there can be no appeal that would lead to an electoral dispute."

The large security detail deployed on the day of the referendum had also generated debate. The UN expert group concluded that "the day went well, with only a few demonstrations noted by the experts. The closing time for the poll was delayed by one hour to allow voters who arrived before the closing time to vote. The Pacific Islands Forum, which also sent an observation mission, noted "a peaceful and organized election but regretted that the context was not taken into account more in the analysis of the result." As for the Melanesian Spearhead Group, "it had advocated a postponement of the ballot".

In its conclusions, the report by the mission of electoral experts stated that "this vote took place without the participation of half of the population who happened to be the First Nation people of New Caledonia. This third referendum [...] has demonstrated that the culmination of the Noumea Accord process has taken place to a background of interrupted dialogue between the State and the pro-Independence parties" the pro-Independence representatives interviewed by the expert group considered that "the change in method by the State (which is seeking advisory positions rather than consensus) and its firmness when faced with their demands would seem to show a French State departing from its position of neutrality [...]" On 9 November, they announced that they would not "respect the result".

Finally, some points observed in some polling stations by the UN expert group were noted.

The results of the referenda

As indicated by the UN expert mission at the time of the first referendum, the vote focused on "the three issues which, under the terms of the Noumea Accord, define full sovereignty, namely 1) the transfer to New Caledonia of the sovereignty powers previously held by the French State, 2) access by the country to an international status of full responsibility, 3) the translation of citizenship into nationality".²¹

To the question: "Do you want New Caledonia to accede to full sovereignty and become Independent?"

- In the first referendum in 2018, 56.7% of participants voted No and 43.3% voted Yes, with a turnout of 81.09%.
- In the second referendum in 2020, 53.26% of participants voted No and 46.74% voted Yes, with a turnout of 85.64%.
- In the third referendum in 2021, 96.49% of participants voted No and 3.51% voted Yes, with a turnout of 43.90%.

The low turnout in the last referendum was due to a call to boycott the vote by the pro-Independence camp.²²

²¹ UN Expert Group for the Referendum of 4 November 2018 in New Caledonia, Mission Report, November 2018

²² UN Expert Group for the Referendum of 12 December 2021 in New Caledonia, Mission Report, January 2022

The parties believe that the State, pro-Independence parties and non-pro-Independence parties have commenced the decolonisation process approved by the Matignon Accords in 1988 and then by the Noumea Accord in 1998. This process is characterised by the recognition of Kanak culture and the development of an unprecedented jointly developed institutional matrix.

The definition of a specific electorate for the referendum votes together with the presence of the UN for each referendum have guaranteed that the population concerned has been enabled to express its free choice of status. This special electoral college is considered by some as a concrete act of decolonisation.

The three referenda in 2018, 2020 and 2021 on the issue of accession to full sovereignty have however led to a hardening of relations within New Caledonian society, placing the people of New Caledonia before a binary vision of the future with which not everyone identifies.

The results of the referenda have a legal basis and substantiate the end of the period defined by the Noumea Accord. The pro-Independence movement considers however that the holding of the third referendum, which occurred during the Kanak mourning period for the victims of Covid 19, as a departure from the Noumea Accord, which was a benchmark for the recognition of Kanak culture. It should be noted that all the mayors, including the pro-independence mayors, representing two thirds of the Communes, oversaw the smooth running of the voting throughout the territory, even when some of them had called for the boycott.

3.4 Conclusion

Conclusion regarding the free choice of institutional status

The right to self-determination of the people of overseas is recognised as a principle having constitutional value by Para 2 of the Preamble to the Constitution.

Matignon-Oudinot and Noumea Accords represent the beginning of New Caledonia's decolonisation process. Since then, institutional arrangement specific to the territory have been introduced through the Provinces, Congress and Government of New Caledonia. At the same time, the State has gradually transferred to New Caledonia and its agencies all the responsibilities required by the Accords. As the devolution of the non-obligatory powers had not been requested by a majority of Congress members, plans have not been made to devolve them.

Through the restricted electorate resulting from the Noumea Accord the people of New Caledonia have voted three times at referenda in 2018, 2020 and 2021. These ballots were provided for under the Noumea Accord and organised at the request of the parties concerned. Arrangements for them were made by an organising committee including all the political groups, with supervision by the UN and regional organisations. During these referenda, neither pressure on voters nor any other hindrance to the casting of their votes was observed. These three referenda therefore correspond to the exercise of a free and democratic self-determination choice, as defined by UN Resolution 15/14.

After three refusals of access to full sovereignty is expressed during the referenda, a fresh dialogue associating the state and all political stakeholders would appear to be relevant in order to prepare a new status for the territory, freely determined and in accordance with the right of the people of New Caledonia to self-determination, in accordance with the model put forward in UN General Assembly Resolution 26/25.

4. Free choice of economic, social and cultural development model

4.1 Decolonization criteria resulting from UN resolutions

" [The General Assembly] Reaffirms the responsibility of the Administering Powers under the Charter of the United Nations to promote the political, economic and social advancement and educational development of the Non-Self-Governing Territories, and also reaffirms the legitimate rights of the peoples of those Territories over their natural resources. "

A/52/621 – UN General Assembly Resolution 52/72, 10 December 1997

"[The General Assembly] Affirms the value of foreign economic investment undertaken in cooperation with the peoples of the Non-Self-Governing Territories and in accordance with their wishes in order to make a valid contribution to the socio-economic development of those Territories."

A/52/621 – UN General Assembly Resolution 52/72, 10 December 1997

4.2 Relevant contextual and historical considerations in terms of the choice of an economic, social and cultural development pathway by New Caledonians and recognition of the Kanak identity

The colonial history of New Caledonia has left a deep imprint on its of economic, social and cultural development model. Historically, this model was based on a plantation economy (coffee, cocoa, copra) and on nickel exporting. In particular, the development of the nickel industry has gradually led to New Caledonia becoming a single-sector economy: ore represented 90% of exports in 1978. Because of this, industrial specialization, the territory must now respond to the major challenge of diversifying its economy.²³

The primary sector is also a determining factor in the future of New Caledonia's economic development model: local agricultural production is not sufficient to meet the population's food needs, causing high dependence on imports. New Caledonia is thought therefore to be almost 90% dependent on imported foodstuffs. This food dependency can therefore be considered as a hindrance to New Caledonia's Independence, as it makes it vulnerable to fluctuations in prices and supplies on international markets.²⁴

The New Caledonian economic model also partly includes the spin-offs from tourism, although these are still limited. Several key steps have made it possible to structure tourism in the territory, starting with the creation of the 'New Caledonian Hotel and Tourism Company' (SHT) in 1972, which later became the 'New Caledonian Tourism Company' (SCT) in 1980, before being integrated into the New Caledonia Tourism Office (OTNC). In 2019, visitor arrivals exceeded 130 400 people.²⁵

The issue of economic, social and cultural development for the people of New Caledonia itself raises issues like toverty alleviation, unemployment and social exclusion, in particular among the Kanak population. In the 1960s, there was an illiteracy rate of over 50% among the Kanaks, and they accounted for 30% of the unemployment rate in the 1980s. At the present time, according to 2020 figures from ISEE, the unemployment rate for over 15-year-olds is 15% among, as against 13% for the population of New Caledonia as a whole²⁶. In addition, 33% of adults for not having French as their mother tongue are thought to be in a "concerning situation as regards writing" (2018

²³ 'La Nouvelle-Calédonie : économie et société', P. Gaboriau and D. Guillemot, 2011

²⁴ 'Diagnostic agricole et alimentaire de la Nouvelle-Calédonie', Agence de développement de la Nouvelle-Calédonie, 2018

²⁵ 'L'essor du tourisme en Nouvelle-Calédonie', Agence Calédonienne du Tourisme

²⁶ 'Synthèse N° 54' – 'Enquête Forces de Travail' – New Caledonia, ISEE, 2020

outcomes from the ‘Defence and Citizenship Days’²⁷. According to the same results, among all persons recorded as being in a situation of illiteracy in New Caledonia, 57% “spoke another language (Kanak, Pacific Island) at home at the age of five years.”

As a corollary, questions over the recognition and promotion of Kanak culture still arise today: as the Kanaks have historically experienced a policy of cultural and linguistic assimilation, it is now a matter of restoring and recognising the value of their identity and culture, while working collectively towards reconciliation between the different communities.²⁸

The development of the territory and its inhabitants must be able to rely on their rising level of ability, through policies supporting higher education and vocational training. However, before 1986, training availability on the territory was limited, not very diversified and had not been widely available: in 1963, New Caledonia had only two higher education establishments, a primary-level training school for male teachers and another for female teachers. Subsequently, several higher education and vocational training institutions set up in the 1970s and 1980s contributed to the development of the territory's resources in this area. In particular, the opening of the University of New Caledonia (UNC) in 1987 was itself seen as a strong symbol of the affirmation of the place of the Kanaks in New Caledonian society.

These various institutions were created to meet New Caledonia's needs in terms of professional training and higher education, but also to foster the emergence of a local elite capable of taking charge of the management of the territory and its development. In spite of this, the need to strengthen and support the process of upskilling the workforce, particularly to match the needs of business, remains a central challenge to guaranteeing the economic and social development of the territory.

4.3 Actions carried out and means used by France since 1986, concerning the free choice of a development model for New Caledonia and the recognition of the Kanak identity

The steps taken by the State and local authorities to contribute to the development model of New Caledonia will be approached here from the angle of the territory's economic development, in the broadest sense, including higher education and vocational training, and social and cultural development for the community.

a) Economic development in the territory

The financial support provided by the State

The transfer to local institutions of responsibility for economic development was formalized by Organic Law No. 99-209 of 19 March 1999 on New Caledonia. This law stipulates that the Provinces and Government now have exclusive responsibility for developing and implementing economic, tourism, commercial, industrial, mining, artisanal and agricultural policies.

In addition, the State continues to provide financial support for the development of New Caledonia. According to the latest report from the High Commission of the Republic in New Caledonia (November 2022), State expenditure in New Caledonia for 2021 amounted to 195 billion CFP francs (1, 630 billion euros), or approximately 20% of New Caledonia's GDP. This amount, up on 2020 (178 billion CFP francs, equivalent to 1,

²⁷ ‘Rapport n°02/2018’, ‘Observatoire de la réussite éducative’ (ORE), ‘Service de l'aménagement et de la planification’, Government of New Caledonia, December 2018

²⁸ ‘Les Kanaks face à leur destin’, J.-M. Tjibaou, 1985

488 billion euros, or 19% of GDP) which was a more ‘representative’ year – the 2021 annual budget having been impacted by the effects of the Covid-19 pandemic.

This package is broken down into 3 major components²⁹ :

- Expenditure by government departments, including some operators;
- Expenditures on action with New Caledonian local government institutions and NGOs;
- Tax incentives for overseas investment.

In addition, expenditure by interministerial sectors, representing 158 billion CFP francs (1 321 million euros) in 2021 excluding other allocations, of the 195 billion (1 630 billion euros) provided by the State can be broken down as follows:

| Ministerial sector (source: Dfip) | CFP francs |
|--|--------------------|
| Interior, Overseas and territorial collectivities | 53 billion |
| National Education | 49 billion |
| Defence, including troop and Gendarme salaries | 23 billion |
| Civilian and military pensions | 19 billion |
| Justice and freedoms | 9 billion |
| Finance, public accounts and State reform | 3.5 billion |
| Food, agriculture and fisheries | 1.2 billion |
| Environment, energy, sustainable development and ocean | 390 million |
| Prime Minister’s Dept | 168 million |
| Recovery plan | 162 million |
| Health and sport | 131 million |
| Culture and communication | 98 million |
| Foreign and European affairs | 79 million |
| Public policy conduct and support: health, social, sport, youth, NGOs, urban | 65 million |
| Higher education and research | 35 million |
| TOTAL | 158 billion |

Development projects for the territory and New Caledonian communities are financially supported through development contracts between the State, New Caledonia, the Provinces and the Municipalities, for periods of 5 years (Organic Law No. 99-209 and Law No. 99-210 of March 19, 1999). They support a wide range of projects: infrastructure, training (initial and continuing), environmental management, economic, social and cultural development, etc. Six contracts have been signed since 1999. The 6th generation (2017-2021) has been 50% funded by the State, i.e. an amount of 93.6 billion CFP francs (nearly 782 million euros). These contracts have been extended until 2022, associated with an additional State allocation of 9 billion CFP francs (about 75 million euros), according to a report by IEOM.³⁰

Alongside these measures, overseas fiscal support is another lever used by the State to support economic initiatives on the territory. In this setting, 26 economic development projects were approved by the State in 2021, representing a fiscal cost of 10.2 billion CFP francs (€85 million) making it possible to support the realisation of 22.5 billion CFP francs (€85 million) worth of investments. In total, from 2013 to 2021, this tax relief arrangement amounted to 107.5 billion CFP francs (almost €900 million) in budgetary support efforts provided by the State.

²⁹ *Les Dépenses de l’Etat en Nouvelle-Calédonie*, report by the Government of New Caledonia, 2020

³⁰ ‘Rapport d’activité 2019 de la Nouvelle-Calédonie’, IEOM

The Provinces now have responsibility for economic development, linked to New Caledonia's economic policy. The Provinces can develop and implement economic development plans in their jurisdiction, in partnership with local actors. In particular, they are responsible for developing priority economic sectors - agriculture, industry, tourism or fishing. They are also a player in the attractiveness of the territory to companies, which they support in their establishment and their projects. They also have a role in promoting the territory to foreign investors.

Over time, various measures and major resources have been implemented jointly by State to support New Caledonia's economic development model. Note can be taken of the 'Special Investment Fund', created in 1988 to fund long-term economic projects in the territory. Between 1988 and 2013, this fund disbursed more than 20 billion CFP francs (167 million euros) in subsidies and zero-interest loans to support 296 projects, according to a report by the Territorial Chamber of Audit of New Caledonia.³¹

Due to the importance of the nickel industry for the territory's economy, a Nickel Fund was set up in 1990 with the State to finance the development of the nickel industry. Between 1990 and 2020, this fund has mobilized nearly 285 billion CFP francs (about 2.4 billion euros) to support research, exploration and mining projects, as well as infrastructure and local development projects, according to the official website of the Government of New Caledonia.

In 2021, as part of the post-Covid-19 recovery plan, the State allocated a support package for New Caledonia's economic recovery. This plan includes investments in the ecological transition, agriculture and fisheries sectors.³²

Also, at the end of 2020, to the background of a global health crisis, all the New Caledonian economic players united under the common banner 'Economy New Caledonia' (NC ECO), with the ambition of building a common vision around a shared and sustainable economic and social model, regardless of the institutional options that are chosen. This collaborative initiative between New Caledonian economic players has the following mission: contribute to building: *"a structural reform of the New Caledonian economy towards a sustainable development model. NC ECO intends to: "generate ideas, by defining its vision of the future and its vision of economic development, which makes it possible to reconcile liberalism and social cohesion in order to ensure lasting economic and social prosperity for New Caledonia: a chosen model"*.

Higher education and training

Higher Education is a State responsibility. An important step was the establishment in 1987 by the State of the University of New Caledonia (UNC) to meet the training needs of young New Caledonians on their territory. The initial funding for the university was 1.2 billion CFP francs (about 10 million euros) from the Ministry of Overseas Territories. Since then, the UNC has received annual funding from the French Government and New Caledonia to cover its operations.

An agreement was signed in 2011 between the State, New Caledonia and the UNC, to strengthen funding for the university and improve the quality of higher education. This agreement provided for an increase in the financial resources allocated to the UNC, as well as better coordination between the various players in higher education in New Caledonia.

In 2018, a report by the 'General Inspectorate of the Administration of National Education and Research' was submitted to the Minister of National and Higher Education. Among other things, this report recommended, strengthening the presence of the State in New Caledonia to support the development of higher education in the territory.

Also, as part of State financial support for the 'Future Investment Programme' (PIA), in 2018 UNC received an initial grant of 720 million CFP francs (€6 million) for its TREC (New Caledonian Student Success Trajectory) project and then a 600 million CFP franc (€5 million) grant for three new projects, which in 2020 were successful under the PIA3 call for project submissions.

³¹ 'Fonds exceptionnel d'investissement', Chambre territoriale des comptes de Nouvelle-Calédonie, 2014

³² 'Plan de relance : les mesures pour la Nouvelle-Calédonie', Ministère de l'Economie, des Finances et de la Relance, 9 September 2021

Enrolment of New Caledonian Bacculaureate holders on higher education courses.

The latest ISEE data (2021 figures, published in 2023) show that an increasing number of Bacculaureate holders in New Caledonia are continuing into higher education. They numbered 7360 in 2021, a figure 3.7% up on 2020 (as against an increase in estimated at 2.6% at national level). 66% of newly awarded bacculaureate holders began higher education in September 2021, as against 62% in 2020 and 65% in 2019. In addition, ISEE indicates that “*young women significantly outnumber men in higher education*” - the exact breakdown is not given. Of new Bacculaureate holders continuing to study at the beginning of the 2021 academic year, almost two-thirds had enrolled in a course on the territory. The Covid 19 pandemic first led to a drop in students studying outside the territory, from 43.4% in 2019 to 40% in September 2020. This decline then continued, affecting 37.8% of students from New Caledonia (2 790) enrolled in mainland France at the end of 2021 – a number equivalent to the 2018 figure.

In terms of vocational training, New Caledonia is responsible but receives financial support from the State. Under this arrangement, within the New Caledonian administration, a Continuing Vocational Training Department has been set up and also deals with apprenticeships. This department works closely with the Employment, Qualifications, Salaries and Training Observatory (OEQSF), established within the Institute for the Development of Skills in New Caledonia.³³

In 1995, the territory signed a cooperation agreement with the State, aimed at strengthening the vocational training policy through the implementation of training courses adapted to the needs of New Caledonian companies and support for the creation of local jobs.³⁴ In 2001, the New Caledonia Vocational Training Development Agency (ADFP) was created, combining the missions of the SFPC and the Scholarship Office (OBF). This agency's task today is to implement continuing vocational training policy and develop the apprenticeship facilities in the territory.

In 2010, the signing of the State-New Caledonia Development Contract (CDE) allocated a budget of 3 billion CFP francs (25 million euros) for the development of vocational training in the territory over the 2011-2015 period. This contract aims in particular to expand the range of training to meet the needs of businesses and to promote the professional integration of young people and job seekers.³⁵

Finally, as an overseas territory of a European Union (EU) member, New Caledonia benefits from the European Development Fund (EDF). As such, New Caledonia had already benefited from the support of the EU, through the ninth and tenth EDFs, applying, among others, to the vocational training component.³⁶ Logically, it then chose to concentrate the funds of EDF 11 on the implementation of its sectoral "Employment and Professional Integration" strategy (2016-2020), including an important component for policy development and a review of training schemes. The 11th EDF represented a total amount of 3.6 billion CFP francs (30 million euros) between 2017 and 2020.³⁷

The 'Future Managers' Programme³⁸

To meet the Territory's development needs, the Government of New Caledonia launched the Future Managers program in 2007, as part of its vocational training development plan (program later governed by Country Law No. 2008-11 dated 23 January 2008). It is financed 90% by the State and 10% by New Caledonia and constitutes a mechanism for social and economic rebalancing in New Caledonia.

The objectives of this program include:

- To train competent and qualified senior managers for management positions in New Caledonian companies and public institutions;

³³ 'Rapport d'observations définitives établi à la suite de l'examen de la gestion de la formation professionnelle de la Nouvelle-Calédonie', Chambre territoriale des comptes de Nouvelle-Calédonie, ROD 10/03/NC dated 2 March 2010

³⁴ 'Direction de la formation professionnelle et de l'apprentissage de Nouvelle-Calédonie', official website

³⁵ 'Direction de la formation professionnelle et de l'apprentissage', official website

³⁶ 'Stratégie Emploi-Insertion Professionnelle de la Nouvelle-Calédonie 2016-2020', Government of New Caledonia

³⁷ DTENC, Government of New Caledonia, official website

³⁸ 'Rapport d'activité 2018 des services de l'État en Nouvelle-Calédonie', Government of New Caledonia, 2019

- To promote the professional integration of young local graduates;
- To contribute to the economic and social development of the territory by enhancing the skills and abilities available locally.

It was expanded in 2012 by the implementation of a scholarship system for students benefiting from the Future Managers program. Since 2017, the program has also been open to Bachelor's degree holders.

Over 2018 (latest figures available), of the 61 people benefiting from the program, 77% were Kanak and 23% from other ethnicities. 70% of the intake were professionals and 30% students. 6 additional candidates for the excellence streams and 12 professional candidates were selected to prepare for competitive exams in the fields of justice, finance, health and general administration.

As mentioned above in relation to the overall economic development of the Territory, the Special Committee's first visiting mission in 2014 welcomed *"the efforts made by the French Government to reduce the economic disparities between the Kanaks and the rest of the population, in particular through schemes such as the Special Military Service and the Future Managers program"*.

It also praised the support the French government *"provided to the University and the positive results obtained in terms of the job-finding success rate of students."* Nevertheless, as mentioned above in relation to the transfer of powers, its report stressed the need to *"urgently strengthen the training of senior executives in the public and private sectors, particularly with the prospect of the transfer of powers from the French Government to New Caledonia"*.

In 2018, the UN Special Committee's second visiting mission stated that *"adequate measures must be taken to guarantee access to education, training and employment, the pillars of New Caledonia's economic and social future."* After visiting the University, the mission had also noted that *"the number of students enrolled [...] had increased from 200 in 1988 to 3,000 in 2018"* and that *"about 10,000 students had graduated from it"*. In addition, *"25% of the lecturers were New Caledonian, and this number was expected to increase"*.

However, the members of the Committee had noted that *"students from the Northern Province were under-represented at the University, mainly due to the remoteness of the area, which made access difficult, both physically and financially"*.

Since then, in 2020, the University has inaugurated the Baco campus located in Kone, in the Northern Province, with the relevant stated objective of being part of the rebalancing policy in New Caledonia. The total cost for the construction of the campus amounts to 540 million Pacific francs (about 4.5 million euros), financed 80% by the State, 7.42% from its own funds by the University, 4.44% by New Caledonia and 8.14% by the Northern and Southern Provinces.^{39 40}

b) Social development

In New Caledonia, the Family Benefits, Industrial Accidents and Provident Fund for Workers in New Caledonia (CAFAT) has been the main social security agency in the Territory since its creation in 1958. Under the 1999 Organic Law, New Caledonia governs the social protection area, as well as the administration of judicial child and youth protection services. This is reflected in the social assistance policies and schemes initiated by local authorities: housing support, Unified Health and Maternity Insurance Scheme (RUAMM), disability and dependency scheme, medical assistance, family allowances and solidarity family allowances, framed by country laws or

³⁹ University of New Caledonia, official website

⁴⁰ Northern Province, official website, press release dated 18 July 2020

resolutions The social protection responsibility also includes social services to the public: sectoral social workers, child welfare, social and medico-social agencies and services, etc.

RUAMM in particular today allows 94% of the inhabitants to enjoy health coverage, irrespective of their status (employees, employers, self-employed, civil servants and their entitled persons). In terms of financial sustainability, however, the scheme suffers from successive annual deficits, with an accumulated total of approx. 31 billion CFP francs (€260 million) at the end of 2019.⁴¹

The New Caledonian Government has responsibility for standard-setting and the Provinces for the implementation of community social support. They are responsible for child welfare and the universality of the sector. They have also obtained delegated powers to adapt and apply the 1989 framework decision on medical aid and social assistance, allowing them to develop actions for the elderly and disabled, as well as for children at risk. They also receive dedicated financing through the 'General Operating Allowance' (DGF) from the State, initially designed to cover costs incurred by the medical aid scheme, plus aid for the elderly, rescued children and disabled persons (art. 181-III).⁴² According to 2018 figures from the DRESS, the proportion of GDP devoted to Social Protection amounts to 23%, or almost a quarter of the wealth produced. This rate is slightly higher than the OECD average (21%), but lower than the national rate (31.5%).⁴³

Socio-economic data for the territory and its inhabitants^{44 45} :

According to the latest IEOM annual report (2021 figures), wealth per capita in New Caledonia *"for the first time since 2007 exceeds the national average of provincial France"*. The territory is thus one of the French overseas territories where the wealth produced per capita is the greatest, *"behind Saint-Pierre and Miquelon and Saint Barthélemy"*. At the scale of the Pacific region, the GDP per inhabitant in the territory (31,065 current euros, equivalent to 3.7 million CFP francs in 2020) *"is at a level close to New Zealand"*.

According to IEOM, New Caledonia's Human Development Index (HDI) was estimated at 0.794 in 2010 (the latest figure available) placing it in 51st position in the world, in the category of countries with "very high human development" - France was 20th and French Polynesia 77th. The HDI of New Caledonia therefore increased by 15% between 1990 and 2010, *"80% due to its social component (education and health)"*.

However, according to figures from the latest census by the statistics institute (ISEE, 2019), the employed population is decreasing for the first time since the Matignon Accords and the unemployment rate stands at 15.3% (compared to 14.7% in 2014). In addition, there is increasing job insecurity: insecure employment over this period (fixed-term contracts, temporary work, apprenticeships) has risen from 17% to 21% of all jobs held (compared to 11.5% in France). Part-time work has also increased (+4,500 in 5 years). There is also a geographical concentration of jobs: 80% of jobs are based in the Southern Province, which has 75% of the population while the Northern Province has lost over 1,000 in 5 years.

These indicators also highlight disparities between communities: the employment rate of Kanaks amounted to 48% in 2019, compared to 64% for non-Kanak natives and 75% for non-native inhabitants. Only one in ten executives is a Kanak - although this figure has increased tenfold in 30 years. In contrast, two out of three unemployed are Kanaks and the latter are more represented in precarious jobs, which concern 29% of Kanaks in employment, as against 17% of non-Kanaks in employment. Similarly, part-time jobs concern 20% of Kanaks in employment compared to 10% of non-Kanaks.

⁴¹ *'La Protection sociale dans les collectivités d'outre-mer - L'exemple de la CAFAT de Nouvelle-Calédonie'*, Laurent Tolmé, EN3S, 2019

⁴² *'NC2025 - Orientations et moyens : propositions – 6.5 Consolider la protection sociale'*, Government of New Caledonia, November 2013

⁴³ *'La Protection sociale dans les collectivités d'outre-mer - L'exemple de la CAFAT de Nouvelle-Calédonie'*, Laurent Tolmé, EN3S, 2019

⁴⁴ *'Rapport annuel économique 2021 de la Nouvelle-Calédonie'*, IEOM, 2022

⁴⁵ 2019 Census, ISEE

ISEE figures also show that employment of people living in tribal areas has progressed much less than for the New Caledonian population as a whole: the employment rate in 2019 was 42% for people living in Kanak tribal areas, compared to 65% for the New Caledonian population living elsewhere.

On this point, ISEE states that one in five New Caledonians resides on "customary land" (2019 census) and that *"the population residing on customary land is growing three times slower than in urban or rural areas"*. As an illustration, the largest Kanak village areas contain a little more than 500 inhabitants. As noted by IEOM, the informal and inclusive economy, *"oriented to meeting family needs, gifts and exchanges, is very prevalent within Kanak society"*. Therefore, informal work is integrated into the customary way of life, and it should be kept in mind that these activities concern part of the inactive so-called 'homemakers' (3,623 people in 2019), estimated to account for about 56% of the inactive. Nevertheless, the ISEE observes at the same time that *"the economy in the tribal areas is decreasingly traditional, and that many Kanaks reconcile life in the tribe with work in the vicinity"*.

c) Kanak identity and culture

Section 4.4 of the Noumea Accord assigns to New Caledonia responsibility for the Agency for the Development of Kanak Culture (ADCK) and urges France to provide the necessary technical assistance and funding to the Tjibaou Cultural Center before its transfer in 2012. The Agency is also responsible for promoting Kanak languages and culture. Related to this, the creation in January 2007 of the Academy of Kanak Languages (ALK) has had the effect of multiplying publications in the Kanak languages.⁴⁶ Overall, in 2020, in addition to the offsetting allocation paid over under the 'Cultural Centre and Communication' budget, the 'State Development Contract Investment Programme' funding allocated a local cultural policy budget of 179.6 million CFP francs (1.5 million euros).

Some other action has also made it possible to work on the promotion of Kanak languages. First of all, the teaching of the 4 main Kanak languages (there are 28 in the territory) has been included in primary and secondary education since the Organic Law of 19 March 1999 relating to New Caledonia. Currently, kindergarten and elementary schools have 7 and 5 hours per week respectively for the learning of Kanak languages and the teaching of the fundamental elements of Kanak culture (EFCK). For secondary schools, both vocational and general, the time set aside for the teaching of EFCK is 18 hours per year. New Caledonian students have the opportunity to take an optional course in Kanak language and culture from the first grade until the end of high school. This option is taught by teachers who hold the Certificate of Aptitude for Teaching Kanak Languages and Cultures (CAELCK).⁴⁷

More broadly, the curricula in New Caledonia take local culture into account (history and geography of New Caledonia in 1st and 2nd cycles), contextualization of science lessons with reference to New Caledonia.

In 2011, the UN Special Rapporteur on the Rights of Indigenous Peoples, Mr James Anaya, visited New Caledonia for the first time. In the conclusions from his visit, Mr Anaya said he wished: *"that stakeholders work together to seek opportunities to share Kanak culture more widely, opportunities that are offered, for example, and among other means, by new curricula, radio programs, and knowledge-sharing programs organized around festivals of Kanak tradition"*. He noted that *"France had set up a program to promote the integration of Kanaks into the teaching profession."*

In 2018, according to the conclusions of the second Special Committee mission, the Kanak People "[supported] the action taken by the Customary Senate and the French and New Caledonian authorities to ensure respect for Kanak cultural and traditional heritage and its protection and preservation." Several initiatives to promote Kanak culture were reported, such as the opening of the Tjibaou Cultural Centre in 1998 or *"the use of local languages in the education system"* - which, according to the C24 *"should be strongly supported."*

⁴⁶ 'ADN and Kanak values review', High Commission in New Caledonia

⁴⁷ Agence de développement de la culture kanak, official website

Among the conclusions of the visit, the C24 "welcomed the progress made in the promotion and protection of Kanak cultural heritage" but noted the "concerns of customary chiefs regarding their proposals [...]....] often insufficiently taken into account by the authorities" - considering that it was therefore necessary "for change", on this last point.

4.4 Conclusion

Conclusion on the free choice of an economic, social and cultural development pathway

The successive Accords have led to a devolution of responsibilities in economic and fiscal policy areas, vocational training, social protection and cultural development to local institutions.

Although state expenditure in New Caledonia (195 billion CFP francs or €0.630 in 2021) remains a structural component in the territory's economy and the balance of local finances, it does not call into question the free administration of the New Caledonian institutions, which enjoy considerable financial resources of their own.

In terms of the distribution of powers, parties from the full spectrum of sensibilities agree on the need to clarify the distribution of roles between the various New Caledonian institutions (government, provinces, communes) and to more fully exercise the responsibilities transferred to New Caledonia.

Lastly, the rebalancing work has not succeeded in totally removing the major economic and social inequalities which mainly affect the Kanak community. With these persistent inequalities, it would appear necessary to mobilise all parties around a robust economic and social project, to amplify development in New Caledonia.

5. Peoples' control over their natural resources and their conservation

5.1 Decolonization criteria resulting from UN resolutions

"The Administering Powers should implement measures to conserve natural resources, protect the environment, and assist the peoples of the Non-Self-Governing Territories in attaining the maximum level of economic self-sufficiency, ecological protection, and social and educational development."

A/56/61 – Second International Decade for the Eradication of Colonialism

UN Secretary-General's Report, Annex, 22 March 2001

"Member States, in particular the Administering Powers, should take all necessary measures to protect the environment of the Non-Self-Governing Territories from environmental degradation and damage; provide timely assistance in monitoring both natural and man-made environmental threats; and provide necessary emergency assistance in the event of an environmental disaster. "

A/56/61 – Second International Decade for the Eradication of Colonialism

UN Secretary-General's Report, Annex, 22 March 2001

5.2 Relevant contextual and historical considerations in the management, development and conservation of natural resources and environmental protection in New Caledonia

The issue of natural resources in New Caledonia in particular spans four significant areas for the territory: mineral resources, land issues, protected areas, and the lagoon.

a) Management of mineral resources

To grasp natural resource issues in New Caledonia requires paying special attention to mineral resource issues. Much of the history of New Caledonia revolves around the discovery of nickel in 1864 by Jules Garnier. The State supported the development of the nickel mines as early as 1878 by sending workers, mostly contracted or convicted. The first nickel processing plant was built in 1879 in Noumea and in 1880, Société Le Nickel (SLN) – now a subsidiary of the French mining group Eramet – was created to exploit deposits in the Thio region.

But it was mainly in the 1960s and 1970s that the nickel industry really took off. In 1972, nickel production reached 50,000 tonnes per year.

In 1998, nickel industry issues took pride of place in negotiations between various stakeholders. The nickel industry was a determining factor in the political negotiations which led to the Nouméa Accord (cf. mining prerequisite).⁴⁸

The nickel industry in New Caledonia also has important social and environmental implications. Its impacts on local communities must be taken into account when studying the decolonization process.

b) Land Issues

The question of access to land is an essential condition for the sovereignty of a people over its resources. In 1855 and again in 1862, after taking possession of the island, the State proclaimed itself the owner of all land in New Caledonia. This land was therefore confiscated from the indigenous population and partly allocated to settlers. This confiscation had a very deep impact on the indigenous communities, who were pushed back into reserves.

Subsequently, a decree by the Governor of New Caledonia and Dependencies, dated 22 January 1868, determined the characteristics of customary land in the territory, known in French as the "four I's": Inalienable, Untransferable, Incommutable and Unseizable.⁴⁹

In 1978, a land reform process was initiated in New Caledonia by Minister Paul Dijoud as part of the long-term economic and social development plan for New Caledonia. This land reform aims to "*solve the land problem from the perspective of respecting the historical rights of Melanesian communities*". In particular, it intends to give back to the clans their traditional space, to allow Melanesians who wish to do so to become farmers outside the reserves and to promote the development of the redistributed land.⁵⁰

The land issue is intrinsically linked to the question of Kanak identity, its conservation and its enhancement. For all these reasons, it would remain a central theme after 1978, addressed in all the fundamental documents on the future of New Caledonia. This area remains an important issue for all New Caledonians.

⁴⁸ 'L'industrie du nickel en Nouvelle-Calédonie : enjeux économiques et perspectives', Institut d'émission d'Outre-Mer, 2019

⁴⁹ Consideration of the draft Country Law establishing rural leases on customary land, CESE, April 2017

⁵⁰ Adraf, official website

c) Protected areas on 'Grande Terre' (main island)

New Caledonia is a territory rich in biodiversity and natural resources. Since the colonial period, environmental protection has therefore been a major concern for the New Caledonian authorities.

On Grande Terre and the islands, New Caledonia has almost as many terrestrial plant species as metropolitan France. For example, there are nearly 3 261 species of plants, 76% of which are endemic.⁵¹ Today, the territory includes nearly 60 terrestrial protected areas, following a belatedly emerging awareness of environmental protection issues, which forced local authorities and the State to make them one of the priorities.⁵²

d) Protection of the marine space

The maritime spaces and lagoon represent both a unique ecosystem in the world, playing host to exceptional biodiversity, and a natural environment weakened by human activities. New Caledonia accounts for nearly 75% of the surface area of the reefs and lagoons of all French territories, making France one of the world's leading coral reef countries. The lagoon alone covers an area of 23,400 km² and the coral reef that protects it extends over nearly 1 600 km, making it the longest continuous barrier reef and the second longest barrier reef in the world. The diversity of this coral ecosystem can reach 580 species per hectare.⁵³ Faced with the challenges of the fragility of marine environments, both territorial and global, New Caledonia has gradually implemented measures to protect these areas. We can cite, in the 1970s, the creation of the Malet reserve, covering a substantial area of 173 km² and enjoying the maximum status of "total protection" - still in force today and supported by increased surveillance resources. Since then, the authorities have continued to deploy measures and arrangements to protect the lagoon, as addressed below.⁵⁴

5.3 Actions carried out and means used by France since 1986, in relation to the issue of control by the people of New Caledonia over their natural resources, their preservation and the protection of the environment

a) Mineral resource management

New Caledonia today can be portrayed as a virtually mono-sectoral economy, with nickel being its main economic resource: it represents approximately 93% of exports and 6% of GDP according to the 2021 figures published by IEOM.⁵⁵ But nickel's contribution to economic activity goes well beyond its direct impacts, because it also generates major spin-off effects, through the employment induced and consequent consumption. For example, according to a recent ISEE study (2019 figures), the sector directly employs 9% of private sector employees (approximately 5,900 people). It also generates 108 billion CPF (approx. 900.9 million euros) in purchases and consumption, from 1,800 suppliers and manufacturers' subcontractors. This generates approximately 5,800 additional indirect jobs. The income from these direct and indirect jobs in turn feeds consumer spending on the territory, itself generating

⁵¹ *'La Biodiversité de la Nouvelle Calédonie'*, 'Maison de la Nouvelle-Calédonie' and IRD, 2016

⁵² *'Aires protégées et politique environnementale en Nouvelle-Calédonie'*, 'Aires protégées insulaires et littorales tropicales' workshop, Erwann Lamand, 2001

⁵³ *'La Biodiversité de la Nouvelle Calédonie'*, 'Maison de la Nouvelle-Calédonie' and IRD, 2016

⁵⁴ *'Vers une gestion planifiée des réserves en Nouvelle-Calédonie'*, Wantiez L. et al., IRD, Solaris

⁵⁵ *'Rapport annuel économique 2021 de la Nouvelle-Calédonie'*, IEOM, 2022

an estimated 3,800 induced jobs. Consequently, the overall impact of the nickel sector on employment is estimated at nearly 15,600 jobs in New Caledonia, i.e., a quarter of the jobs in the private sector on the territory.⁵⁶

However, the various local nickel operators are facing persistent difficulties, due in particular to a falling level of production, but also the impact of bad weather, in 2021 and social conflicts. The weakening of local operators is therefore all the more worrying as it influences the degree of confidence or misgivings around the sector, which in turn produces changes in behaviour, positive or negative, within the New Caledonian economy.⁵⁷

This pivotal role of nickel for the economic development of the territory explains why the industry has been at the heart of the concerns and major steps taken jointly by the State and the New Caledonian authorities. From 1988 onwards, the Maignon-Oudinot Accords have had important consequences for the management of New Caledonia's mineral resources.

The State has facilitated the development of the nickel industry in the North through the Bercy Agreement signed on 1 February 1998, under which the Koniambo massif held by SLN was transferred to a company 51% owned by the Northern Province, with SLN being compensated in an amount of 1 billion francs and given the Poum deposit. The Koniambo deposit will enable the Northern Province to develop the Northern Province pyro-metallurgical plant.⁵⁸

The Organic Law on New Caledonia grants the Territory responsibility for the management of its mineral resources, including nickel. In this context, the State has signed a partnership agreement with the Provinces of New Caledonia for the management of mineral resources, which provides for the establishment of a monitoring committee and an advisory committee. This agreement aims to ensure sustainable management of resources, taking into account environmental and social issues. In 2009, the State created the Nickel Fund to fund research and development projects in the nickel sector in New Caledonia.

From 2016, with the collapse in nickel prices, the State launched a plan to support the nickel industry in New Caledonia, with a loan and guarantees of 1.2 billion euros. Other support measures were announced in 2021 to guarantee the lasting operation of the Southern Province plant (420 million euros) and in 2023 to provide cashflow to the SLN (40 million euros).

b) Land issues

New Caledonia is experiencing land reform, initiated in 1978 through the Dijoud Plan. It was implemented first by the territory through the 'Lands Department' and then, from 1982, by the 'Land Board', a State public agency. Since 1989, ADRAF, another public state body, has had the task of managing land reform, and to survey customary land holdings. It operates in 4 main areas of responsibility: allocation of customary land, land tenure security and development, land use planning, agricultural development.⁵⁹

Its annual budget allows it to buy land from private individuals or administrations and allocate it to claiming clans.⁶⁰ Thus, it allocated plots of land from its land stock then changed their legal status to customary land. A well-defined administrative procedure allows for an investigation phase to be carried out on the land in question, at the end of which the Agency's Board of Directors makes the final decision on its allocation. In this context, it should be noted that *"the allocation of customary land is only possible if there is a customary consensus concerning the recipient(s) of the plots"*. Achieving this consensus - sometimes a long process, depending on relevant historical and current

⁵⁶ 'L'impact du Nickel en Nouvelle-Calédonie', ISEE, 2019

⁵⁷ 'Rapport annuel économique 2021 de la Nouvelle-Calédonie', IEOM, 2022

⁵⁸ 'Le Nickel en Calédonie, une opportunité enfin saisie' ? 'Rapport d'information n°7' lodged on 5 October 2005, Finance Commission, Senate

⁵⁹ ADRAF, official website

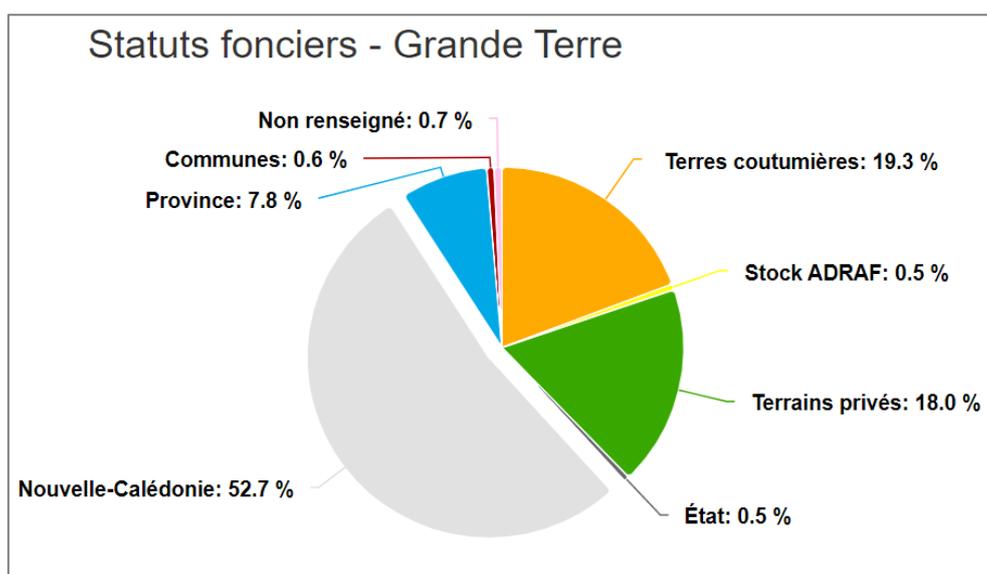
⁶⁰ Consideration of the draft Country Law establishing rural leases on customary land, CESE, April 2017

issues - relies on the mediation work carried out by ADRAF, which must itself be based on a "good knowledge of the parties involved, their strategies and the history of the areas concerned".⁶¹

ADRAF is therefore contributing to the 'levelling-up' work referred to in the Noumea Accord Preamble.

At the same time, to facilitate these land transfers, the Kanak clans were set up as "Special Local Law Groups" (GDPL), which are the official holders of the land.⁶² ADRAF explains that "the GDPL is an original structure that exists only in New Caledonia. Introduced in 1981 as part of the land reform process to reconcile the requirements of civil law and traditional customary organization, the GDPL is a legally recognized structure with legal personality." It brings together people of customary civil status (bound by custom) and is therefore governed by customary law. The first GDPLs were formed in the early 1990s to benefit from land allocations by ADRAF. Today, the purpose of a GDPL can be extended to cultural, social, economic fields.

ADRAF's updated data, including 2023 figures show that 167 000 hectares of land, that is approx.10% of the surface area of Grande Terre, have changed ownership "within the framework of the land reform and through the intermediary of land operators". 75% of the land acquired from private owners were purchased during the first 10 years of the scheme, between 1978 and 1989 by the Territory, the Lands Office and the territorial ADRAF. 84% of these 167 000 hectares have become customary land, in addition to the original reserves. ADRAF has been responsible for 72% of total allocations and 73% of customary land allocations. Finally, "nearly three quarters of customary land constituted since 1978 is GDPL land, distributed among 353 GDPLs"; 50% of GDPLs have less than 127 hectares. The range is from under 1 hectare to 3,066 hectares.



Source: WARDA & DITTT, data as of June 2021

Translation

Land tenure situation on Grande Terre (main island)

Customary land: 19.3%
 ADRAF stock: 0.5%
 Private landholdings: 18%
 State: 0.5%
 New Caledonia: 52.7%
 Provinces: 7.8%
 Communes: 0.6%
 Not known: 0.7%

⁶¹ ADRAF, official website

⁶² Report of the Special Rapporteur on the Rights of Indigenous Peoples, Mr. James Anaya, UN, September 2011

c) Protected areas

The Provinces are therefore responsible for environmental conservation. This has led to each having a separate environmental law. The three Provinces each have their own administrative department in charge of environmental issues. In addition, the Provinces have adopted their own Environmental Codes, containing some common provisions for the protection of the natural heritage. Despite this coordination effort, the protected areas have different legal regimes from one Province to another. In total, the 'National Natural Heritage Inventory' (INPN) currently lists 56 protected and managed spaces, throughout New Caledonia.

Protected areas in the Northern and Southern Provinces⁶³:

Northern Province:

The Northern Province Environmental Code (Resolution n°2008-306/APN dated 24 October 2008) distinguishes six natural area categories:

- Totally Protected Nature Reserves
- Wilderness Nature Reserves
- Provincial Parks
- Nature Reserves
- Areas for the protection and enhancement of the natural and cultural heritage
- Sustainable Resource Management Areas

Southern Province:

The Southern Province Environmental Code (Resolution n°25-2009/APS dated 20 March 2009) defines the following categories:

- Totally protected Nature Reserves
- Provincial Parks
- Nature Reserves
- Sustainable Resource Management Areas

The State and its operators continue to support the protection of biodiversity on the territory - and in the South Pacific region, more broadly. State services are involved in environmental issues, via joint or delegated arrangement: Maritime Affairs administration, State Service for Agriculture, Forestry and the Environment (DAFE). It can provide technical support to local communities as needed. Under the Development Contracts (CD) between the State and the local authorities, DAFE, on behalf of the High Commission, assesses local investment operations in the fields of drinking water, sanitation, agriculture and the environment. In 2020 and 2021, 69 operations involved environmental initiatives. According to figures published in 2021 by the High Commissioner, the budget allocated by the State to support ecosystem monitoring amounted to 24 million CFP francs (over 200 000 euros).

The Agency for Ecological Transition (ADEME), a State operator, is also active in New Caledonia in the fields of energy, air, waste and the circular economy, the fight against global warming and the soils. As in Metropolitan France, it provides technical and financial support to New Caledonian actors, both public and private. In 2021, its action has enabled the co-financing of 43 energy projects and 54 waste projects, with an action budget of 265 million CFP francs (approx. 2.2 million euros).

⁶³ INPN, official website

Also relevant is the action of the French Biodiversity Agency (OFB), working under agreements to assist the Provinces and the Government of New Caledonia in the definition, implementation and evaluation of their environmental policies. In 2021, 5 projects were cofunded, dealing with the restoration of terrestrial areas and wetlands, and representing a total budget of 42 million CFP francs (approx. 350 000 euros).

French research organizations also work closely with the territory, in the framework of bilateral or multilateral regional research programs, on environmental issues. An incomplete list includes Pasteur Institute of New Caledonia (IPNC), Institute of Research for Development (IRD), National Center for Scientific Research (CNRS), French Research Institute for the Exploitation of the Sea (IFREMER) or French Initiative for Coral Reefs (IFRECOR).

Beyond the involvement of the State and its partners, New Caledonia, as Overseas Collectivity of an EU Member State, can also benefit from Community funding, under Articles 131 and 136 of the Treaty of Rome, revised in 1991, in particular through the European Development Fund (EDF). The insert below presents, as an example, the EU's multiannual program for the Pacific OCTs, which benefits New Caledonia.

The 2021-2027 pluriannual programme for Pacific Overseas Countries and Territories (OCT)⁶⁴:

This EU pluriannual program is a financing and development plan that aims to strengthen the links between the EU and the Pacific OCTs, including New Caledonia. It supports projects in areas such as the fight against climate change, biodiversity, or the sustainable management of marine resources. It aims to promote economic growth and sustainable development in the Pacific OCTs and to strengthen the links between these territories and the EU.

Decision 2021/1764/EU and Articles 74 *et seq.* confirm the provision of a total financial package of EUR 80 million for the OCTs, over the 2021-2027 period. Article 5 provides for support "*to the diversification of the economies*" of the OCTs, for the purposes of "*integration into the global and regional economies*", "*promotion of the green and blue economy*", "*sustainable management of natural resources, including the conservation and sustainable use of biodiversity and ecosystem services*".

It highlights "*greening and blueing of food systems*" and is in line with the EU's action plans such as the "Farm to Table" strategy, the 2030 Biodiversity Strategy or the 2050 Strategy for the Blue Pacific Continent. This regional program also builds on the results and lessons learned from other past and ongoing EU regional programs, such as INTEGRE and PROTEGE.

In this context, New Caledonia is eligible for the InvestEU Program, making it possible "*to finance innovative solutions for the food, nutrition and agriculture sectors, or more simply to promote effective and inclusive private sector investment in sustainable agri-food systems*".

⁶⁴ 'Programme Indicatif Pluriannuel 2021-2027 Régional pour les PTOM du Pacifique', European Union

d) Protection of the marine space

New Caledonia's maritime space represents an area of 1.3 million km², more than three times that of mainland France's surrounding waters. This zone was included in the decree establishing the Coral Sea Nature Park dated 23 April 2014.

The implementation of measures to protect the lagoon and marine biodiversity in New Caledonia, has been gradual, reflecting human pressures and their impacts, as observed on resources (fishing) and on the reef/lagoon seascape (mining, urbanization). These conservation mechanisms, mainly by means of protected areas, result today in a relatively satisfactory health status for New Caledonian coral ecosystems. This space protection approach seems suited to the New Caledonian system, also catering for customary reserve modalities.⁶⁵

In 1995, the 'Marine Protected Areas Agency' was created to manage and protect the territory's maritime areas.⁶⁶ The year 2008 was a milestone: the lagoons of New Caledonia were inscribed on the UNESCO World Heritage List, in the form of a 'serial property' composed of six sites, representative of the diversity of coral reefs and associated ecosystems. They cover 60% of the lagoons. According to the UNESCO Commission: "*these sites are of exceptional beauty and contain reefs of varying ages, from living structures to ancient fossil reefs, which provide an important source of information on the history of Oceania*".⁶⁷

In 2014, the Coral Sea Nature Park was officially created to protect the natural and cultural wealth of the New Caledonian lagoon. Today, the Coral Sea Nature Park allows the territory to respond to various challenges: protect the biodiversity of New Caledonia's maritime space, while allowing responsible and sustainable economic development, and contribute to the territory's outreach potential in forming a showcase of its rich natural heritage. In this, the territory is part of the Strategic Plan for Biological Diversity, signed in Aichi in 2010, with the objective of promoting the conservation and sustainable use of biodiversity at the global level. This plan aims in particular to protect at least 10% of local marine areas by 2020. New Caledonia achieved this goal in 2018.⁶⁸

Since 2015, a Coral Sea Natural Park Management Committee has implemented collegial governance of the park. The creation of this committee also led to the preparation of a management plan for the nature park. The nature park management committee comprises four colleges representing (1) institutions, (2) environmental associations, (3) traditional leaders and (4) socio-professional stakeholders. Each college has eight members, giving the committee 32 members altogether, to which qualified persons may be added. These members are appointed for a period of 5 years, by decision of the High Commissioner and the President of the Government, who co-chair it. The New Caledonia Maritime Affairs unit acts as the secretariat of this committee.

The management committee is an advisory body whose role is to issue opinions on the implementation of the management plan, its evaluation and any subject related to the sustainable management of the Coral Sea Nature Park. Its leadership and actions also rely on thematic working groups, working in consultation with government departments and the various technical and scientific partners concerned.⁶⁹

Finally, it is important to note that, as part of New Caledonia's Exclusive Economic Zone (EEZ), which covers an area of 1.3 million km², State services, the Government of New Caledonia and the Provinces jointly manage the surveillance of the maritime space, particularly in the field of fisheries monitoring. On the high seas, this mission is carried out by the Armed Forces in New Caledonia (FANC), which is the subject of the following section, on the non-use of force. FANC also maintains a pollution response capability, an area in which the FANC Joint Operations Centre leads the operations.⁷⁰

⁶⁵ 'Vers une gestion planifiée des réserves en Nouvelle-Calédonie', Wantiez L. et al., IRD, Solaris

⁶⁶ High Commission in New Caledonia, official website

⁶⁷ 'La Biodiversité de la Nouvelle Calédonie', Maison de la Nouvelle-Calédonie and IRD, 2016

⁶⁸ Coral Sea Nature Park – Government of New Caledonia, official website

⁶⁹ Coral Sea Nature Park – Government of New Caledonia, official website

⁷⁰ Government of New Caledonia, official website

6. The non-use of force

6.1 Decolonization criteria resulting from UN resolutions

"States have a duty to refrain from acts of reprisal involving the use of force. It is the duty of every state to refrain from any coercive measures which would deprive the peoples mentioned in the formulation of the principle of equal rights and self-determination of their right to self-determination, freedom and independence. The territory of a state may not be subject to military occupation resulting from the use of force contrary to the provisions of the Charter."

Resolution 26/25 of the UN General Assembly, 24 October 1970

6.2 Relevant contextual and historical considerations in the non-use of force

French colonization produced a political, economic, social and cultural domination that has left an enduring impact on New Caledonian society. In response to this situation, the Kanaks have initiated various resistance movements, such as the 1878 and 1917 revolts.

From the 1970s, the Kanaks organized themselves politically to claim their right to self-determination and sovereignty, especially through the creation of the Kanak and Socialist National Liberation Front (FLNKS) in 1984.

A series of violent conflicts between pro-Independence, non-pro-Independence and law enforcement players, then occurred from 1984 to 1988, often referred to as "The Events".

The signing of the Matignon-Oudinot Accords in 1988, then the Noumea Accord in 1998, ushered in the pacification of the territory and raised the level of self-government. But these historical conflicts have left their mark on collective and individual memories and have contributed to shaping the identities and aspirations of the various communities in New Caledonia.

6.3 Actions taken and means used by France since 1986 on the issue of the non-use of force

a) Milestones passed and measures implemented in the field of security and defence

The Ouvea episode in 1988 was the gravest of the Events. However, since 1988, the use of force has never exceeded normal law and order requirements.

Sovereignty over security and defence remain in the hands of the State but is also quite deeply embedded in local society.

National defence is a sovereign power, exclusively exercised by the by the State on the territory (Article 21 of the Organic Law dated 19 March, 1999). In this setting, the State has deployed the resources required to provide security in the territory. In 2020, the interministerial budget allocated to Defence (including military and Gendarmerie salaries) amounted to 22 billion CFP francs (or approximately 183 million euros).⁷¹

Since 1998, the Armed Forces of New Caledonia (FANC) have been working closely with local authorities and Kanak communities to prevent conflict and maintain peace. The FANC's permanent area of responsibility (ZRP)

⁷¹ 'Les Dépenses de l'Etat en Nouvelle-Calédonie en 2020', Government of New Caledonia

includes the maritime zone of New Caledonia, with the territories, territorial waters and airspace included within the perimeter (those of New Zealand, Vanuatu, Fiji, Tonga, Solomon Islands, New Caledonia and its dependencies, Wallis and Futuna). FANC comprises the Army (Pacific Marine Infantry Regiment – New Caledonia or RIMAP-NC), the National Navy and the Air and Space Force.

According to the White Paper on defence and national security published by the Ministry of the Armed Forces in 2013, the French armed forces have maintained a significant presence in New Caledonia since the late 1980s to ensure the security and stability of the territory. Based on 2018 figures⁷², FANC manpower represents approximately 1,700 staff (civilian and military) in Nouméa, Plum, Tontouta and Nandaï. The armed forces carry out the following missions:

- They make about fifty visits per year to Kanak villages in the three 3 provinces to provide community support and collect useful information allowing them, in the event of force majeure, to bring their assistance to the most remote areas;
- They bring relief and assistance to the community: every year, 30 airborne operations and assistance to 50 persons are recorded;
- They carry out maritime surveillance missions in the exclusive economic zone (EEZ), extending over 1.5 million sq. km: pollution control, fisheries policing, rescue at sea, fight against illicit trafficking, etc.
- They carry out regional cooperation actions with their partners throughout the South Pacific, through joint humanitarian aid and evacuation of nationals exercises, organized every 2 years. In 2023, 3 000 men and women from 19 partner states were mobilized.⁷³

In addition, in terms of public security, the Gendarmerie, the Public Security Directorate (DSP) of the National Police, the Border Police (PAF) are services of the Ministry of the Interior placed under the authority of the High Commissioner of the Republic in New Caledonia. There are 400 police officers and administrative officers from the public security department within the central police station and the 4 police offices of Noumea, 855 gendarmes present in the rest of the territory, divided into 30 brigades, 58 border police officers (PAF) as well as 119 officers from the Regional Customs Department.⁷⁴

In New Caledonia, New Caledonians represent 90% of the police force and 40% of the Gendarmerie. These officers exercise a peacekeeping and rights protection function, extending to customary land areas when violent clashes occur.

Finally, in terms of civil protection, the State transferred this responsibility to New Caledonia on 1st January 2014. The Government Civil Protection and Risk Management Unit's mission is to prevent and manage technological or natural disasters that occur in the territory. However, the High Commissioner retains jurisdiction in this area in his capacity as Prefect of the Defence and Security Zone (covering New Caledonia and Wallis and Futuna).

At the same time, in order to provide professional training to New Caledonians in the defence professions, New Caledonia has initiated a number of arrangements, starting with the defence and general security classes added to the curriculum in 24 junior secondary schools, as listed on the website of the New Caledonia education service ('*Vice-rectorat*'). This educational project is aimed at students wishing to engage in a possible career in the military or seeking the benefit of education focused on military values. Compared to mainland France, this program has been very successful with young people, with about 10 times more enrolments.

The territory also has the Special Military Service Regiment (RSMA-NC), which offers vocational and military training for young people aged 18 to 25 who have lost their way regarding employment and training. This course

⁷² '*Rapport d'activité 2018 des services de l'État en Nouvelle-Calédonie*', Government of New Caledonia, 2019

⁷³ '*Rapport d'activité 2018 des services de l'État en Nouvelle-Calédonie*', Government of New Caledonia, 2019

⁷⁴ '*Rapport d'activité 2018 des services de l'État en Nouvelle-Calédonie*', Government of New Caledonia, 2019

was deployed in 1986 on the territory. Originally based in Koumac, it gradually expanded, with a second vocational training company set up in Koné in 1992, a branch in Noumea in 2015 then a third company in Bourail in 2020.

In 2021, RSMA-NC included 606 young people with an SMA contract (467 volunteer trainees and 139 volunteer technicians), with an average age of 21 years and 55% composed of men. 54% of the intake were also in a situation of illiteracy. According to the latest figures available, the RSMA had an integration rate of nearly 78%.⁷⁵

In addition, the measures put in place by the State and the New Caledonian Government since the Noumea Accord contribute in themselves to the peaceful resolution of conflicts, like the Committee of signatories who, since the Nouméa Accord, have instituted a mechanism for dialogue and consultation between the various stakeholders in the decolonization process. On the other hand, the three referenda on access to full sovereignty, which took place peacefully, in themselves enabled Caledonians to express themselves democratically on their political future. In this regard, the electoral expert missions sent by the UN during each referendum on the request of the State, whose observations were detailed at the beginning of this report, did not report any use of force by the French or local authorities.

Conflict prevention also pervaded the period through the inception of a 'Wise Persons' Group' in 2017, on a proposal by Prime Minister Edouard Philippe, then revived in October 2020 during a visit by Overseas Minister Sebastien Lecornu. The task entrusted to the Group was to ensure a serene and peaceful climate during the referendum campaign, by taking care that public remarks and statements did not infringe New Caledonia's common values.

b) UN observations on the issues of non-use of force and peaceful conflict resolution

The 2012 UN General Assembly, with reference to the Noumea Accord implementation monitoring committee meeting on 8 July 2011, reported that the parties (Members of Parliament, Presidents of Provinces and the President of the Customary Senate) had in particular *"taken note of the progress made in the transfer of powers, in particular those relating to [...] and the civil protection sector, which will take effect in 2013 and 2014."*⁷⁶

In 2013, again according to the UN General Assembly, *"the Committee of Signatories to the Noumea Accord had in particular noted the concerns raised by the problems relating to security in the territory, and had taken note of the Administering Power's commitment to exercise increased vigilance in maintaining adequate availability of public security forces, promoting the recruitment of New Caledonians and supporting initiatives taken by territorial institutions with regard to crime prevention and social cohesion"*.⁷⁷

In 2014, several persons interviewed by the Special Committee during its first mission to New Caledonia alerted it to the issue of *"proliferation of firearms among the New Caledonian population"*. In this regard, the C24 mission had *"noted the measures taken by the High Commissioner to curb the proliferation of firearms and ammunition and to provide an urgent legal and practical response to this problem."*

At the same time, the members of the Special Committee felt *"like many others, that the current situation in New Caledonia was extremely fragile. To this end, their conclusions stressed the importance "of establishing a constructive dialogue between all the actors in order to reach an agreement, preserve peace and promote a 'common destiny'"*.⁷⁸

⁷⁵ Government of New Caledonia, State Services – Defence, official website

⁷⁶ Resolution 67/130 adopted by the General Assembly on 18 December 2012, UN

⁷⁷ Resolution 68/52 adopted by the General Assembly on 11 December 2013, UN

⁷⁸ Report of the United Nations Visiting Mission in New Caledonia, Special Committee, 18 June 2014

During the second mission visit in 2018, the UN Special Committee observed that *"overall, the security situation in New Caledonia remained calm and peaceful in this period leading up to the referendum on self-determination"; and that "the importance of peace, stability and security was stressed by all parties present."* Finally, recording, in the pre-referendum context, that it was not possible *"to rule out the risk of political unrest"*, the C24 considered that *"the Administering Power and the local authorities should, within the rule of law, take measures that are proportionate to the level of threat to peace and security in the Territory."*⁷⁹

Following this, the UN electoral expert mission, deployed at the time of the November 2018 referendum, had observed that *"the campaign had been conducted peacefully"* and that both Loyalist and pro-Independence camps had *"shown responsibility and called for calm"*. The expert group also reported that *"the risk of new violence breaking out before, during or after the 4 November 2018 vote was considered low by the authorities"* and indicated that about 260 police officers had been deployed in Noumea, and more than 300 gendarmes in the rest of the territory.⁸⁰

However, during the second referendum in 2020, and in contrast to 2018, the electoral expert group reported that *"law enforcement officers very much in demand"* on election day: *"several incidents were reported, several demonstrations by pro-Independence groups, the Loyalist group reported threats and intimidation, and the pro-Independence group indicated that the State did not play its role as referee in the face of irregularities by the Loyalist group. According to UN figures, the referendum was secured by "both the police, consisting of 559 officers of the Territorial Directorate of the National Police of New Caledonia (DTPN) and 171 municipal police officers; and 72 Gendarmerie officers."*⁸¹

Lastly, during the third and final referendum in 2021, the State had reinforced the security arrangements for the vote, with 2,000 personnel mobilized, according to the figures reported by the UN electoral expert group: *"Security forces were widely deployed throughout the territory, with the objective of ensuring the smooth running of operations and limiting potential public order disturbances. Equipment was brought in (armoured vehicles, helicopters, military aircraft, communications equipment), which led to sometimes divergent interpretations."* The group also pointed out that this measure had been *"a subject of controversy, considered 'colonial, disproportionate and provocative' by the pro-Independence parties and 'dissuasive or reassuring' by the Loyalists."*

For example, according to the expert group's report, *"the campaign atmosphere was marked by a paradoxical feeling. On the one hand, the electoral campaign was peaceful, in accordance with the calls for calm made by all parties involved; on the other hand, the spectre of a repeat of the "Events" of 1987 loomed large, fuelled by certain comments recalling the tragedies of the 1980s and an impressive deployment of security forces.* The electoral expert mission ultimately concluded that the 2021 election was *"held in a calm manner and was logistically organized in accordance with the legislative provisions in force. [...]"*⁸² It should be noted that the pro-Independence mayors who had called for a boycott supervised the smooth running of voting in their communes.

⁷⁹ Report of the United Nations Visiting Mission in New Caledonia, Special Committee, 2 April 2018

⁸⁰ UN Expert Group for the Referendum of 4 November 2018 in New Caledonia, Mission report, November 2018

⁸¹ UN Expert Group for the Referendum of 4 October 2020 in New Caledonia, Mission report, November 2020

⁸² UN Expert Group for the Referendum of 12 December 2021 in New Caledonia, Mission Report, January 2022

6.4 Conclusion

Conclusion on the non-use of force

Since the Events, no local actor has challenged the impartiality of law enforcement officers or their respect for equal rights.

After the Events of the 1980s, the New Caledonia Armed Forces have not taken part in any peacekeeping operations in the territory. Their activities are carried out in the same framework and with the same prerogatives as in the rest of the nation.

In addition, the Army is a vector for education and vocational integration through many avenues, and in particular the Special Military Service facility, lauded by all parties, which is an opportunity for many young people to learn professional skills.

The imprisonment situation in New Caledonia needs however to be carefully monitored. The prison is thought today to accommodate 600 inmates for 420 places. The number of prisoners in proportion to the population is very high (257 per 100 000 as against 120 in mainland France) and the prison population is composed of over 80% Melanesians.⁸³

7. International cooperation

7.1 Decolonization criteria resulting from UN Resolutions

"The Administering Powers should, in accordance with all relevant resolutions and decisions of the General Assembly and bearing in mind Assembly resolution 15/14 (XV) of 14 December 1960, facilitate the participation of the Territories under their administration in the programmes and activities of the specialized agencies, international financial institutions and other organizations of the United Nations system, as well as those of the United Nations bodies concerned with decolonization, including the Special Committee, and of international and regional organizations."

A/56/61 – Second International Decade for the Eradication of Colonialism. UN Secretary-General's Rapport, Article 14, 22 March 2001

⁸³ Figures provided by L. Leconte, Director of the 'Service pénitentiaire d'insertion et de probation', Interview on 26 August 2022, 'La Première' TV station

7.2 Relevant contextual and historical considerations in New Caledonia's integration into its international environment and regional cooperation

New Caledonia's history in the area of regional cooperation is very recent, with responsibilities gradually being devolved to it in this area from the 1980s and 1990s. The first provisions relating to decentralized international cooperation, between the State and New Caledonia, date from the 1980s but initially remained quite limited, allowing New Caledonia to be associated with State's foreign relations, providing only that a representative of the New Caledonian Government can "be authorized to represent the Government of the Republic jointly with the High Commissioner in regional bodies in the South Pacific" (Law N°84-821 dated 6 September, 1984).⁸⁴

Subsequently, in 1988, New Caledonia was granted the possibility, with the authorization of the State, to be represented "*alongside the Republic*", in its areas of responsibility, within Pacific regional organizations or Pacific regional bodies emanating from specialized institutions of the United Nations (Law n°88-82 of 22 January 1988).⁸⁵

But only after the Noumea Accord of 1998 did the possibility of participating in regional international organizations really open up for New Caledonia, within the shared-responsibility framework between the State and New Caledonian institutions. Indeed, if the State retains the power in international relations, under its sovereignty powers, it must nevertheless take into account New Caledonia's specific interests, according to the relevant provisions enacted in Articles 28 to 38 of Organic Law No. 99-969 of 19 March 1999.

Since then, New Caledonia has had specific room for manoeuvre in comparison with the other French collectivities.

7.3 Actions carried out and means used by France since 1986, in terms of the integration of New Caledonia into its international environment and regional cooperation

a) Powers vested in the territory

Certain external relations mandates have been partially devolved to New Caledonia by the State, in accordance with the provisions of the 1999 Organic Law.

Possibility of negotiating and/or signing agreements:

This power may be delegated from the State to the President of the Government of New Caledonia. Alternatively, the President of the New Caledonian Government may be invited to take part in the negotiations as part of the French delegation for the signing of agreements of the same nature. Before international commitments made by France can be ratified, the Congress of New Caledonia must be consulted (Art. 28).

The territory's deliberating assemblies may request assistance from the French authorities in the negotiation of international agreements. If an intention to negotiate exists, the State cannot oppose this, but the signing of the texts resulting from the negotiations is subject to the authorization of the authorities (art. 29).

Participation in regional organizations

New Caledonia may join regional bodies on its own behalf, with the agreement of the State.

⁸⁴ 'Law N°84-821 dated 6 September 1984' « providing for the status of the Territory of New Caledonia and Dependencies »

⁸⁵ 'Law N°88-82 dated 22 January 1988' « providing for the status of the Territory of New Caledonia »

Membership in international organizations

New Caledonia may be a member, associate member or observer (art. 31) within international organizations, with the agreement of the State.

External representation

New Caledonia may have representation in the Pacific States and Territories (art. 32).

It can also assign staff to represent it: New Caledonian delegates have been posted to the five French embassies in the Pacific region.

It may also have representation at the European Community (art. 31) and its own representations, not diplomatic in nature, to foreign states.

Decentralized cooperation agreements

The Congress and the Provincial Assemblies have authority to sign decentralized cooperation agreements, subject to approval. These "*come into force as soon as they are sent to the High Commissioner*" (art.33).

b) Milestones in international cooperation

The implementation of the above-mentioned provisions has since been put into practice through the strengthening of the Territory's relations with the Pacific States. The first official visit, in January 2000, of the President of the New Caledonian Government to Australia, was followed, on 25 August 2000, by his first empowerment to negotiate an international agreement.

Since then, several successive steps have been taken by New Caledonia in terms of decentralized international cooperation. They are summarized below:

2002:

- The President of the Government of New Caledonia signs the Cooperation Agreement between the French Republic and Vanuatu, with the powers of the Republic;
- New Caledonia signs its first declaration of intent with a state in the Pacific region, Australia.

2003:

- New Caledonia is associated with the first France-Oceania summit, held on 28 July 2003 in Papeete. This initiates the reinforcement of ties between France and Oceania through the three Pacific collectivities - New Caledonia, Wallis and Futuna and French Polynesia;
- May 6, 2003: a headquarters agreement is signed between the Government of the French Republic and the Pacific Community, which "*has established its permanent headquarters in New Caledonia*".⁸⁶

2004:

- A line dedicated to funding the Economic, Social and Cultural Cooperation Fund for the Pacific of the Ministry of Foreign Affairs (created in 1985) is included in the budget of New Caledonia;
- The President of the Northern Province, as head of the New Caledonian delegation, takes part in COP7 of the Convention on Biological Diversity, held in February in Kuala Lumpur.

⁸⁶ Decree N° 2012-39 dated 11 January 2012 providing for the gazetting of the Headquarters Agreement between the Government of the French Republic and the Pacific Community, signed in Nouméa on 6 May 2003

2010:

- A declaration of intent on the sustainable management of the Coral Sea is signed between New Caledonia and Australia;

2011:

- A New Caledonia Regional Cooperation and External Relations Unit (SCRRE) is created to meet the need to structure the administration, under the direct authority of the President of the New Caledonian Government.

2012:

- New Caledonia chairs the Oceania Regional Environment Programme (SPREP) for the first time since it joined;
- On 26 January, a framework agreement (see insert below) is signed by the President of the New Caledonian Government, the French Minister for Cooperation and the French Minister for Overseas Territories, which led to the appointment of New Caledonia's first delegate in Wellington. This delegate has a triple mission: (1) to officially represent New Caledonia to the New Zealand Government; (2) to conduct bilateral cooperation actions and (3) to develop commercial relations.

Agreement on the hosting of delegates of New Caledonia within the diplomatic network of the State in the Pacific (Oceania)

This agreement in particular specifies:

- The accommodation arrangements for these New Caledonia delegates (art. 1 and 3): "*officers posted within the diplomatic and consular posts to the Pacific States, are registered on the French diplomatic list and benefit from the corresponding privileges and immunities*", they also benefit from a workspace on the premises and the operational resources of the diplomatic posts.
- The tasks and responsibilities of delegates (art.2), who "*represent and pursue the interests of New Caledonia*" and "*Contribute to the work of the mission to which they are assigned*".
- The relations with the Head of Post (art. 4): "*If circumstances so require, the Head of Post may request the President of the New Caledonian Government to recall his delegate*".

2016:

- New Caledonia becomes a full member of the Pacific Islands Forum;
- New Caledonia becomes an associate member of the International Francophonie Organization (OIF) and obtains a seat without voting rights on the Regional Committee of the World Health Organisation (WHO);
- For the first time, a joint cooperation plan is signed with a State in the Pacific region, New Zealand, on 10 September 2016;
- The Orientation Plan for Export Support (OSE) is set up by the New Caledonian government, with the aim "*to set the strategic orientations of the New Caledonian government's export support policy*".⁸⁷

2017:

- The Country Law on the status of the delegates of New Caledonia in the Pacific region is adopted unanimously by Congress on 5 April;
- New Caledonia chairs the Pacific Community Conference;
- New Caledonia becomes an associate member of UNESCO;

2018 -2019:

- New Caledonia participates in the dialogue initiated between Japan and Pacific Leaders

⁸⁷ 'Orientations pour le Soutien à l'Export', Government of New Caledonia, October 2016

- The network of New Caledonian delegates in the Pacific is extended in the Pacific region (Australia, Fiji, New Zealand, Papua New Guinea and Vanuatu).

At a time when the Indo-Pacific is the subject of a national strategy, New Caledonian stakeholders unanimously regret that they were inadequately associated with its development.

c) UN observations on New Caledonia's evolution in international cooperation

In 2008, the UN General Assembly noted: "*the territory's relations with Pacific neighbours are intensifying*" (Pacific Islands Forum, of which New Caledonia has been an Associate Member since October 2006); ties between New Caledonia the EU are growing closer; it welcomed "*the cooperation between Australia, France and New Zealand in the area of fisheries surveillance,*" praising "*the cooperative attitude of the States in the region.*"⁸⁸

In 2014, however, the first C24 mission had concluded: "*New Caledonia's integration into the Asia-Pacific region and the strengthening of its partnership with Pacific countries will serve its interests and must be done urgently*". Given the numerous calls for greater integration of New Caledonia at the regional level, the mission also stated that "*concrete measures to facilitate the recognition of qualifications between New Caledonia and other countries should be taken without further delay*".⁸⁹

Then in 2022, in a Working Document on New Caledonia prepared by the United Nations Secretary-General, the Special Committee of the UN indicated: "*New Caledonia has benefited, along with the three other Pacific Overseas Countries and Territories, from a regional envelope of the Eleventh European Development Fund in the amount of 36 million euros (4,3 billion CFP francs) for the implementation of a regional cooperation project. Finally, New Caledonia is also involved in the work of the Association of Overseas Countries and Territories of the European Union*".⁹⁰

7.4 Conclusion

Conclusion on international cooperation

Although foreign affairs are a sovereign responsibility, in New Caledonia they are a shared responsibility between the State and the territory. New Caledonia has therefore gradually taken an important place in regional diplomacy. A member of Pacific Community since 1983, in 2016 it became a member of the Pacific Islands Forum. Since 2012, the territory can also rely on the services of its own delegates overseas, deployed in French embassies. Such an arrangement was unprecedented in the French Republic.

Also, alongside the State, the Government of New Caledonia takes part in regional humanitarian relief operations; its role in this area has expanded in line with the transfer to the territory of civil protection responsibilities in 2012.

As the State identifies the Indo-Pacific as a strategic axis, players of all sensibilities in New Caledonia express their regret at not being associated with this debate. They wish in the future to be able to contribute to the drafting and implementation of an Indo-Pacific strategy, co-developed with French citizens in the zone.

⁸⁸ Resolution 63/106 adopted by the General Assembly on 5 December 2008, UN

⁸⁹ Report of UN Visiting Mission in New Caledonia (2014), Special Committee, 18 June 2014

⁹⁰ Working Document prepared by the Secretariat, UN Special Committee, 31 March 2022

8. Migratory flows

8.1 Decolonization criteria resulting from UN resolutions

"[The United Nations General Assembly] *Recalling also that the right to self-determination, as recognized in the Charter, shall be exercised with due regard to all human rights and fundamental freedoms, and that changes in the demographic composition due to immigration or displacement of populations shall not prejudice the exercise of this right, in accordance with the relevant resolutions of the General Assembly*"

Resolution 15/41 of UN General assembly, 1960

8.2 Relevant contextual and historical considerations concerning migratory flows and population movements in New Caledonia

Since the end of the 19th century, the history of New Caledonia has been marked by a number of waves of settlement, first with the annexation of the territory by France, which began to establish a penal colony there: the first convicts were landed in 1864 and the prison population rose to more than 8 000 in 1920. The establishment of 'reserves', delineating the areas to which the natives were relegated, generally the least arable, led to many revolts by the Melanesians. Also, from 1864 to 1897, the State deported to Noumea more than 2,100 Algerians, tried by military courts following the Kabylia insurrection. Those whose sentence lasted more than 7 years were not allowed to return to Algeria.⁹¹

These prisoners were followed by workers from Asia. The first Chinese workers arrived in 1865, followed by Japanese and Indonesians. Indochinese workers then arrived in the 1880s. Most of these workers were employed on plantations, including coffee, cotton, bananas and sugar cane. There were more than 14,000 Asian indentured workers in 1923, and until 1945, their work contracts did not allow them to return home. Departures were organized from 1960 onwards and 5,800 Vietnamese went back to Vietnam between 1960 and 1964. In 1963, there were less than 1,000 Vietnamese left in New Caledonia.⁹²

Asian contract workers were replaced in the 1950s by Wallisians and Tahitians. In the 1960s, New Caledonia continued to see increasing numbers of workers disembark from Wallis and Futuna, Tahiti, Fiji and Vanuatu, due to the explosion of nickel production. From the 1970s-1980s, New Caledonia experienced strong demographic growth, with a population increase of nearly 70% between 1971 and 1983.⁹³

The issue of migration flows remains very sensitive in New Caledonia and continues to be the subject of debate. Measures taken by the French and New Caledonian authorities since the 1980s aim to strike a balance between protection requirements for the indigenous people and the territory's economic needs.

⁹¹ 'Histoire de la Nouvelle-Calédonie', New Caledonia official website

⁹² 'L'immigration en Nouvelle-Calédonie : des mouvements de population marquants depuis un siècle', ISEE

⁹³ 'L'immigration en Nouvelle-Calédonie : des mouvements de population marquants depuis un siècle', ISEE

8.3 Actions taken and means used by France since 1986 in the area of migratory flows, and recorded demographic trends

a) Key action by the State and local authorities

Immigration policy

Jurisdiction over foreigners is shared between the State, for entry and residence, and New Caledonia for work. But, although it is attached to the State, New Caledonia, as an overseas collectivity, applies special provisions concerning the entry and stay of foreigners on its territory.⁹⁴

The Code on entry and residence of foreigners and the right to asylum, in Chapter VI (Part IV), includes “provisions applicable in New Caledonia” (Articles L446-1 to L446-5). In particular, it provides for adaptations of the texts applicable in metropolitan France: the words “in France” and “French territory” are replaced respectively by the words “on the territory of New Caledonia” and “territory of New Caledonia” - except for the exceptions detailed in paragraph 2.⁹⁵

Article L. 413-3 provides: “the contract for integration into the Republic provided for in Article L. 413-2 provides for civic education that includes a presentation of French institutions and the values of the Republic, particularly equality between men and women and secularism. Language training is recognised through a State-approved qualification. Foreigners also benefit from a briefing session on life in New Caledonia and its institutions and, if necessary, a professional skills assessment. All these training and service arrangements are provided free of charge.”⁹⁶

With regard to migratory flows, in 1988, the Maignon Accords already provided for the establishment of a ‘community protection’ mechanism for the protection of Kanaks in the context of the decolonization process. This includes regulating migration flows and controlling naturalizations. The same year, Law n°88-1028 relating to the regulation of the entry and residence of foreigners in New Caledonia and in the Wallis and Futuna Islands was promulgated. This law makes it possible to limit the right of residence of foreigners in New Caledonia, by introducing a compulsory residence permit for residents of foreigner nationality.⁹⁷

In 2000, a law on the regulation of immigration was adopted, reinforcing the criteria for the admission of foreigners to New Caledonia. It provides for measures to fight against illegal immigration.⁹⁸ In 2007, the law relating to immigration control, integration and asylum was adopted and provides for the creation of a ‘Residence Card’ reserved for foreigners with lasting ties to the territory.⁹⁹ Subsequently, Law no. 2009-594 on immigration strengthened the powers of Prefects in the fight against illegal immigration.¹⁰⁰

Lastly, in 2018, Law No. 2018-771 for controlled immigration, an effective right of asylum and successful integration provides for the establishment of a system of “delegation of powers” to local New Caledonian authorities for the management of migratory flows.¹⁰¹

Today, any foreigner wishing to visit New Caledonia for a long stay (more than three months) is therefore subject to a visa requirement, under the conditions specified by the State services in New Caledonia, except for nationals of a European Union member state. For tourist stays (3 months maximum), this exception also applies to nationals of the European Economic Area, Switzerland, holders of a residence permit issued by a member or associate state of the Schengen area or nationals of countries with which France has concluded visa exemption agreements.¹⁰²

⁹⁴ ‘Maison de la Nouvelle-Calédonie’, official website

⁹⁵ ‘Code de l’entrée et du séjour des étrangers et du droit d’asile’, Livre IV, Chapitre VI (Art. L446-1 à L446-5), Légifrance

⁹⁶ ‘Code de l’entrée et du séjour des étrangers et du droit d’asile’, Livre IV, Chapitre VI (Art. L446-1 à L446-5), Légifrance

⁹⁷ ‘Loi n°88-1028’, Légifrance

⁹⁸ ‘Loi n°2000-1207’, Légifrance

⁹⁹ ‘Loi n°2007-1631’, Légifrance

¹⁰⁰ ‘Loi n°2009-594’, Légifrance

¹⁰¹ ‘Loi n°2018-778’, Légifrance

¹⁰² ‘Maison de la Nouvelle-Calédonie’, official website

Local citizenship

A New Caledonian citizenship is established in the Nouméa Accord. This instrument, whose content is constitutional, explicitly recognizes the “Kanak People” in its Preamble, as well as the existence of special civil status, distinct from ordinary law, i.e. “customary status”, while also referring to “other communities” represented in the territory. According to constitutional scholar Guy Carcassonne, quoted in an article published by the Constitutional Council, “it is less a question of particular constitutional provisions than of another Constitution, that of New Caledonia”.

The Nouméa Accord thus aims to “gradually replace the coexistence of diverse ethnicities and histories with a sense of belonging to the chosen common destiny;” Community membership can therefore be recognized legally and can be “the constitutional basis for differentiating between the rights of individuals”. Furthermore, the Noumea Accord enshrined a New Caledonian citizenship, the basis for voting restrictions.

New Caledonian citizenship status includes the following rights:

- “Only French citizens with New Caledonian citizenship may participate in the election of the deliberative bodies of the territory. Such a process is strictly impossible elsewhere on French territory;
- Preferential recruitment in the public service is planned for the benefit of New Caledonian citizens;
- The exercise of certain professions is restricted to holders of this citizenship”

The New Caledonian citizen has also a duty “of belonging to the chosen common destiny” and “as a French citizen, remains subject to French laws and comes under French jurisdiction”.¹⁰³

Rules for access to local employment

New Caledonia has jurisdiction over foreigners in the work area. In this regard, the Code on the entry and residence of foreigners and the right to asylum provides in particular in Chapter VI relating to New Caledonia for the following adaptations: “Access to work for foreigners is exercised under the conditions provided for by the legislation and regulations applicable locally and with reference to the collectivity’s responsibilities” (art. L446-2) ; “The issuance of residence permits bearing the words “employee”, “temporary worker” and “seasonal worker” respectively, as provided for in Articles L. 421-1, L. 421-3 and L. 421-34 is subject to compliance with the locally applicable provisions on work permits for foreigners and the laws and regulations in force locally with respect to labour law” (art. L. 414-12).¹⁰⁴

To be able to exercise a salaried professional activity in New Caledonia, a foreign national must first “obtain a work permit, issued by the New Caledonian Government. This should be done in conjunction with the employer”.¹⁰⁵

With a concern to protect local employment, the Organic Law of 1998 relating to New Caledonia had already provided for the establishment of special civil status for persons of customary civil status, with quotas for employment reserved for Kanaks in the public service.¹⁰⁶

In this same framework, a priority hiring system for local staff has been operational since February 14, 2012, in application of the law on “the protection, promotion and support of local employment”; since then, it has guided hiring policy in New Caledonia: “with equal qualifications and skills, priority is thus given to hiring New Caledonian citizens and then, as a second step, to people with a minimum period of residence (3 to 10 years depending on the sector of activity)”. As a result, at the last census, the proportion of jobs held by citizens increased from an average of 65%, observed in all censuses since 1989, to 70% in the 2019 census. The Directorate of Labour and Employment (DTE) recorded 1,205 authorizations for external recruitment in 2021 (2 refused), against 1,700 in previous years - a figure much lower than those noted during the metallurgical plant construction period.¹⁰⁷

¹⁰³ ‘Vie publique, République Française’, official website

¹⁰⁴ ‘Code de l’entrée et du séjour des étrangers et du droit d’asile’, Livre IV, Chapitre VI (Art. L446-1 à L446-5), Légifrance

¹⁰⁵ ‘Maison de la Nouvelle-Calédonie’, official website

¹⁰⁶ ‘Loi organique n° 98-611 du 20 juillet 1998 relative à la Nouvelle-Calédonie’, Légifrance

¹⁰⁷ ‘Rapport annuel économique 2021 de la Nouvelle-Calédonie’, IEOM

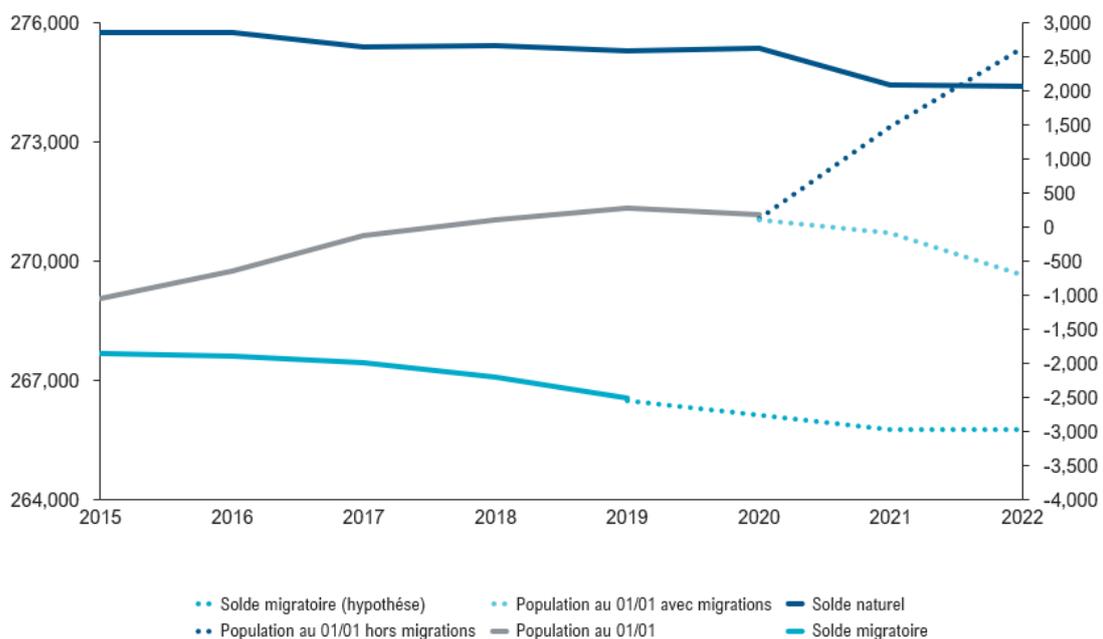
b) Statistical data

In New Caledonia, the census is conducted by INSEE (National Institute of Statistics and Economic Research), in partnership with ISEE, on the entire population. The official ISEE website specifies its objectives: "to know the population and its characteristics; to define the operational resources of the municipalities; to make appropriate decisions for the institutions".

As of the last census in 2019, the population of New Caledonia was 271,407, with a provisional growth rate of -2.10% between 2019 and 2021.

Data compiled by ISEE for the period 1969-2019 show that New Caledonia is currently experiencing a negative migratory balance which, combined with the continuous decline in the territory's natural balance since 1969, results in a progressive decrease in total population, observed over the entire period (see graph below). The ISEE also notes that "this phenomenon is being observed for the first time in 40 years". Thus, 1/10 of the inhabitants left the territory in 2019; 3/4 of them are not natives of New Caledonia and the last quarter is represented by students. At the same time, since 2014, 17,300 people have moved into the territory. This number of inflows is less than outflows, explaining the negative net migration over the 2014-2019 period, as shown on the graph below.

It would seem in addition that the health emergency has exacerbated the immigration trend observed in recent years. In fact, according to the latest demographic balance figures from ISEE (2020/2021), the negative demographic balance trend observed in New Caledonia over the 2014-2019 period, continued to deepen in 2020 and 2021, remembering that it was "certainly much easier to leave the territory than to enter it." According to these latest data and "everything else being equal", the total population is estimated to have fallen by 330 in 2020 (-0.1%) and almost 1 050 in 2021 (-0.4%), placing it below the 270 000 mark on 1st February 2022¹⁰⁸.



Bilan démographique Nouvelle-Calédonie 2020-2021, Synthèse N°60, ISEE, septembre 2022

Distribution of the population according to communities of origin, places of birth, and knowledge of a Melanesian language

¹⁰⁸ .Bilan démographique Nouvelle-Calédonie 2020-2021., Synthèse N°60, ISEE, September 2022

The table below aims to compare the numerical evolution of the different communities represented in New Caledonia, during the various censuses, from 1996 to 2019. It should be noted that the data from the 2004 census do not allow, contrary to other years, to gauge the distribution of the different communities in detail.

| Census | Community | Place of birth | Knowledge of a Melanesian language |
|--------|---|---|--|
| 1996 | 44% Melanesian; 34% European; 2% Indonesian; 1% Ni-Vanuatu; 2% Tahitian; 1% Vietnamese; 9% Wallisian and Futunian; 0.4% other Asian; 3% other and 1% not stated | 76% in the territory; 18% in metropolitan France or other DOM-TOM and 5% in foreign countries (including 1% in Vanuatu; 0.9% in Morocco, Algeria and Tunisia and 0.9% in Vietnam, Cambodia, Laos) | 38% of the population over the age of 14 speaks a Melanesian language, 90% of whom are Melanesians. For all other communities, the average is 1.77% who speak a Melanesian language |
| 2004 | 97% of the population is French by birth; 1% by acquisition and 1% is foreign | 76% in France; 18% in metropolitan France or other DOM-TOM and 5% in foreign countries | 41% of the population surveyed understands and/or speaks a Melanesian language |
| 2009 | 40% Kanak; 29% European; 1% Indonesian; 0.9% Ni-Vanuatu; 2% Tahitian; 0.9% Vietnamese; 8% Wallisian and Futunian; 0.7% other Asian; 6% other; 8% "several communities"; and 1% not declared | 75% on the territory; 19% in metropolitan France or other DOM-TOM and 5% in foreign countries | 41% of the population surveyed understands and/or speaks a Melanesian language |
| 2014 | 39% Kanak; 27% European; 8% Wallisian and Futunian; 8% "several communities" and 16% other and undeclared | 74% in France; 20% in metropolitan France or other DOM-TOM and 4% in foreign countries | 63% of the population surveyed speaks or understands a Kanak language (<i>note: that year, the question was not asked of all the people surveyed</i>) |
| 2019 | 41% Kanak; 24% European; 8% Wallisian and Futunian; 11% "several communities" and 15% other and undeclared | 77% in France; 17% in metropolitan France or other DOM-TOM and 4% in foreign countries | 43% of the population surveyed understands and/or speaks a Melanesian language |

It can be seen that the number of inhabitants of the territory who declare themselves to be neither Kanaks, nor of European origin, has been rising steadily since 1996: it rose from 19.4% in 1996 to 34% in 2019.

The detail available on the representativeness of the different communities varies from year to year, making it difficult to compare these numbers in a more focused way, community by community. Nevertheless, the proportion of Wallisians and Futunians, which represented 9% of the inhabitants of New Caledonia in 1996, has remained stable at 8% since 2009.

However, the share of inhabitants declaring themselves Kanak in New Caledonia, after having fallen by 4 points between 1996 and 2009, first stabilized around 39-40% between 2009 and 2014, and now seems to have been slightly increasing since 2019 (41% of the total population of the territory).

In addition to this analysis, the demographic evolution of people with customary status indicates that the number of births under this status, after having experienced two periods of decline (2005-2011 and then 2013-2015), has been on the rise again since 2015, and in 2017 exceeded the threshold of 1,600 children born under customary status, thus regaining its 2005 level. The number of deaths of persons with customary status, after a gradual but measured increase over the period 2005-2013, seems stable since 2013, remaining very slightly above 600 deaths/year.

Source : ISEE

Lastly, the electoral colleges for Provincial elections and referenda are the fruit of an agreement between all the parties (State, pro-Independence and non-pro-Independence factions) and were defined in such a way that the demographic changes that could occur during the process would have no impact on the expression of the communities concerned.

c) UN observations on the issue of migration flows in New Caledonia

The annual resolutions of the UN General Assembly do not refer to settlement issues in New Caledonia.¹⁰⁹ The issue of migration flows is therefore briefly addressed in the resolutions. From 2008 to 2012, we could thus identify that the United Nations took note *"of the provisions of the Nouméa Accord relating to immigration control and the protection of local employment, and notes that unemployment remains high among Kanaks and that the recruitment of foreign miners continues"*.

Between 2009 and 2017, the main observation made on the matter by the General Assembly was about *"the concerns that the Kanak people continue to express about [...] the incessant migration flows [...], as well as the need to address these issues without delay"*.

Finally, it can also be noted, in the report of the United Nations Special Committee first mission in 2014, that it requested *"the Administering Power to take all necessary measures to address the concerns regarding the promotion of the systematic acceptance of foreign immigrants in New Caledonia"*.¹¹⁰

8.4 Conclusion

Conclusion on migratory flows

New Caledonia has been a penal and settlement colony. The Issue of the place of each community in the New Caledonian whole, coupled with the political issues relating to the territory's future, have led to demography becoming a data item of concern for political forces in New Caledonia. The fear of a dilution of the Kanak population is regularly expressed by pro-Independence representatives.

Demographic developments show that New Caledonia has remained economically attractive until the end of the 2000's, before a reversal in the trend which has led to a negative migratory balance.

These identity and political concerns led to the introduction of restricted electorates for the provincial assembly and Congress elections, as well as for the referenda on accession to full sovereignty. Today they remain an important topic in political discussions.

These measures have been accompanied by restrictions in the economic field which led to the introduction of protected access to employment.

¹⁰⁹ Annual resolutions of the UN General Assembly on New Caledonia, from 2008 to 2021

¹¹⁰ Report of United Nations Visiting Mission in New Caledonia (2014), Special Committee, 18 June 2014

9. Other criteria in response to the Action Plans for the Eradication of Colonialism

9.1 Decolonization criteria resulting from UN resolutions

" The Administering Powers should continue to cooperate, or resume cooperation, with the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, and participate actively in the work of that Committee "

A/56/61 – Second International Decade for the Eradication of Colonialism. UN Secretary-General's Rapport, Article 14, 22 March 2001

" The Administering Powers should facilitate regular United Nations visiting missions to each of the Territories. "

A/56/61 – Second International Decade for the Eradication of Colonialism. UN Secretary-General's Rapport, Article 14, 22 March 2001

" [The international community should ensure that the peoples of the Non-Self-Governing Territories are able to exercise their inalienable right to self-determination and to decide their future political status in full awareness of the full range of political options open to them, including independence.... In this regard, particular emphasis should be placed on improving the educational systems in the Non-Self-Governing Territories and on protecting and strengthening the human rights of the people of these territories. "

A/56/61 – Second International Decade for the Eradication of Colonialism. UN Secretary-General's Rapport, Article 14, 22 March 2001

" The United Nations should, in cooperation with the Administering Powers, ensure that the peoples of the Non-Self-Governing Territories are kept fully informed of the options available to them with regard to their political status, through direct contact with the elected leaders and the peoples themselves. "

A/56/61 – Second International Decade for the Eradication of Colonialism. UN Secretary-General's Rapport, Article 14, 22 March 2001

" The United Nations should, in collaboration with the Administering Powers, ensure that all self-determination processes are preceded by adequate and impartial political education campaigns. "

A/56/61 – Second International Decade for the Eradication of Colonialism. UN Secretary-General's Rapport, Article 14, 22 March 2001

9.2 Actions carried out and means used by France since 1986 in terms of good cooperation with the UN and guaranteeing equal human rights, as recalled in the UN Action Plan 2000-2010

As a preamble, it is important to recall that, as early as 1986, the FLNKS independence movement relied on the United Nations to make its voice heard. According to historian Caroline Gravelat, the UN has since *"asserted itself over the decades as an undisputed player in the New Caledonia emancipation process"*. From 1998, the Noumea Accord explicitly states that *"progress towards emancipation will be brought to the attention of the United Nations"*.

As a result, cooperation between the UN and the various parties involved in this process has since resulted in: collaboration with the Special Committee on Decolonization (C24), support for UN electoral experts, concerning the constitution and revision of the electoral rolls and, more recently, for the deployment of UN expert missions, at the request of the State, at the time of the three referenda on self-determination. Thus, the UN has played "*an objective role*", contributing to "*general easing of tensions*".

Importantly, the years 1990-2000, then 2001-2010 and 2011-2020 were declared by the General Assembly of the United Nations "*as the International Decade for the Eradication of Colonialism and a plan of action is adopted to this effect*". In this international context, the actions of France since 1998 have been "*fully consistent with international law on decolonization*". To this end, the State provides an annual report on the decolonization process in New Caledonia and this is then the subject of a resolution on New Caledonia, adopted annually at the end of the year by the UN General Assembly.¹¹¹

a) Cooperation with and participation in the Special Committee

In 1961, the 'Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples', also known as 'Committee of 24' or 'Special Committee' (Resolution 16/54 (XVI) dated 27 November). was established. This subsidiary body of the United Nations is mandated (1) "*to study the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*" and (2) "*to make suggestions and recommendations regarding the progress made and the extent to which the Declaration is being implemented*".¹¹²

Since New Caledonia was reinstated on the list of non-self-governing territories by resolution 41/41A of 2 December 1986, pro-Independence delegations from New Caledonia have travelled every year to New York "*to present their case to the Committee*", noting that the visit could not take place in 2020 because of the Covid-19 pandemic. In addition, in accordance with the UN Plan of Action, the President of the Government of New Caledonia is "*systematically encouraged by the decolonization committee to participate in its annual meeting and its regional seminar, which is held either in the Caribbean or in the Pacific*". He is also invited to contribute to the work of the fourth committee of the UN General Assembly - mandated "*to examine the items on the agenda relating to special political questions and decolonization*".¹¹³

To this background, since 2000, New Caledonia has been participating in the annual regional seminar of the Special Committee for Decolonization. In 2009, the President of the Government of New Caledonia, "*accompanied by a delegation representing all political sensibilities spoke for the first time*" before the UN General Assembly - enabling the New Caledonian Government to "*renew dialogue with the UN*".

In 2010, on an invitation from the President of the Government of New Caledonia, the UN Special Committee Regional Seminar for the Pacific was held in Noumea, with the particular goal to "*present to the General Assembly the progress towards the emancipation of New Caledonia;*". This seminar was an opportunity "*for the New Caledonian political forces to paint a complete and consensus-based picture of the situation in the territory[...]. The presence of the President of the Congress, the President of the Northern Province and several members of the local government was intended to demonstrate the spirit of concord*".

Subsequently, New Caledonia was represented at the meetings of the Fourth Committee of the UN General Assembly on Decolonization by the President or the Vice-president of the New Caledonian government. Also, the FLNKS pro-Independence movement is "*almost systematically present at the Committee's meetings and petitioner each year before the United Nations General Assembly*". It was not until 2015 that the anti-independence movement also took part in the various collaboration efforts conducted with the UN.

¹¹¹ 'L'ONU au service du processus d'émancipation de la Nouvelle-Calédonie', Caroline Gravelat, Department of Pacific Affairs, 2020

¹¹² UN Special Decolonisation Committee, UN, official website

¹¹³ 'L'ONU au service du processus d'émancipation de la Nouvelle-Calédonie', Caroline Gravelat, Department of Pacific Affairs, 2020

Pursuing the spirit of cooperation on 20 February 2014, the UN Special Committee sent a first visiting mission to New Caledonia, aiming to collect information on the implementation of the Noumea Accord – which itself explicitly provides that *"progress towards emancipation will be reported to the United Nations"*.¹¹⁴ This first C24 mission enabled its members *"to obtain information about the situation in the territory, to hear all the stakeholders (including those who had initially refused to talk to the C24)".* The mission also had a clear objective to *"facilitate the process of decolonization as defined in the Noumea Accord"*.¹¹⁵ As a result, the UN General Assembly expressed, in its 2014 annual resolution, *"its appreciation to the Administering Power and the Government of New Caledonia for the close cooperation and assistance extended to the visiting mission"*.¹¹⁶

A second visiting mission of the Special Committee was then deployed in March 2018. The report of this visit states that *"the Government of France continues to support the work of the Special Committee and to cooperate with it",* noting also *"the useful support and assistance provided to it and reiterating the call of the UN General Assembly to the Government of France to cooperate fully in the work of the Special Committee and to participate formally in its forthcoming sessions"*. Lastly, in its findings, the mission acknowledges *"the Administering Power's efforts to address the recommendations of the 2014 mission, acknowledges the progress made, and calls for continued action in this direction"*.¹¹⁷

Following this new C24 visit, the 2018 annual resolution of the United Nations General Assembly then observed that *"The Administering Power had intensified its cooperation with the Special Committee in its work on the question of New Caledonia and had readily accepted to receive the 2018 visiting mission. More generally, the United Nations had also noted "with satisfaction that the administering Power continued to facilitate visiting missions to the Territory in advance of the self-determination referendum, scheduled for 2018"*.¹¹⁸

In 2021, the UN general Assembly expressed *"ts recognition to the Administering Power and the Government of New Caledonia for the close cooperation and assistance provided to the visiting missions"*.¹¹⁹

b) Hosting of United Nations visiting missions in New Caledonia

Hosting of UN electoral experts for the revision of the rolls

In the context of the specific electorates in New Caledonia, a small working group was set up by the State in 2014 dealing with the revision and the constitution of the relevant rolls. At the request of the representatives of 'Union Calédonienne', the State requested the cooperation of the UN in this work - in response to suspicions of fraud emanating from certain political parties and the will of New Caledonians to see the functioning of the Special Administrative Committees (CAS) evolve. On a proposal from the members of the Signatories' Committee, 14 experts from the UN (as *"independent qualified persons"*) sat on the SACs at the time of the revisions, under the coordination of a fifteenth independent UN expert (Decree no. 2015-1753 dated 23 December 2015). These electoral experts were *"formally appointed by the State" but, in practice, "appointed and coordinated by UNOPS"* (the United Nations Office for Project Services).¹²⁰

Their mission was to *"observe the work of revising the LESP"* as well as the *"initial work of establishing the LESC"*. Their observations were then the subject of a report, presented to the Minister of Overseas Territories and to the President of the New Caledonian Congress. The conclusions indicate that the experts were very well accepted locally, allowing the work of *"to proceed in a serene atmosphere."*

¹¹⁴ Noumea Accord, 1998

¹¹⁵ Report of the United Nations Visiting Mission in New Caledonia, Special Committee, 18 June 2014

¹¹⁶ Resolution 69/102 adopted by the UN General Assembly on 5 December 2014

¹¹⁷ Report of the United Nations Visiting Mission in New Caledonia, Special Committee, 2 April 2018

¹¹⁸ Resolution 73/115 adopted by the UN General Assembly on 7 December 2018

¹¹⁹ A/RES/76/98 – Resolution 76/98 adopted by the UN General Assembly on 9 December 2021, UN

¹²⁰ 'L'ONU au service du processus d'émancipation de la Nouvelle-Calédonie', Caroline Gravelat, Department of Pacific Affairs, 2020

Following on from this, in 2017, the Prime Minister of the French Republic "addressed a request to the UN Secretary General regarding a further deployment of experts to New Caledonia within the CAS for the reviews of the LESP and LESC. In response, a second mission of experts was appointed by the UN and then formally named by the High Commissioner, "after advice from the Congress of New Caledonia". The resulting report mentions "the cooperation of New Caledonia's partners for the successful completion of its mission". It also indicates that "the data collected by the UN experts tends to show that the SACs are on the whole functioning in a transparent manner, even if in this respect, not all are at the same level", and observes the "peaceful functioning" of the SACs. ¹²¹

Reception of UN expert missions during the three referendums

As detailed in the Part 1 of this report (Free choice of institutional status), a UN expert electoral mission was deployed in November 2018, during the first referendum consultation, at the request of the State. It was composed of 13 independent electoral experts, coordinated by UNOPS, active before and during the event, aiming "to assist in the conduct of the referendum and to report to the Secretary General of the United Nations the political environment and the technical organization of the consultation".¹²² The report of this expert mission indicates that it was "following the request of the authorities of the French Republic, and in accordance with the wish expressed by the New Caledonian political leaders to see the United Nations continue to accompany the referendum process" that the United Nations Secretary-General had then "approved the deployment [...] of a group of electoral experts in New Caledonia to accompany the referendum process"¹²³. In its annual resolution on New Caledonia, adopted in December 2018, the UN General Assembly then welcomed the fact that "the Administering Power has provided the Special Committee with the final report of the mission of electoral experts sent to New Caledonia."¹²⁴

Subsequently and again "following a request from the French authorities",¹²⁵ the UN again despatched an expert electoral mission to attend the second referendum on 4 October 2020, mission also "renewed by Jean-Castex on 24 June, 2021",¹²⁶ in the context of the third and last referendum scheduled for the end of the year.

In the last report of the electoral experts mobilized in 2021, we can note in particular that "the Mission [composed this time of 15 experts] met with the heads of the institutions, notably: the High Commissioner of the Republic, Mr. Patrice FAURE, the President of the Government of New Caledonia, Mr. Louis MAPOU, the President of the Congress of New Caledonia, Mr. Roch WAMYTAN and the President of the Customary Senate, Mr. Yvon KONA. It also met with the members of the Commission for the Control of the Organization and Conduct of the Consultation headed by Mr. Francis LAMY, those of the Wise Persons' Group, Custom Chiefs, the leaders of the main political groups of all major tendencies and representatives of civil society." Members of international organizations present in Noumea were also met, especially the representatives of the Pacific Islands Forum (PIF) – the PIF having itself "deployed a mission composed of seven election observers".¹²⁷

¹²¹ 'Révision de la liste électorale pour l'élection des membres du Congrès et des assemblées de Province de la Nouvelle-Calédonie (LESP) et de la liste électorale spéciale pour la consultation (LESC)', UN experts' report, June 2018

¹²² 'L'ONU au service du processus d'émancipation de la Nouvelle-Calédonie', Caroline Gravelat, Department of Pacific Affairs, 2020

¹²³ UN Expert Group for the Referendum of 4 November 2018 in New Caledonia, Mission Report, November 2018

¹²⁴ Resolution 73/115 adopted by the UN General Assembly on 7 December 2018

¹²⁵ UN Expert Group for the Referendum of 4 November 2018 in New Caledonia, Mission Report, 4 October 2020

¹²⁶ UN Expert Group for the Referendum of 12 December 2021 in New Caledonia, Mission Report

¹²⁷ UN Expert Group for the Referendum of 12 December 2021 in New Caledonia, Mission Report, January 2022

c) Protection and strengthening of human rights

The Noumea Accord “prescribes a common future such that the Kanak people, communities of French settlers and other groups living in New Caledonia have the same right to reside in the country”. In this regard, the UN Special Rapporteur noted that “this basic framework [...] has been widely accepted as the cornerstone of the future New Caledonia”.¹²⁸

Today, within the framework of the sovereignty responsibilities relating to Justice, some agencies involved in the protection of rights are deployed in New Caledonia, starting with the ‘Defender of Rights’, who can be consulted free of charge by any “natural person (acting on his own behalf) or legal entity (acting in the name of an association, a company ...), of French or foreign nationality”.

Also relevant are a large number of organizations and associations working specifically against discrimination, for child protection and family rights, gender equality and minority rights. Examples are the Women’s Rights and Equality Information Center - (CIDFE) attached to the South Province, the New Caledonia Council of Women and the NC Diversity association, recognized as being of general interest.

In addition, in 2018, on a proposal by Prime Minister Edouard Philippe, a ‘Charter of New Caledonian Values’ was signed and presented to the Committee of Signatories, resulting from the work conducted by the ‘Dialogue Group on the Path to the Future’ - composed of local political leaders. In their Preamble, the political leaders stress that they have “decided to establish, promote and share the present Charter of New Caledonian Values in order to highlight what brings together and unites New Caledonians in their diversity”.

We can cite in particular Article 2 (Part II) of the Charter, through which its signatories recognize “the right to equal dignity of all human beings, which excludes all discrimination between individuals, based on community or ethnic affiliation, gender, disability, physical appearance, age, religion, philosophical or political convictions, social origin or sexual orientation”.¹²⁹

More specifically on the recognition and protection of the rights of the Kanak people, the CNDH (National Human Rights Commission), accredited with A status by the United Nations) believes that “the Nouméa Accord and all of the successive legislative provisions applicable to New Caledonia allowed major political progress, in particular for the recognition of the Kanaks”.¹³⁰

Thus, the implementation of the provisions of the Noumea Accord has resulted in a number of legislative provisions, which have made it possible to define customary structures and the associated rights. For example, Articles 141 and 149 of the Organic Law provide that each customary area shall designate a customary council, the composition of which shall be determined in accordance with the customs of the area. Similarly, the 18 March 2013 circular on criminal policy for New Caledonia opens a path to developing customary criminal mediation.¹³¹

A Charter of the Kanak People, prepared by the Customary Senate, was proclaimed on 26 April 2014, at the closing of an extraordinary Congress. It constitutes a basic document making it possible “to create a legal framework for the recognition of the Kanak people”.

On the issue of the law of the Kanak people, the UN Special Rapporteur on the rights of indigenous peoples, Mr. James Anaya, following his mission in 2011, said he was “convinced that the Nouméa Accord and the process it seeks to promote are important steps in reversing the historical trend of oppression of the Kanaks and in establishing dignified living conditions for them in New Caledonia”. The Noumea Accord further recognizes the “legitimacy of customary authorities”, allowing the Kanak people to use it with respect to marriage, adoption, inheritances and land matters, relying in particular on the customary judicial system. The UN rapporteur indicated that in this area, “the French system normally respects decisions taken through this channel”, with the exception of customary criminal justice, which is not allowed under French law. On this last point, it should be borne in mind that

¹²⁸ Report of the Special Rapporteur on the Rights of Indigenous Peoples, Mr. James Anaya, UN, September 2011

¹²⁹ ‘Charter of New Caledonian Values’

¹³⁰ ‘La place des peuples autochtones dans les territoires ultramarins français’, CNCDH, 23 February 2017

¹³¹ ‘ADN et valeurs kanaks’ review. High Commission in New Caledonia

the republican judicial model remains to this day one of the sovereign powers of the State, which will not be transferred to New Caledonia before it becomes independent.

In addition, the UN Special Rapporteur considered that *"many of the provisions contained in the Noumea Accord went further than the [United Nations Declaration on the Rights of Indigenous Peoples]"*, recalling that the latter *"should guide the interpretation and application of the Noumea Accord and the development of all laws and policies that affect the Kanak people"*.¹³²

A delegation of the Human Rights League, interviewed in 2014 by the first C24 visiting mission, alerted the committee to the persistence of racism against the Kanaks, which *"still [manifested itself] in many areas of life in society (real estate rental, access to cultural outings, training)"*¹³³. At the end of its second visiting mission in 2018, the Special Committee again recalled *"the persistence of thinly veiled racial discrimination, in particular against the Kanaks, [...] a problem that must be addressed"*, specifying at the same time that *"authorities were taking steps in this direction, particularly on the legislative front"*. In this regard, the third UN electoral expert visit during the 2021 referendum concluded that *"the question of cohabitation is not yet resolved"*.¹³⁴

Lastly, more recently, the CNCDH report published in 2017 indicated that *"New Caledonia is the only example of the French overseas territories in which the specific characteristics of indigenous peoples are constitutionally recognized. According to its observations, "this legal experience is of great interest in terms of France's ability to manage the recognition of and respect for cultural difference, despite the apparent rigidity of republican principles. As an exception to the principles of unity of the people and normative unity, the New Caledonian model could be a source of reflection for the legislator in order to deal with the specific characteristics of other overseas territories where there are indigenous peoples."*

d) Education, communication, and community political briefings

The education responsibility in New Caledonia

In New Caledonia, schooling is compulsory between the ages of 5 and 16 and is organized into three levels: primary, secondary and higher education.

The jurisdiction of the territory has evolved level by level over the past fifteen years. Since 2000, for public primary education, New Caledonia has been responsible for the curriculum, teacher training and supervision. These responsibilities lie with the New Caledonian Education Department (DENC).

The Provinces are responsible for the school system, the assignment and the remuneration of teachers. They are also responsible for the adaptation of programs to local cultural and linguistic realities. The City Halls are responsible for the construction and maintenance of schools.

Since 1 January 2012, New Caledonia has also been responsible for public and private secondary education.

The State and New Caledonia now exercise their respective jurisdiction within a single service: the 'Vice-rectorate of New Caledonia, General Directorate of Education'. The State retains oversight on the definition of the qualifications required for secondary school teachers and staff management.

Within the transfer of responsibilities therefore an agreement on "free and general provision of personnel to New Caledonia" was signed in 2012 between New Caledonia and the State. As a result, New Caledonia manages the recruitment, career progress and evaluation of territorial staff, through the Vice-Rector. The Vice-Rector manages

¹³² Report of the Special Rapporteur on the Rights of Indigenous Peoples, Mr. James Anaya, UN, September 2011

¹³³ Report of the United Nations Visiting Mission in New Caledonia, Special Committee, 18 June 2014

¹³⁴ UN Expert Group for the Referendum of 12 December in New Caledonia, Mission Report, January 2022

the career and evaluation of staff, but all the staff of the Vice-Rectorate General Directorate of Education are paid by the State.¹³⁵

According to the latest IEOM report, spending on the territory's education system amounts to 107 billion CFP francs (893 million euros), or 11.5% of GDP, compared to 6.7% in mainland France (2016 figures from the education accounts). Several factors would explain this higher cost, including the remoteness and insularity of the territory, the indexed remuneration of state personnel, and redundant administrative resources. In 2017, the State financed half of education spending in New Caledonia, or 56 billion CFP francs (467 million euros).¹³⁶

As part of primary and secondary education, all students follow a civic education pathway, instituted on 15 January 2016 by the adoption of Congress Resolution 106. The preamble of the text provides that the New Caledonian school "encourages the practice of citizenship, in order to initiate children into democratic debates and to urge them to commit themselves to the common good. It therefore proposes to train all young people to help them become responsible and fulfilled citizens on a personal, professional, civic and social level, in particular through the implementation of a civic pathway that relies on the resources offered by the school."¹³⁷

Communication and political awareness measures

In the lead-up to the three referendum ballots in 2018, 2020, and 2021, several measures for informational purposes can be cited. First of all, it is necessary to recall the dissemination of explanatory documents by the State, ahead of the three ballots, starting with 'The implications of the 4 November 2018' vote, published in October that year, followed by a similar document, disseminated before the 2020 ballot. Then, in the run-up to the last ballot of 2021 and at the request of the pro-Independence movement, the State issued a comprehensive document of more than 100 pages entitled 'Discussions on the institutional future of New Caledonia', aiming to present in a substantiated, documented and objective way 'The consequences of the Yes and the No'.¹³⁸

At the same time, the official websites of the High Commission and of the Government of New Caledonia also published detailed information, press releases and articles explaining the modalities and implications of these votes. Also relevant is the implementation of an online platform - elections-nc.fr - attached to the High Commission, whose purpose is to present in a didactic way (videos, infographics...) the stages of the institutional process, since 1988, the implications of the votes or even the specific modalities of the electoral lists.¹³⁹

More particularly concerning the election campaign that preceded the three polls, it seems important to note that, on the proposal of Prime Minister Edouard Philippe, a commission was formed in December 2017, known as the 'Wise Persons Group', with the purpose of "ensuring respect for the common values of New Caledonia and therefore cohabitation during the campaign". The Wise Persons Group was made up of persons "recognized, respected, and representing the diversity of New Caledonia" such as Roch Apikaoua (first Kanak priest on the island), Soséfo Falaeo (former customary chief of Mua district), Marie-Claude Tjibaou (widow of Independence leader Jean-Marie Tjibaou), Octave Togna (former director of the ADCK-Kanak Culture Development Agency), Jean Leques (former Mayor of Noumea, who, passed away in 2022) and Fote Trolue (first Kanak magistrate).

The 'Wise Persons Group' first of all monitored the declarations made and initiatives conducted by the various parties and civil society, in the conventional and social media, in order to guarantee the respect for territory's values.

Above all, before the three periods preceding votes, it carried out a programme of meetings with political actors and citizens: local politicians, New Caledonian youth with the support of the Vice-rectorate (visits to high schools on the main island, the University, Special Military Service Regiment), Gendarmerie soldiers... It also met the UN delegation in 2020.

¹³⁵ 'Vice-Rectorat' of New Caledonia, official website

¹³⁶ 'Rapport annuel économique 2021 de la Nouvelle-Calédonie', IEOM, 2022

¹³⁷ DENC – Government of New Caledonia, official website

¹³⁸ Discussions on the institutional future of New Caledonia – « The consequences of the 'Yes' and the 'No' »,

¹³⁹ Official websites of the Government of New Caledonia, High Commission, referenda (elections-nc.fr)

Starting in January 2021, it has been closely associated with "launch of a "deep listening mission", whose objective was to identify the expectations of New Caledonians on the future of the territory". To do this, the committee members met representatives of the different communities in New Caledonia: Vietnamese, Caribbean, Indonesian, Wallisian and Futunian, Tahitian and the Arab community of Bourail. They also met different associations such as "tomorrow in common" (promoting a common destiny for the territory), the association of Muslims of New Caledonia or the Marguerite association (dedicated to safeguarding the heritage).¹⁴⁰

UN Observations

In terms of political education and information, the UN Special Committee's visiting mission made various observations and recommendations. In the lead-up to the 2014 Provincial elections, some impediments to voter notification by mail had been raised by the C24 mission: difficulties in delivering mail to certain underprivileged neighbourhoods, difficulties accessing tribal areas and lack of precise addresses, irregularity of postal services, or the difficulty of reaching young Kanaks living in the villages. In addition, according to the report of this mission "the municipalities did not systematically indicate that there were two lists (general and special) requiring two separate approaches" - opinion of the political groups, reported in March 2014 by the C24.¹⁴¹

In the same year, the UN General Assembly also asked France, "to study, in the light of the observations, conclusions and suggested recommendations of the visiting mission, the possibility of developing an educational program aimed at informing the population of New Caledonia on the nature of self-determination in order to better prepare them to face a future decision on the issue and requests the Special Committee to provide all available assistance in this regard"

Regarding the referendum campaigns, the second C24 mission in 2018 had noted "the wish that had been expressed regarding the need to better inform the population, prior to the vote, of the possible results of the vote and their consequences, and encouraged the administering Power and the New Caledonian Government, as well as the stakeholders concerned, to continue the awareness-raising campaigns relating to the referendum and its implications".

The UN electoral expert group mobilized at the time of the first referendum in 2018 had noted at the time that the various political parties had agreed to campaign with a "sharing of exposure time" Further, the Secretary General of the High Commission then underlined that an "intensive awareness drive had been conducted over the past two to three years to increase voter turnout and voter registration", specifying that, "as part of France's efforts to inform the population about the referendum, it was planned to explain the legal implications of the voters' choice".¹⁴²

In 2020, the UN General Assembly, held after the second referendum and the visit of the UN electoral expert group, had once again reiterated the importance of strengthening the information and political education operations of New Caledonia, judging: "important to continue and increase its efforts to disseminate information on decolonization as widely as possible, emphasizing the various options available to the peoples of the Non-Self-Governing Territories for self-determination" It recommended that local authorities "develop procedures for the collection, preparation and dissemination, particularly to the Non-Self-Governing Territories, of basic documentation on matters relating to the self-determination of the peoples of those Territories; seek the full cooperation of the Administering Powers in the above-mentioned tasks; further explore the idea of establishing a programme of collaboration with the contact points of the Territories' Governments..

¹⁴⁰ 'Le Comité des Sages, fiche de synthèse', Haut-Commissariat de la République en Nouvelle-Calédonie, February 2023

¹⁴¹ Report of the United Nations Visiting Mission in New Caledonia, Special Committee, 18 June 2014

¹⁴² Report of the United Nations Visiting Mission in New Caledonia, Special Committee, 2 April 2018

9.3 Conclusion

Conclusion on other criteria in response to the Action Plans on the Eradication of Colonialism

A number of instruments can be used to implement the action plans for the decolonisation of New Caledonia, including full cooperation with the various segments of the UN and its agencies, action designed to fully guarantee the respect and protection of the rights of the New Caledonian people as well as measures in favour of political education and transparency in the institutional process in the eyes of the electors concerned..

On the first point, since the signing of the Matignon Accords in 1988 and with the adoption of the first Action Plan for the Eradication of Colonialism in 1991, the State has endeavoured to work in close cooperation with the UN and C24 in order to accompany the decolonisation process in New Caledonia with the greatest possible transparency. In order to do so, France has hosted and supported UN visits to New Caledonia in the period leading up to the referenda (2014 and 2018), hosted a regional decolonisation seminar in Noumea (May 2010) and facilitated visits by UN electoral expert experts during the preparation and revision of the electoral rolls, as well as at each of the three referenda.

In addition, various initiatives have contributed and are still contributing to the protection of the fundamental rights of the New Caledonian people, starting with civic education and information, with special reference to the lead up to the three referenda.

It is a matter now of confirming and accelerating this trajectory, through the mobilisation of all stakeholders, in particular by bringing together institutional players and civil society.

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|---|---|--|--|
| STATE | | | |
| Overseas Ministry | Director-General for Overseas | Sophie BROCAS | |
| Overseas Ministry | Deputy Director for Legal and Institutional Affairs | Jean-Pierre BALCOU | |
| Overseas Ministry | Prefect responsible for a public service mission with HCNC | Rémi BASTILLE | |
| Foreign Affairs Ministry | Ambassador, Permanent Secretary for the Pacific | Marine DE CARNE | |
| Foreign Affairs Ministry s | Ambassador, Permanent Representative of to the United Nations | Nicolas DE RIVIERE | |
| Foreign Affairs Ministry | Foreign affairs advisor | Laura BERNARD | |
| HCNC | High Commissioner | Louis LE FRANC Also present: Stanislas ALFONSI (Secretary-General) Remi BASTILLE (Prefect responsible for a public service mission) Samira OUZZINE (Advisor for political affairs and Noumea Accord follow-up) Marilyn MARESCA (Director of State Action and Public Policy Coordination) | |
| Ministry of National Education and Youth | Vice-rector of NC Director of Education | Erick ROSER | |
| Ministry of Higher Education and Research | President of the University of New Caledonia (UNC) | Catherine RIS | |
| PUBLIC AGENCIES | | | |
| French Development Agency | Director AFD New Caledonia | Virginie BLEITRACH | |
| ADRAF | Director-General | François MOE WAIA | |
| ISEE | Director | Olivier FAGNOT | Exchange of documents |

| POLITICAL AND ELECTED REPRESENTATIVES | | | |
|---|--|---|-------------|
| Government | President of the Government | Louis MAPOU | X |
| Congress | President of Congress | Roch WAMYTAN Also present Magali TINGAL (Northern Province Nord elected representative – permanent representative of FLNKS to the United Nations) | X |
| Customary Senate | President of the Customary Senate | Victor GOGNY Also present Adrien DIROUA (Grande Terre - AJIE ARÔ) 1st Vice-President Yvon KONA (Grande Terre - XARACUU) Customary Senator Raphael MAPOU (consultant and doctor of public law) | X |
| French Association of Mayors of New Caledonia (AFMNC) | President | Sonia LAGARDE (Mayor of Nouméa) Also present Pascal VITTORI (Mayor of Boulouparis) Patrick ROBELIN (Mayor of Bourail) Georges NATUREL (Mayor of Dumbea) | X |
| Association of Mayors of New Caledonia (AMNC) | President | Robert XOWIE Also present Jean-Patrick TOURA (Mayor of Thio) Wilfrid WEISS (Mayor of Koumac) Prisca HOLERO (Mayor of Sarraméa) | X |
| Loyalty Islands Province | President PIL | Jacques LALIE | X |
| Southern Province | President PS | Sonia BACKES | in Paris |
| Northern Province | President PN | Paul NEAOUTYINE | Unavailable |
| Congress | Representative of UC in Congress | Pierre-Chanel TUTUGORO | Unavailable |
| Congress | Representative of UNI in Congress | Jean-Pierre DJAIWE | X |
| Congress | Representative of EVEIL OCEANIEN in Congress | Milakulo TUKUMULI Also present Veylma Falaeo (Elected member of Congress, Secretary-General of Eveil Océanien) | X |
| Congress | Representatives of CALEDONIE ENSEMBLE in Congress | Philippe MICHEL Philippe DUNOYER (MP for 2 nd constituency of NC). | X |
| Congress | Representatives of AVENIR EN CONFIANCE in Congress | Virginie RUFFENACH Alcide PONGA (Mayor of Kouaoua) Laura VENDEGOU (Elected representative in Southern Province assembly) Nadine JALABERT (Elected representative in Congress) | X |

| | | | |
|--|---|---|------------------------------|
| Congress | Representatives of Loyalistes in Congress | Françoise SUVE Muriel Malfar PAUGA Christiane SARIDJAN VERGER Naïa WATEOU Julien TRAN AP Christopher GYGES Cameron DIVER Guillaume DENIS Renaldo BOURGEOIS Gil BRIAL Christel VARNEY Katy RIBAUTL Arthur LETOURNEULX | X |
| National Assembly | Member | Philippe Philippe MICHEL (representative of Calédonie Ensemble Group in Congress) | X |
| National Assembly | Member | Nicolas METZDORF | |
| Senate | Senator | Pierre FROGIER | X |
| Senate | Senator | Gérard POADJA | Absent with apologies |
| CIVIL SOCIETY, BUSINESS, RESEARCH, CULTURE & CHURCHES | | | |
| NC ECO | President | David GUYENNE Charles ROGER (Director General) | |
| Research | Lecturer-Researcher | Jeanne ADRIAN | |
| Research | Lecturer-Researcher | Caroline GRAVELAT | |
| Research | Lecturer-Researcher | Samuel GOROHOUNA | |
| Church | President of Protestant Church | Pasteur Leonard KAEMO | X |
| Culte | Vicar General Catholic Church | Père APIKAOUA | Unavailable |
| NGO | Spokesperson of NGO « Dix vers cité » | Pablo BARRI & Aurélie LOMBARDO | |
| NGO | President – FOL NC : Fédération des Œuvres Laïques de Nouvelle-Calédonie | Pierre Welepa | To be arranged |
| NGO | Secretary General - UFFO NC : Union des Femmes Francophones d'Océanie de Nouvelle-Calédonie | Guilaine LOMBARDET Also present Fara CAILLARD Hmuneiko HAOCAS Dorian NEMOARA | X |