

HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

FRANCE

**INTERIM REPORT
CUSTOMARY SENATE OF NEW CALEDONIA
SUMMARY OF VIOLATIONS & RECOMMENDATIONS**

**Human rights situation on the
Territory of New Caledonia/Kanaky**

SUMMARY OF VIOLATIONS

The alleged violations imputed to the Government of the French Republic relate to general discrimination against persons belonging to the indigenous Kanak people of New Caledonia in the exercise of their rights to political participation and public life and to informed consent to decisions concerning their rights and interests.

This is a combined violation of articles 1, 18, 25, 26 and 27 of the Covenant on Civil and Political Rights committed during the organisation of and following the consultation of 12 December 2021 on New Caledonia's accession to full sovereignty and as part of the process of **calling into question the NOUMEA AGREEMENT and France's commitments, which was initiated by the French government, leading to a major crisis in May 2024.**

The violations have also spread in the context of the militarisation of New Caledonian territory and the armed conflict that has been raging since May 2024, and are now also violations of articles 2, 6.1, 6.2, 9, 10, 14, 17

- **Existence of widespread and persistent practices of racial discrimination, as illustrated by economic and social indicators;**
- **Repeated outbreaks of racial hatred and violence, racist propaganda or calls for racial intolerance by individuals, groups or organisations, including elected officials or other state authorities;**
- **Discrimination and incitement to racial hatred encouraged and/or tolerated by the State and its agents on New Caledonian territory,**
- **Passage of discriminatory laws;**
- **Policy of segregation or de facto exclusion of members of a group from political, economic, social and cultural life;**
- **Policies or practice of impunity with regard to: a) acts of violence targeting members of a group on the basis of their race committed by State authorities or private actors; c) the creation and organisation of militias or extremist political groups advocating racist ideas;**
- **Extrajudicial executions, violence and rape perpetrated by the forces of law and order,**
- **Arbitrary arrests,**
- **Detention in inhuman and degrading conditions ;**
- **Denial of the right to a fair trial and infringement of the presumption of innocence**
- **Illegal intervention by law enforcement agencies on customary land**

The events took place in **New Caledonia, which is under French sovereignty but on the United Nations list of territories to be decolonised.**

SUMMARY IN FIGURES

During the civil conflict and repression that have been going on since May 2024 and on 11 September 2024, the figures are estimated at a minimum:

On 12 September 2024, the estimated human toll attributable to the police and military contingents among the indigenous Kanak people was as follows:

-169 injured, including :

11 injured in life-threatening emergencies

-24 people shot in the head

-4 injured by flashball

--4 dead, whose names are as follows:

- Jybril SALO, aged 18, killed at Tindu (Exhibit 18) ;

-Dany TIDJITE, 48, killed in Dumbéa sur Mer;

-Josh POULAWA executed by the GIGN ,

- Lionel PAITA, grandson of the Grand Chief of Païta, shot in the head by alleged plainclothes gendarmes in a hire car, died of his injuries in hospital (Exhibit 19: Portrait of Lionel PAITA).

- Victorin WAMYTAN was executed on 10 July 2024 by a GIGN sniper. This execution was premeditated, as the High Commissioner had publicly threatened the young people of Saint Louis the day before, telling them that by demonstrating "they run the risk of being killed. Elite gendarmerie units such as the GIGN are in the area". The High Commissioner of the French Republic in New Caledonia appears to have ordered and co-authored this homicide. The person executed was the nephew of a senior pro-independence leader¹ .

- Marc CACO executed on 15 August 2024 in Thio by the gendarmerie;

On 30 August 2024, a 22-year-old Melanesian woman was raped by 5 people wearing black emergency uniforms and bullet-proof waistcoats, who may have been members of the police force. It should be pointed out that the large number of police and military personnel present on the archipelago has begun to give rise to problems of morality.

¹ <https://www.humanite.fr/politique/colonialisme/il-sappelait-rock-victorin-wamytan-ce-que-lon-sait-du-dixieme-mort-en-kanaky-nouvelle-caledonie-tue-par-le-gign>

Some of the killings and violence have also been carried out by extreme right-wing loyalist militias:

- 2 fatalities:

- Nassaie DAOUKA, 17, shot dead in Ducos by a European civilian

- Chrétien NEREGOTE from Canala, killed in Ducos by a European civilian;

- On 4 June 2024, a Kanak policeman was beaten by a militia, including an elected official, Gil BRIAL , 2nd Vice-President of the Southern Province .

The judicial record of the criminalisation of the indigenous Kanak emancipation movement is at least as follows:

2,343 arrests of Kanak, including a large number of arbitrary arrests, representing over 2% of the Melanesian population

269 police custody for 48 to 72 hours ;

63 deportations or forced transfers of Kanak rights defenders to France, more than 20,000 kilometres from their country and their families

RECOMMENDATIONS

We ask the Committee to make the following recommendations to the State Party:

France's reservation to Article 27

- Reiterate its 2015 recommendation and ask the State party to review the restrictive interpretation given to article 27 of the Covenant, particularly in view of the existence of overseas indigenous peoples

Disaggregated data on indigenous peoples

- Reiterate its 2015 recommendation and request the State party to collect and publish disaggregated data on indigenous peoples, in particular the Kanak people, to enable the Committee to assess fully the enjoyment of the rights enshrined in the Covenant by the indigenous Kanak people in New Caledonia.

On the Nouméa Accord, the bill to unfreeze the electorate and the decolonisation process

- To recognise the right of the indigenous Kanak people to self-determination and self-determination in accordance with Article 1 of the Covenant and Articles 3 and 4 of the UNDRIP.
- To implement the right of the indigenous Kanak people to political participation, to take part in the conduct of public affairs, to consultation and to free, prior and informed consent before the adoption of legislative measures, reforms and the organisation of consultations concerning their rights.
- Respect the Nouméa Accord and the principle of constitutional irreversibility set out in Article 5 of the Accord, which guarantees the integrity of the decolonisation process and the non-regression of the legal gains enshrined in the Accord and Organic Law 1999-209.
- Abandon the Electoral Roll Unfreezing Bill

On the right to land and natural resources

- In consultation with the Kanak customary authorities, resume and finalise the land restitution process, the drawing up of the customary land register and the demarcation of Kanak customary land and ensure that all Kanak land claims are processed to their conclusion, without taking into account the total proportion of Kanak land, private land and state land (Recommendation of the Special Rapporteur on Indigenous Rights during his visit to New Caledonia in 2011).

Racial disparities in the criminal justice system, over-representation of indigenous Kanaks in prisons and conditions of detention in New Caledonia

- Take energetic measures to remedy the over-representation of people of Kanak origin in New Caledonian prisons, by increasing the use of non-custodial measures and diversion programmes.
- Improve prison conditions and meet the basic needs of indigenous peoples deprived of their liberty;

On the crisis violations and the crisis of May 2024.

- Put an end to the excessive use of force, militarisation, police violence and the criminalisation of Kanak rights defenders,
- Put an end to arbitrary arrests and detentions and to the arbitrary and discriminatory deportation of Kanak rights defenders to mainland France
- To put an end to acts of racist violence against Kanaks by armed militias opposed to independence
- Dismantle armed militias opposed to independence and open investigations into incitement to racial hatred and other violations against Kanaks
- To investigate impartially the murders of 4 Kanak demonstrators by agents of the State party and the murders of 3 Kanak demonstrators by armed militia.
- Guarantee that demonstrators defending the rights of Kanaks can fully exercise their right to freedom of thought, their right to freedom of opinion and expression, and their right to freedom of assembly and freedom of movement.
- Guaranteeing adequate and non-discriminatory access to justice
- To implement a process of transitional justice and to overcome the fractures associated with colonisation and the neo-colonial legacy, with a view to reconciliation.

On the Convention 169

- Ratify the International Labour Organisation's Indigenous and Tribal Peoples Convention, 1989 (No. 169).

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CUSTOMARY SENATE OF NEW CALEDONIA**

**Human rights situation on the
Territory of New Caledonia/Kanaky**

This report is submitted to the SENATE COUTUMIER OF NEW CALEDONIA in order to shed relevant and contradictory light on the human rights situation of the Kanak people of New Caledonia in the context of the committee's work, and to alert the committee to the chronic violation by FRANCE of the rights of the indigenous Kanak people since the third consultation on New Caledonia's accession to full sovereignty, which took place in 2021, and in particular with the armed conflict that has affected this territory since May 2024.

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INTRODUCTION

1. Geographical and historical overview of New Caledonia:

New Caledonia is a Melanesian archipelago in Oceania, comprising the main island of Grande Terre and the Loyalty Islands. It covers an area of approximately 19,100 km². It is located in the Pacific Ocean, 1,500 km east of Australia and 2,000 km north of New Zealand.

New Caledonia was proclaimed a French colony in Balade on 24 September 1853. It was later used as a place of deportation for the insurgents of the Paris Commune and those of the colony of Algeria. After the Second World War, France abandoned the term colony and abolished the code de l'indigénat. However, New Caledonia remained under French sovereignty and was in practice a colony of settlers, strategically and economically important to France due to its abundant natural resources.

The Kanak people have been progressively dispossessed of their land and resources.¹ The Kanak people have been the victims of serious racial discrimination throughout colonial history.

2. Decolonisation and the Kanak people

As the 1960s saw the start of the decolonisation process for the vast majority of colonies around the world, the French government decided to encourage the emigration of people from metropolitan France and communities in the French Overseas Territories to New Caledonia, thus continuing the colonisation process. From 53.85 per cent in 1956, the Kanak population fell to 45.93 per cent in 1969 and 41.73 per cent in 1976.² At the last census in 2019, 111,856 people claimed to belong to the Kanak people³.

New Caledonia is on the UN list of countries to be decolonised. In its latest report of 2023 on the right of peoples to self-determination, the United Nations General Assembly, on the basis of a report by the UN Special Political and Decolonisation Committee, called upon "the administering Power and all the parties concerned in New Caledonia to ensure that the next stages of the self-determination process are carried out in a peaceful, equitable, fair and transparent manner, in accordance with the Nouméa Accord".⁴

During the period known as the "Events" (1984-1988), the indigenous Kanak people demanded their right to self-determination. Confrontations between supporters and opponents of independence degenerated into insurrection, the introduction of a state of emergency and the deployment of French

¹ <https://www.adraf.nc/la-terre-en-nouvelle-caledonie/terres-coutumieres#repartition>

² Georges Malignac, "Rapport démographique sur la Nouvelle-Calédonie", SCIENCES HUMAINES OUTRE-MER, Rapports du Conseil Supérieur des Recherches Sociologiques Outre-Mer, Office de la recherche scientifique et technique outre-mer, 1957

³ Laurent de Boissieu, "[Infographie - La Nouvelle-Calédonie, terre de contrastes démographiques \[archive\]](#)", on [La Croix](#), 29 October 2018

⁴ <https://documents.un.org/doc/undoc/gen/n23/225/74/pdf/n2322574.pdf?token=UGlcuHwAL1OJhuT0pN&fe=true>

military forces, culminating in 1988 with the execution of 19 Kanaks, some of them unarmed, who had taken hostages in the Ouvéa cave⁵.

This episode prompted the two sides to negotiate, leading to the signing of the Matignon-Oudinot Accords on 26 June 1988, which provided for the establishment of a transitional status leading to self-determination⁶.

This agreement was supplemented by the Nouméa Accord of 5 May 1998, which provided for autonomy and new institutions for the Territory of New Caledonia, and recognised the Kanak identity and the specific rights deriving from it⁷.

The Kanak people are an indigenous people whose fundamental rights are internationally protected by the 1989 International Labour Organization Convention 169 on Indigenous and Tribal Peoples⁸ and the 2007 United Nations Declaration on the Rights of Indigenous Peoples⁹. France voted in favour of this Declaration on 13 September 2007¹⁰. This Declaration is binding on France under the International Convention on the Elimination of All Forms of Racial Discrimination and through General Recommendation No. XXIII of the Committee on the Elimination of All Forms of Racial Discrimination¹¹.

In New Caledonia, the question of the right of peoples to self-determination, as recognised by Resolution 1514 (XV) of the United Nations General Assembly of 14 December 1960¹², the International Covenant on Civil and Political Rights of 23 March 1976¹³ and the International Covenant on Economic, Social and Cultural Rights¹⁴ of 3 January 1976, is superimposed on the question of the right of the indigenous Kanak people to self-determination.

As the National Consultative Commission on Human Rights (CNC DH) recalled in its opinion of 23 February 2017¹⁵: "*Self-determination of an indigenous people means that this people has autonomous institutions of authority, the right to participate fully in the life of the State (187) and in decision-making on matters that may affect their rights and directly or indirectly their way of life.*")

3 A constitutionally guaranteed decolonisation process for New Caledonia:

⁵ Enquête sur Ouvéa: rapport et témoignages sur les événements d'avril-mai 1988, Ligue des droits de l'homme, 1989 - 202 pages

⁶ https://www.mnncparis.fr/uploads/accords-de-matignon_1.pdf

⁷ <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000555817>

⁸

https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312314,fr

⁹ https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_F_web.pdf

¹⁰ <https://digitallibrary.un.org/record/609197?ln=en>

¹¹ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FGE C%2F7495&Lang=en

¹² <https://www.ohchr.org/FR/ProfessionalInterest/Pages/Independence.aspx>

¹³ <https://www.ohchr.org/fr/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

¹⁴ <https://www.ohchr.org/fr/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

¹⁵ [https://www.cncdh.fr/sites/default/files/2021-](https://www.cncdh.fr/sites/default/files/2021-04/Avis%20peuples%20autochtones%20all%C3%A9g%C3%A9%20-100%20pages%29%20pour%20impression.pdf)

[04/Avis%20peuples%20autochtones%20all%C3%A9g%C3%A9%20-100%20pages%29%20pour%20impression.pdf](https://www.cncdh.fr/sites/default/files/2021-04/Avis%20peuples%20autochtones%20all%C3%A9g%C3%A9%20-100%20pages%29%20pour%20impression.pdf)

The implementation of the Matignon-Oudinot and Nouméa agreements has led to a threefold process of self-determination in legal terms:

- an internal decolonisation process based on cooperative legal pluralism. The Nouméa Accord and the organic law of 1999-2009¹⁶ recognise Kanak identity and the specific rights deriving from it. It creates customary institutions and recognises customary law, a specific land tenure system for land belonging to the Kanaks, and civil courts with customary assessors. Through what these two texts refer to as the "Kanak Identity", all the rights recognised for indigenous peoples by the United Nations Declaration on the Rights of Indigenous Peoples have been recognised and implemented by France in New Caledonia.
- autonomy for the territory and the emergence of a legal system distinct from that of mainland France. The Nouméa Accord provides for autonomy and new institutions for New Caledonia and a transfer of powers from the State to the territory. The preamble to the Nouméa Accord states that: "The sharing of powers between the State and New Caledonia will signify shared sovereignty. [...] The powers transferred may not revert to the State, which will reflect the principle of the irreversibility of this organisation".
- Finally, the Nouméa Accord initiates a process of access to independence for the territory based on Resolution 1514. Article 5 of the Nouméa Accord provides for three consultations on New Caledonia's accession to full sovereignty.

The irreversibility of this process and the legal certainty of the arrangements were guaranteed since, according to the Agreement, *until such time as the consultations have resulted in the proposed new political organisation, the political organisation put in place by the 1998 Agreement will remain in force, at its final stage of development, with no possibility of going back, this "irreversibility" being constitutionally guaranteed.*

Secondly, the consultation process on access to full sovereignty was also implemented in accordance with the conditions set out in Article 5 of the Nouméa Accord of 5 May 1998, which states: "*The State recognises the vocation of New Caledonia to benefit, at the end of this period, from complete emancipation*".

A first referendum on New Caledonia's accession to full sovereignty was held on 4 November 2018, followed by a second on 4 October 2020. In the first referendum, the "no" vote won out with 56.67% against 43.33% for the "yes". In 2020, the gap narrowed considerably, with 53.26% of voters voting "no" and 46.74% "yes".

There was therefore a significant increase in the YES vote.

However, New Caledonia is still marked by structural imbalances to the detriment of Melanesian populations¹⁷, so the situation of marginalisation and discrimination has changed little since the 1980s.

¹⁶ <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000393606>

¹⁷ A-HRC-18-35-Add6_en

As Michel LEVALLOIS pointed out: *"Kanak efforts at diversification and development have been marginalised, no tax reform has been achieved and the over-remuneration of public servants remains an obstacle to any development policy.*

The emergence of a Melanesian middle class, especially in the public services, has not slowed down either immigration from mainland France or the proliferation of squats on the outskirts of Nouméa, nor the dramatic rise in delinquency: 95% of the inmates at Camp Est are young Kanak, for whom independence is now the only horizon"¹⁸.

In terms of the right to participation, the CNCDH in its opinion of 12 March 2017 highlighted in particular a number of difficulties hindering the full participation of Kanaks in political life.

Against this backdrop, the last of the three scheduled consultations was decisive for the stability of New Caledonia and the image that the French Republic would project of itself on the international stage.

New Caledonia remains in any case a territory to be decolonised.

In its resolution of 18 June 2021, the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples¹⁹

" 35. Decides to keep the process taking place in New Caledonia since the signing of the Nouméa Accord under constant review;

36. Requests the Special Committee to continue to examine the question of the Non-Self-Governing Territory of New Caledonia and to report thereon to the General Assembly at its seventy-seventh session".

4. The organisation of the consultation on 12 December 2021, the first notable source of tension:

Pursuant to point 5 of the orientation document of the Nouméa Accord and article 216 II of Organic Law no. 1999-209, on 8 April 2021, at the instigation of the Front de Libération Nationale Kanak et Socialiste (FLNKS), more than a third of the members of the New Caledonian Congress asked the High Commissioner to organise a new consultation²⁰.

On 2 June 2021, the Minister for Overseas France announced that the date of the consultation would be 12 December 2021, while noting that "there was no consensus on this date"²¹.

The Government of New Caledonia, on 22 June 2021, and the Congress of New Caledonia, on 23 June 2021, gave their respective opinions in favour of holding the consultation on that date²².

¹⁸ LEVALLOIS Michel: "De la Nouvelle-Calédonie à Kanaky", Paris, 2018, Vent d'Ailleurs; page 518.

¹⁹ A/AC.109/2021/L.22

²⁰ <https://la1ere.francetvinfo.fr/nouvellecaledonie/nouvelle-caledonie-les-independantistes-demandent-l-organisation-du-troisieme-referendum-d-autodetermination-978655.html>

²¹ <https://noumeapost.nc/2021/06/03/le-conseil-des-ministres-valide-la-date-du-12-decembre-pour-le-troisieme-referendum/>

²² <https://la1ere.francetvinfo.fr/nouvellecaledonie/referendum-2021-avis-favorable-du-congres-sur-le-projet-de-decret-1042195.html>

As far as the Congress is concerned, although the pro-independence parties agreed with the principle of a third consultation, during the debates major reservations were expressed about the date of 12 December chosen by the State.

It was against this backdrop that the decree was issued in the Council of Ministers on 30 June 2021, convening the electorate and organising the consultation on New Caledonia's accession to full sovereignty. Article 2 of the said decree stipulates that: "*Voters will be asked to respond with : 'yes' or : 'No' to the following question: 'Do you want New Caledonia to accede to full sovereignty and become independent'*".²³

The date for the third and final consultation has been set for Sunday 12 December 2021, even though the Prime Minister had guaranteed: "*We have ruled out the possibility of this third consultation being organised between the middle of September 2021 and the end of August 2022'*".

On the other hand, after the date of 30 June 2021 and subsequent to the intervention of the said decree, certain circumstances will call into question the relevance of the date chosen for the 3^{ème} consultation.

After being spared by the Covid-19 pandemic on 7 September 2021, New Caledonia imposed strict confinement for a fortnight²⁴. This confinement was then extended twice until 10 October inclusive²⁵.

Until 19 December 2021, restrictive measures will apply²⁶ :

This health crisis was presented as unprecedented in New Caledonia²⁷.

Above all, it should be emphasised that this health crisis had a **major psychological impact on the indigenous Kanak population** from the outset in 2020, as has been observed throughout the world in many indigenous communities²⁸. **The Kanak population still carries the stigma and intergenerational trauma associated with memories of past pandemics spread by colonisation.** As a result, the Kanak population was disproportionately affected by the Coronavirus epidemic. A year of customary mourning had been declared by the customary authorities in order to respect mourning customs. At the end of 2021, this impact was increased by the number of losses recorded.

In these circumstances, on 13 October 2021, during Minister Lecornu's visit to the Customary Senate of New Caledonia, the President of the Customary Senate, after explaining the psychosociological impact

²³<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043728098#:~:text=Notice%20%3A%20le%20d%C3%A9cret%20convoque%20les,le%20dimanche%2012%20d%C3%A9cembre%202021.>

²⁴ Confinement de la population le 7 septembre à midi", by the Government of New Caledonia, 6 September 2021, <https://gouv.nc/actualites/06-09-2021/confinement-de-la-population-le-7-septembre-midi>

²⁵ "Confinement extended until 4 October", by the Government of New Caledonia, 17 September 2021, <https://gouv.nc/actualites/17-09-2021/le-confinement-est-prolonge-jusquau-4-octobre>; "Confinement further extended", by the Government of New Caledonia, 4 October 2021, <https://gouv.nc/actualites/04-10-2021/nouvelle-prolongation-du-confinement>; "Confinement arranged from 11 October", by the Government of New Caledonia, 8 October 2021.

²⁶ <https://gouv.nc/espace-presse/point-sanitaire-du-mardi-30-novembre>

²⁷ https://www.lemonde.fr/planete/article/2021/09/22/covid-19-la-nouvelle-caledonie-traverse-une-crise-jamais-vue-dans-toute-son-histoire-apres-l-annonce-de-16-morts-en-vingt-quatre-heures_6095578_3244.html

²⁸

<https://documents.un.org/doc/undoc/gen/g22/617/67/pdf/g2261767.pdf?token=aq0fmolkptonWIEmtD&fe=true>

of microbial shocks on the Kanak population since the beginning of colonisation, presented him with the request to postpone the referendum. (**Appendix 7: Speech by the President of the Customary Senate to Minister Lecornu on 13 October 21**).

On 19 October 2021, the Customary Senate, in deliberation no. 06-2021/SC, following advice from the plenary meeting of the Customary Councils of the areas, once again officially requested the postponement of the Consultation scheduled for 12 December 2021 and declared a year of national mourning (**Appendix 8: deliberation no. 06-2021/SC**).

In response to these deaths, but also in view of the specific impact of this crisis on the indigenous population, on 20 October 2021 the FLNKS issued a press release calling for non-participation in the third consultation.

On 09 November, the Customary Senate sent an open letter to the President of the Republic (**Appendix 9**), explaining that *"...to mitigate the negative effects of this climate of crisis, the Senate and the customary councils have decided to introduce a year of "Kanak mourning", which is culturally imposed on families and clans. We propose that the people of New Caledonia take advantage of this period, which began on 06 September, to commemorate the memory and achievements of the past 37 years and the historical figures who have marked this period and the history of the country..."*.

All these efforts were to no avail, and on 12 November the French High Commissioner announced that the consultation would be held on 12 December 2021.

This was followed by an *"Open letter from the Kanak people to the people of France"*, published in Médiapart on 24 November 2021²⁹ (**Appendix 10: "Open letter from the Kanak people to the people of France", published in Médiapart on 24 November 2021**).

International voices have been heard.

The Prime Minister of Vanuatu, Mr Bob Loughman, told the Ni-Vanuatu Parliament that his Government formally supported the Kanak request to postpone the consultation³⁰.

On another level, the Permanent Representative and Ambassador of Papua New Guinea to the United Nations, Mr Max HUFANEN RAI, on behalf of the Melanesian Spearhead Group, *"respectfully [requested] that France, as the administering power of New Caledonia, consider postponing the third referendum on self-determination for New Caledonia to an appropriate time when the situation improves"*³¹.

²⁹ Signed by the Front de Libération Nationale Kanak et Socialiste (FLNKS), the Comité Stratégique Indépendantiste de Non-Participation (CSINP), the UC-FLNKS and Nationalists group, the Union Nationale pour l'indépendance (UNI) group, the Parti travailliste (PT), the Dynamique Unitaire Sud (DUS), the Dynamique Autochtone (DA), the Nationalists and the Union Syndicale des Travailleurs Kanak Exploités (USTKE).

³⁰ <https://islandsbusiness.com/news-break/new-caledonia-referendum-3/>

³¹ <https://la1ere.francetvinfo.fr/nouvellecaledonie/onu-l-ambassadeur-de-papouasie-demande-le-report-du-referendum-1133446.html>

The *Pacific Elders' Voice*, a group of former heads of state from Oceania, has also "asked the French President to respect the wishes of indigenous leaders in New Caledonia who have called for the postponement of the third independence referendum because of the rise in Covid-related deaths"³²³³.

A group of MEPs also called for the consultation to be postponed "until the health and social conditions in New Caledonia return to normal".

In his statement on the future of New Caledonia, Prime Minister Edouard Philippe said of the second consultation: ***"The State will therefore have to organise it under conditions that are as unquestionable and as exceptional as those that prevailed in 2018.***

It is up to the State to set the date for this second consultation, and we have discussed this issue at length. It's not a simple date, and it's not a simple date to set. Several members of the signatories' committee spoke of a rendezvous with history.

However, the consultation was held on 12 December 2021, in a climate of rupture between the Kanak people, the State and the other components of Melanesian society.

This was reflected first and foremost in the results of the consultation. With 96.49% against and 3.51% in favour of independence, the legitimacy of the process was questioned everywhere³⁴.

In the context described above, the commission responsible for monitoring the organisation and conduct of the consultation noted that "for this ballot on 12 December 2012, there was a high abstention rate among voters: 56.13%, compared with 14.31% on 4 October 2020 and 18.99% on 4 November 2018. The committee wondered about the consequences of this abstention on the fairness and sincerity of the ballot." (*Appendix 16*).

5. The position of the French State following the announcement of the results of the 3^e Consultation.

Heightening tensions within New Caledonian society, the President of the Republic, Emmanuel MACRON, was able to state following the vote: *"Tonight France is more beautiful because New Caledonia has decided to stay"*.³⁵

This position brought to light the continuing contempt shown by French leaders for the reality of the indigenous Kanak people, despite recognition in principle of the Kanak identity.

Michel LEVALLOIS emphasised that *"In reality, thanks to the "common destiny" dynamic of the Nouméa Accords, a policy of strengthening the Territory's autonomy has been put in place, which has not prepared the way for full sovereignty, as confirmed by the latest university publications on the*

³² <https://pina.com.fj/2021/11/23/pacific-elders-urge-french-president-to-defer-independence-referendum/>

³³ <https://www.outremers360.com/bassin-pacifique-appli/nouvelle-caledonie-64-universitaires-et-six-anciens-dirigeants-du-pacifique-appellent-au-report-du-referendum>

³⁴ <https://www.france24.com/en/live-news/20211212-new-caledonia-rejects-independence-from-france-in-referendum-boycotted-by-separatist-camp-partial-results>

³⁵ <https://www.elysee.fr/emmanuel-macron/2021/12/12/troisieme-vote-sur-accession-independance-nouvelle-caledonie>

economic and financial results of the Accords. The colonial situation was consolidated for the benefit of non-Kanak people".³⁶

Minister Le Cornu has already expressed the consequences of the position that the State has taken for 30 years: *"the first political lesson is that the territory is still divided, block against block, and that we have a duty to get out of this binary situation"³⁷.*

But this observation of a binary reality only reflects the failure to implement the process set out in the Nouméa Accord, the cause of which is the failure of the administering power to take effective account of the "Kanak identity" in good faith, and the reinforcement of a colonial situation designed to preserve its geopolitical and economic interests.

The French government's position following the consultation on 12 December 2021 was even more significant.

Following the disputed victory of the "no" to full sovereignty for New Caledonia, the French government undertook to call into question the Nouméa Accord and the entire legal framework that derives from it, which includes recognition of the human rights of the indigenous Kanak people.

This was done in two stages:

- Initially, the French government imposed a process of negotiation of a global political agreement between the political players in New Caledonia, in defiance of the principle of irreversibility of the Nouméa Accord and in order to release the French State from its commitments;
- The Kanak customary institutions were not fully involved in the process of negotiating a new political status, while the draft political agreement drawn up by the Ministry of the Interior (the Martyr Project) completely eliminated customary institutions and the recognition of customary law from the arrangements envisaged;
- Secondly, faced with the failure of this political process, the French government directly called into question one of the achievements of the Nouméa Accord (article 2.2.1.) by envisaging a bill reforming the freezing of the New Caledonian electorate in order to force the New Caledonian political players to conclude the political agreement desired by the State.

The crisis that began in May 2024 is the direct consequence of the unilateral undermining of the achievements of the Nouméa Accord.

The authors of this communication represent French citizens of Melanesian origin and consider that the positions taken by the French State and its management of the crisis that New Caledonia has been experiencing since May 2024 have resulted in clear discrimination and an infringement of their rights protected by the United Nations Declaration on the Rights of Indigenous Peoples and by the International Covenant on Civil and Political Rights.

³⁶ LEVALLOIS Michel: "De la Nouvelle-Calédonie à Kanaky", Paris, 2018, Vent d'Ailleurs; page 518.

³⁷ <https://www.theguardian.com/world/2021/dec/12/new-caledonia-fears-of-unrest-as-polls-open-for-vote-on-independence-from-france>

NATURE OF THE ALLEGED VIOLATIONS

1. Systemic violations of the civil and political rights of indigenous Kanaks - violations of articles 2 and 26 of the Covenant on Civil and Political Rights:

The Committee on the Elimination of Racial Discrimination has repeatedly expressed its concern about the lack of full recognition of the existence of indigenous peoples in overseas territorial units and the obstacles to their enjoyment of economic, social and cultural rights, in particular their rights to health and education on an equal footing with the rest of the population³⁸.

In his report on the situation of the Kanak people of New Caledonia (A/HRC/18/35/Add.6), the Special Rapporteur on the rights of indigenous peoples also highlighted the discrimination suffered by Kanaks in the exercise of their civil, political, economic, social and cultural rights:

"The Kanak people experience low levels of education and employment and poor health, they are over-represented in social housing, they experience urban poverty and their land and water have dangerous levels of pollution. A disproportionate number of the Kanak population live below the poverty line, despite the fact that many of them continue to benefit from subsistence practices, and at least 90% of prisoners in New Caledonia are Kanak, half of whom are under 25 (...) The urban pauperism affecting the Kanak is increasingly worrying. Around 8,000 Kanak live in precarious housing (known as "squats" in the country) that has sprung up spontaneously in Greater Nouméa without being served by municipal water, electricity or sewerage services. The social housing stock available is unable to meet demand, and Kanak residents question the structural soundness of buildings constructed in the (...)

In the field of health, the information received by the Special Rapporteur shows that *"despite the generally high quality of health care offered in New Caledonia, the Kanak population suffers in comparison with its European counterpart in terms of life expectancy, neonatal mortality, thyroid cancer, leprosy, tuberculosis, rheumatoid arthritis and suicide"*.

The crisis in the region since May has exacerbated this situation, particularly in the Southern Province, with the complicity of the French government.

The Southern Province is in the hands of Loyalist elected representatives. In response to the social movement that swept through New Caledonia, the Southern Province took targeted measures to close access to social services, healthcare and then all provincial services to the Melanesian population. This resulted in:

³⁸<https://documents.un.org/doc/undoc/gen/g15/120/59/pdf/g1512059.pdf?token=grekBBTWILILtciVRC&fe=true>,
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2FFRA%2FCO%2F20-21&Lang=fr

- the closure of the Bethanie shelter for women in difficulty in Noumea, which was almost entirely staffed by Kanak women, following the abrupt end of provincial and state subsidies³⁹ ;
- the abolition of universal medical cover to prevent access to healthcare for disadvantaged Kanak populations living in the Southern Province⁴⁰ ;
- the closure of all provincial services on the Isle of Pines, whose population is exclusively Kanak⁴² .

The pretext of the ongoing civil conflict or the financial difficulties associated with it is put forward by the loyalist elected representatives of the Southern Province.

However, these decisions can be seen as retaliatory measures which penalise the entire Melanesian population indiscriminately and are the result of a discriminatory attitude (*Appendices 30 and 31*).

These decisions are systematically tolerated by the representatives of the State on the territory, who do not exercise their powers in terms of legality control.

The report A/HRC/18/35/Add.6 also noted that *"the Kanak people's ability to control change is limited by a severe shortage of Kanak in the higher professional classes. There are no Kanak lawyers, judges, university professors, police chiefs or doctors; there are only six recognized Kanak midwives in the public health system, out of the 300 midwives in the territory. What's more, less than 5% of public sector employees are Kanak, most of them in the lowest salary brackets (...) There are few Kanaks in the public sector. According to data provided by the Customary Senate, while there are currently 528 Kanaks in the civil service (out of 3,660 civil servants), only 57 are middle or senior managers⁴³" (...)*

This general situation of social marginalisation of the Kanaks has not changed since France's last review, and reflects a systemic violation of the principle of prohibition of discrimination set out in articles 2 and 26 of the Covenant.

³⁹ https://radiococotier.nc/2024/08/01/une-fermeture-qui-met-en-lumiere-lingratitude/?fbclid=IwY2xjawFPjQ5leHRuA2FlbQIxMQABHQgSDUwxCSf5gWWy4S4I_yDE8zjKCRtaQXlUTCbHA19Oqe1KMY3ki3vqhw_aem_7h5rS1OAs2nKIQJbNC6qlA

⁴⁰ <https://voixducaillou.nc/2024/07/13/laide-medicale-gratuite-suspendue-par-la-province-sud/#:~:text=Pour%20faire%20face%20aux%20nombreuses,aux%20revenus%20les%20plus%20modestes.>

⁴¹ https://www.liberation.fr/checknews/laide-medicale-a-t-elle-ete-suspendue-en-nouvelle-caledonie-a-cause-des-emeutes-de-mai-20240712_BG7RWNl3ERGWTBYT447KF5ZIZY/

⁴² <https://la1ere.francetvinfo.fr/nouvellecaledonie/province-sud/en-nouvelle-caledonie-la-suspension-des-services-provinciaux-de-l-ile-des-pins-contestee-1519601.html>

⁴³ https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/SR/A-HRC-18-35-Add6_fr.pdf

2. Combined violation of Articles 25, 18 and 27 of the Covenant on Civil and Political Rights: failure to take account of the specific impact of the health crisis on the indigenous Kanak population

The 3^{ième} consultation on New Caledonia's access to full sovereignty was held despite the Covid health crisis.

The health crisis has had a particular impact on the indigenous Melanesian populations and has also resulted in a psychological shock felt by almost all the world's indigenous communities. The intensity of this shock is related to post-colonial trauma.

On 19 October 2021, the Customary Senate of New Caledonia underlined the societal impact of the pandemic on Kanak communities and families and decreed customary mourning (*Appendix 8*):

This observation was accompanied by a request for the postponement of the consultation to be revoked, formulated officially in a deliberation published in New Caledonia's official gazette.

However, no consideration was given to the issue raised by the customary authorities.

Maintaining the consultation despite the customary mourning declared by the customary authorities and institutions resulted in discrimination against the indigenous Kanaks in the exercise of their freedom of thought, conscience and religion.

The Conseil d'Etat is the highest court for administrative matters, particularly electoral disputes.

Firstly, an application for interim relief was lodged with the Conseil d'Etat in order to obtain a postponement of the consultation.

In its order of 7 December 2021, the Conseil d'Etat gave a strictly arithmetical assessment of the impact of the health crisis, limiting itself to statistical data and trends in the figures and excluding any consideration of the reality of the local situation.

In a relatively ethnocentric approach, the reality of the circumstances that led to this customary mourning and the reality of the impact that maintaining the consultation date may have had on the free exercise of the right to political participation and on the right to freedom of thought, conscience and religion of the members of the indigenous Kanak people have not been addressed.

Secondly, the proclamation of the results of the consultation was also challenged on the merits before the Conseil d'Etat by the Customary Senate of New Caledonia.

However, in its ruling of 3 June 2021, the Conseil d'Etat failed to take into account the reality of the Kanak indigenous people and maintained an arithmetical assessment of the facts based on an ethnocentric approach⁴⁴.

⁴⁴ <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000045886675>

The decisions handed down by the Conseil d'Etat lacked impartiality and contradicted the recommendations made by international bodies regarding the impact of Covid on indigenous communities.

The position taken by the traditional authorities reflected the deep trauma suffered by the Melanesian populations in the face of the pandemic crisis, and was based on a request to take into account the real psychological impact directly linked to colonisation.

The customary mourning decided by the customary authorities and institutions was based on a desire to overcome a real trauma and to restore deeply affected and weakened families, without any other interaction.

These facts constitute a combined violation of articles 25, 18 and 27 of the Covenant.

3. On the combined violation of articles 25, 26 and 27 of the Covenant on Civil and Political Rights: failure to take account of the right of participation of the indigenous Kanak people

The failure to take into account the reality of the socio-cultural impact of the pandemic on the Kanak populations and the way in which this impact could be such as to impede their right to participate in an essential election resulted in a combined violation of several fundamental rights and freedoms, violations which tainted the election of 12 December 2021 with irregularity.

In practice, the Senate is an institution with a customary basis, whose essence and mission is to shed light that will enable the government authorities and the legislative power to take account of indigenous perceptions and temporality in order to overcome the divisions that have marked New Caledonian territory in the past.

Within the French Republic and New Caledonia, the creation of the Customary Senate is part of an inclusive approach that will enable Kanak citizens with customary status to participate fully in political life.

The impact of the health crisis on the Kanak world was clearly explained to the government by the Customary Senate in its deliberation of 19 October 2021.

The French government, which is aware of the socio-cultural reality of the Kanak people, has deliberately chosen to ignore the demands expressed by the customary authorities to guarantee the right of indigenous peoples to political participation in an issue that is of primary concern to them.

The Special Rapporteur on the rights of indigenous peoples, Mr James Anaya, in his 2011 report on the situation of the Kanak people of New Caledonia (A/HCR/18/35/Add.6) took the full measure of the problem of the right of participation of the Kanak indigenous people in New Caledonia.

15. The recommendations made in particular in paragraphs 68 to 76 of its report highlighted violations of the fundamental rights of the Kanak populations, stemming from disregard for the provisions of articles 14, 25, 26 and 27 of the International Covenant on Civil and Political Rights.

16. He was thus relieved:

" 68. *The system of customary laws and institutions that govern relations between Kanak people and between their clans and villages is relatively well recognised at official level.*

69. *Customary justice is an important aspect of Kanak autonomy and emancipation, and the Special Rapporteur was pleased to learn that under French law, customary decisions in civil law matters are generally upheld and respected by the State judiciary.*

70. *Nonetheless, the Kanaks' control over their villages, territories and natural resources must continue to be strengthened, i.e. their hierarchical institutions and customary rules must be effectively recognised to the extent compatible with human rights standards.*

71. *In particular, the French Government should reconsider the limits currently imposed on the exercise of customary justice by the Kanak authorities, especially in criminal matters.*

Kanak participation in politics and government

72. *The Nouméa Accord gives some recognition to Kanak participation in decision-making at national level, notably through the creation of the Customary Senate, and provides for Kanak participation in the Congress of New Caledonia. However, there is still work to be done to improve Kanak participation in decision-making at territorial level.*

73. *Consideration should be given to giving the Customary Senate a little more authority - and even a power of constraint in certain areas - over decisions taken in areas of interest to the Kanak people.*

74. *The Customary Senate should have sufficient funding to carry out its functions effectively. On the other hand, every effort should be made to ensure that its power is not reduced when sovereign powers are devolved from France to New Caledonia.*

75. *The ability of the Kanak people to participate in decision-making at the national level is limited by the scarcity of Kanak people in senior and middle-level positions in the public service. As New Caledonia becomes more autonomous, there is a need to ensure that Kanak people share equally in the benefits of decolonisation: France and the New Caledonian Government should redouble their efforts to prepare Kanak people for leadership positions through programmes such as the "400 cadres" programme referred to in the Nouméa Accord.*

76. *Efforts should be made to increase Kanak participation in electoral life and to remove any obstacles to such participation. Particular attention should be paid to the inclusion of Kanak people on electoral rolls for future referendums on the status of New Caledonia.*

Years after the visit of the United Nations Special Rapporteur on the Rights of Indigenous Peoples, France persists in ignoring the right of indigenous Kanak people to participate, which on an issue as fundamental as the referendum on access to independence has had dramatic consequences and resulted in civil conflict in May 2024.

As a result, the Kanaks were unable to conduct a campaign under normal conditions, in defiance of the rights recognised in **articles 5, 18, 19 and 34 of the United Nations Declaration on the Rights of Indigenous Peoples, a breach of the equality and freedom of suffrage.**

This constitutes a combined violation of articles 25 and 26 of the International Covenant on Civil and Political Rights. This deliberate discrimination reflects the lack of sincerity and regularity of the consultation of 12 December 2021.

This violation is one of the factors behind the crisis that has shaken the territory of New Caledonia since May 2024.

4. On the combined violation of Articles 1, 25 and 27 of the Covenant on Civil and Political Rights: undermining of the achievements of a process of internal and external self-determination

Since the proclamation of the results of the 3rd consultation, the French government has been seeking to go beyond the issue of independence and call into question all the achievements of the Nouméa Accord, including the recognition of Kanak identity and the rights associated with it.

- **Questioning the irreversibility of the Nouméa Accord**

Following the proclamation of the results of the third consultation on New Caledonia's access to full sovereignty, the French government decided to call into question the Nouméa Accord and replace it with a new agreement on New Caledonia's institutions. Within this framework, the government has limited official discussions to the political sphere, excluding customary institutions.

The draft agreement (known as the "Marty" draft) presented by the French government abolished all customary institutions, customary law and any reference to Kanak identity (*Annexes 22, 23 and 24*).

This choice not only generated a risk of polarisation in New Caledonian society, but also an obvious risk of legal uncertainty.

This approach is in itself contrary to the Nouméa Accord and in contradiction with the constitutional guarantees attached to that Accord. It also violates the right of peoples to self-determination guaranteed in Article 1, since it seeks to call into question a level of self-determination already enshrined internally (Internal-self determination).

However, this political process desired by the French government has also been designed to undermine all the achievements of the Nouméa Accord and the rights recognised within this framework for the Kanak people as an indigenous people.

A political crisis linked to the French government's breach of its commitments therefore preceded the social crisis of May 2024.

- **Blackmail by the French State and the proposed reform of the electorate**

In accordance with the Nouméa Accord, the electorate for New Caledonia's provincial elections is defined in article 77 of the Constitution and article 188 of the Organic Law of 19 March 1999 on New Caledonia.

This electoral body has been frozen at 1998 since the constitutional reform of 23 February 2007.

As New Caledonia was a settlement colony, this provision relating to the electorate was one of the major achievements of the Kanak struggle for self-determination.

The principle of freezing the electorate has been declared compatible with Article 3 of Additional Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, 2 March 1987, No. 9267/81, Mathieu-Mohin -and Clerfayt v. Belgium).

The Court subsequently accepted (ECHR, 11 January 2005, no. 66289/01, Py v. France) the principle of a restricted electorate, due to the process set in motion by the conclusion of the Nouméa Accord.

In addition, the 2017 Constitutional Act No. 2007-237 validated the principle of a fixed electoral body⁴⁵.

However, in January 2024, at a time when the imposed process of negotiating a new political agreement had reached an impasse, the French government envisaged calling this acquis into question by presenting a new draft constitutional reform that contradicted one of the commitments made by the State in the Nouméa Accord but in fact only met the demands of the most extreme anti-independence supporters⁴⁶.

The particularity of this reform project lies in the fact that the government has made its entry into force conditional upon a political agreement on the future institutions of New Caledonia.

It was therefore a case of blackmail carried out through a process of constitutional reform contrary to the spirit of the Nouméa Accord and aimed at forcing the stakeholders, in particular the Kanak, to renege on the Nouméa Accord.

- **The persistent lack of impartial guarantees from the supreme court**

The Conseil d'Etat issued an opinion on this draft reform, but it fully endorsed the government's plan, confirming the biased and politicised nature of its analysis, which had already been revealed during the disputes over the 3^{ième} consultation. The Conseil d'Etat thus failed to take due account of the ECHR ruling of 2005 and decision no. 99-410 DC of 15 March 1999, and did not rule on the project's non-compliance with the principle of irreversibility set out in the Nouméa Accord⁴⁷.

In all these respects, and by calling into question, both politically and judicially, the achievements of the Nouméa Accord, which implemented the right of peoples to self-determination, France has violated Article 1 of the Covenant on Civil and Political Rights.

All these violations have led to a civil conflict in which the indigenous Kanaks are victims of massive and systematic violations by France of their fundamental individual and collective rights, which have also been denounced to the United Nations Special Rapporteurs (*Appendix 25*).

France has provided no response to the question of whether the achievements of the Nouméa Accord and the rights recognised to the Kanaks have been called into question and, contrary to the State's allegations, this process was neither concerted nor peaceful and did not involve the customary authorities (*Appendices 26 and 27*).

⁴⁵ <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000425507>

⁴⁶ <https://www.senat.fr/dossier-legislatif/pjl23-291.html>

⁴⁷ <https://www.conseil-etat.fr/avis-consultatifs/derniers-avis-rendus/au-gouvernement/avis-sur-un-projet-de-loi-constitutionnelle-portant-modification-du-corps-electoral-pour-les-elections-au-congres-et-aux-assemblees-de-province-de#:~:text=Le%20Conseil%20d'%C3%89state%20estimate,with%20the%20constitutional%20principles%20mentioned%C3%A9s>

5. Combined violation of articles 6.1, 2 and 26 of the Covenant on Civil and Political Rights: extrajudicial executions, targeted killings and violence

The Committee on the Elimination of Racial Discrimination has on several occasions expressed its deep concern at the number of cases reported in France of excessive use of force and ill-treatment, including physical and verbal violence inflicted by law enforcement officers on members of certain minority groups⁴⁸.

The constant marginalisation of the Kanak populations of New Caledonia, combined with the French government's violation of its commitments under the process described above, led to a major crisis in May 2024 when the National Assembly adopted the bill on the reform of the electoral body.

After May 2024, in response to what was described as an unprecedented insurrection⁴⁹, the French government declared a state of emergency and deployed the army to deal with the pro-independence protests and riots in New Caledonia. The state of emergency allowed for exceptional measures such as searches without the intervention of the public prosecutor, and house arrests when the state of emergency came into force. A ban on certain social networks The government justified this measure on the basis of the "theory of exceptional circumstances", which allows derogations from the law in times of crisis⁵⁰.

The militarisation of the conflict in New Caledonia intensified with the arrival of large reinforcements, including GIGN forces, CRS companies, RAID, mobile gendarmes and two sections of CRS 8, a unit specialising in combating urban violence⁵¹.

The French Air Force sent planes on a daily basis, transporting police officers and gendarmes. Two companies of the French Army, representing 300 soldiers, remained temporarily on site, doubling their usual strength. The government has announced that it will be sending a further 1,000 soldiers to support the 1,700 already on the ground⁵².

It has also been accompanied by police violence, extrajudicial killings and/or executions and, more recently, alleged rapes of Kanaks.

On 12 September 2024, the estimated human toll attributable to the police and military contingents among the indigenous Kanak people was as follows:

⁴⁸

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2FFRA%2FCO%2F22-23&Lang=fr

⁴⁹ <https://www.ladepeche.fr/2024/05/23/direct-nouvelle-caledonie-emmanuel-macron-demande-le-retour-a-la-paix-mais-aussi-au-dialogue-apres-les-emeutes-11968460.php>

⁵⁰ <https://www.lefigaro.fr/secteur/high-tech/nouvelle-caledonie-le-conseil-d-etat-donne-24-heures-au-gouvernement-pour-motiver-l-interdiction-de-tiktok-20240521>

⁵¹ https://www.huffingtonpost.fr/france/article/emeutes-en-nouvelle-caledonie-armee-renforts-policiers-a-quoi-ressemble-le-dispositif-deploye_234005.html

⁵² <https://www.france24.com/fr/asia-pacifique/20240517-en-nouvelle-cal%C3%A9donie-la-situation-est-plus-calme-et-apais%C3%A9e-malgr%C3%A9-de-nouveaux-incendies>

- 169 injured, including⁵³ :
 - 11 injured in life-threatening emergency
 - 24 people shot in the head
 - 4 injured by flashball
- 4 dead whose names are as follows:
 - Jybril SALO, aged 18, killed in Tindu (Exhibit 18) ;
 - Dany TIDJITE, 48, killed in Dumbéa sur Mer;
 - Josh POULAWA killed by GIGN⁵⁴ ,
 - Lionel Païta, grandson of the Grand Chief of Païta, shot in the head by alleged plainclothes gendarmes in a hire car, who died in hospital from his injuries (Exhibit 19: Portrait of Lionel Païta).
- On 30 August 2024, a 22-year-old Melanesian woman was raped by 5 people wearing black emergency uniforms and bullet-proof waistcoats, who may have been members of the police force⁵⁵ . It should be pointed out that the large number of police and military personnel present on the archipelago has begun to give rise to vice-related problems⁵⁶ .

Some of the killings and violence are also the work of extreme right-wing loyalist militias:

- 2 fatalities:
 - Nassaie DAOUKA, aged 17, shot dead in Ducos by a European civilian (Exhibit 17),
 - Chrétien NEREGOTE from Canala, killed in Ducos by a European civilian;
- On 4 June 2024, a Kanak policeman was beaten by a militia, including an elected official, Gil BRIAL⁵⁷ , 2^e Vice-President of the Southern Province⁵⁸ .

The right to life and security of Melanesian people is not duly guaranteed by France in New Caledonia.

⁵³ These figures come from the Médipôle de Nouméa board of directors. The figures for the Kuindo Magnin hospital are not known.

⁵⁴ The GIGN is an elite Gendarmerie unit whose work is exemplary in mainland France. However, in New Caledonia, the GIGN has distinguished itself by its participation or **active assistance in numerous extrajudicial executions** during the events of the 80s, including the extrajudicial execution of Eloi Machoro (https://fr.wikipedia.org/wiki/%C3%89loi_Machoro), and that of five Kanak during the assault on the Ouvéa Grotto in 1988 - 3 summary executions, one wounded man summarily killed and one wounded man left untreated (https://fr.wikipedia.org/wiki/Prise_d%27otages_d%27Ouv%C3%A9a).

⁵⁵ https://www.lemonde.fr/politique/article/2024/09/04/nouvelle-caledonie-le-parquet-ouvre-une-enquete-pour-viol-le-flnks-pointe-du-doigt-les-forces-de-l-ordre_6303946_823448.html

⁵⁶ <https://www.charentelibre.fr/france/nouvelle-caledonie-des-dizaines-de-crs-rapatries-apres-avoir-contracte-la-gonorrhée-21340785.php?csnt=191e59bbd3a>

⁵⁷ https://fr.wikipedia.org/wiki/Gil_Brial

⁵⁸ <https://la1ere.francetvinfo.fr/nouvellescaledonie/province-sud/noumea/un-jeune-policier-passe-a-tabac-par-des-voisins-vigilants-dans-le-quartier-de-tuband-a-noumea-1493840.html>

6. Combined violation of articles 9, 2 and 26 of the Covenant on Civil and Political Rights: judicialisation of a civil conflict - lack of impartiality of the judiciary

The crisis of May 2024 was a political crisis that had its direct origins in the French State's challenge to the rights of the indigenous Kanak people and the resulting major breach of the territory's legal security.

In defiance of all the recommendations concerning the management of conflicts with indigenous peoples, the choice was made to deal with the conflict by military and judicial means.

- **The criminalisation of an indigenous emancipation movement**

Firstly, in response to the situation on the ground, the Minister of Justice, who has no knowledge of the social reality in New Caledonia, issued a Circular on 17 May 2024 marking the judicialisation and criminalisation of a conflict with an indigenous people and urging the public prosecutor's office **to take the strongest possible action against the perpetrators of the atrocities**. This circular, sent to the Noumea public prosecutor's office, sets out the procedures for the judicial handling of offences committed under the state of emergency declared in the territory. It insists on close coordination with the High Commissioner of the Republic, so that the judicial authorities are kept informed of the actions and resources deployed.

The Minister is also calling for a criminal investigation to be launched systematically when there are facts that could be classified as criminal in the context of administrative measures, such as house arrest or an administrative search.

An order was also issued on 14 May 2024 by the Commissaire de la Haute République in New Caledonia to prohibit public gatherings⁵⁹.

According to the Minister, the penal response had to be firm, rapid and systematic, with qualifications such as rebellion, assembly and participation in a group with a view to preparing violence or damage. The judicial response to the Kanaks was immediate⁶⁰.

This approach illustrates the judicialization of the conflict with the indigenous people in New Caledonia, even though the aforementioned judicial institution has never been able to adapt its criminal law provisions to the reality of New Caledonia and to a decolonization scheme.

⁵⁹ <https://www.nouvelle-caledonie.gouv.fr/contenu/telechargement/11463/98665/file/20240514+-+Arr%C3%AAt%C3%A9+135+du+14+mai+2024.pdf>

⁶⁰ <https://www.leparisien.fr/societe/nouvelle-caledonie-coordination-fermete-que-contient-la-circulaire-penale-publiee-par-eric-dupond-moretti-17-05-2024-Q6PDZEK27FFFVM5FMDLFL5TZ3U.php>

It should be remembered that the judicial system in New Caledonia does not include any Kanak magistrates or, for that matter, any Kanak lawyers.

In a context of civil conflict and colonial power relations, the question of the right to a fair trial and access to the rights of the defence arises.

Finally, in a context of overlapping indigenous and non-indigenous legal and socio-cultural fields, it is clear that the repression carried out by the French government, which does not envisage any political option, is not aimed at reparation, reintegration or the construction of civil peace through transitional justice, but only at destroying any hope of civil peace and stifling a people's aspiration to dignity and freedom.

- **These measures do not mention or target loyalist militias.**

Several accounts gathered by a French media outlet (Mediapart) have revealed the lack of police control over armed citizens of European origin. Despite the offence of armed assembly or criminal conspiracy, the latter receive support from the authorities, and sometimes even make informal arrangements with the police.

Furthermore, despite the violence committed by these militias, High Commissioner LE FRANC has systematically legitimised them in his public speeches, complacently describing them as "groups formed to defend themselves". This reflects a discriminatory stance, tolerant of armed factional groups and fundamentally anti-republican. This public discourse embodies a total failure of the State⁶¹.

But even more seriously, the regular armed forces of the Republic and the militias have taken concerted action and carried out a joint crackdown on the territory.⁶²

In a report sent to one of his colleagues, a police officer involved in the operations said that "the State is no longer able to guarantee the security of the population. Residents are taking charge of their own security by forming militias"⁶³.

The Republic's official forces cooperated with factional groups who, in principle, should have been prosecuted.

Despite its declared repressive policy, the French government has not disbanded the "loyalist" militias. No arrests were made other than in the case of the perpetrator of the double murder. Members of the militias were able to continue patrolling armed throughout the crisis, and their political representatives were not brought to justice.

As far as the Noumea Public Prosecutor's Office is concerned, the Public Prosecutor, Yve DUPAS, has opened a number of investigations and initiated proceedings in respect of **isolated, clear-cut incidents that have received too much media coverage to be ignored.** On the other hand, the position of the

⁶¹ https://www.lemonde.fr/politique/article/2024/05/15/nouvelle-caledonie-sur-les-barricades-de-noumea-deux-peurs-se-font-face_6233504_823448.html

⁶² <https://contre-attaque.net/2024/05/16/kanaky-des-milices-de-colons-armes-tuent-plusieurs-habitants/>

⁶³ <https://www-mediapart-fr.budistant.univ-nantes.fr/journal/france/290524/lors-des-revoltes-en-nouvelle-caledonie-des-habitants-armes-ont-ete-soutenus-par-la-police>

Public Prosecutor's Office is to deny the existence of armed militias⁶⁴ and to do nothing to punish the formation and collective actions of these militias, which could nevertheless be punishable under criminal law.

The discriminatory orientation of the criminal justice policies of the Nouméa Public Prosecutor's Office and the use of the criminal justice system against certain political leaders and defenders of Kanak rights had already been denounced in 2020 (*Annex 28: Communication to the Special Rapporteur in 2020*).

At the same time, representatives of the French government have adopted a position marked by racism and discrimination.

The Cellule de Coordination des Actions de Terrain (CCAT) is a Kanak organisation that called for the abandonment of the proposed reform of the electoral body in New Caledonia, which would see the weight of the indigenous population reduced in local elections, and which was voted through by the National Assembly.

State representatives have systematically stigmatised this political opposition, conflating the actions of certain thugs with the militant and political actions of other demonstrators.⁶⁵ This justified the State's rejection of any attempt to find a serious political solution to the crisis and led it to focus on a repressive policy towards the indigenous Kanak people as a whole, contrary to the allegations made by the French State (*Appendix 27*).

At the same time, the ultra-anti-independence militias, whose radical and colonialist stance has contributed in the main to the instability of New Caledonia, have been tolerated by the authorities, or even used as auxiliaries, and have been able to continue their acts of violence or illegal actions, including those directed against democratic institutions.

For example, Ms BACKES, President of the Southern Province, and Mr MEZDORF, a Renaissance elected representative, organised a demonstration in front of the Noumea Magistrates' Court, despite a ban on gatherings imposed by the authorities, in order to criticise the slowness of the justice system and to call for an acceleration of the repression (*Appendix 31*).

This demonstration was neither banned by the High Commission nor prosecuted by the Public Prosecutor's Office, despite the ban on gatherings, which remains in force⁶⁶.

Only a few courageous non-Kanak local elected representatives have denounced this factious drift, tolerated by the State authorities and consisting of attacking both the judiciary and the press (*Appendix 32: Post by Mr Philippe Gomes*).

⁶⁴ https://www.lemonde.fr/politique/article/2024/05/21/en-nouvelle-caledonie-des-milices-encombrantes-pour-le-camp-loyaliste_6234639_823448.html

⁶⁵ <https://www.mediapart.fr/budistant.univ-nantes.fr/journal/france/290524/nouvelle-caledonie-macron-ou-l-arrogance-coloniale>

⁶⁶ <https://www.interieur.gouv.fr/actualites/actualites-du-ministere/levee-de-letat-durgence-en-nouvelle-caledonie-forces-de-securite>

7. Combined violation of articles 7, 2 and 26 of the Covenant on Civil and Political Rights: inhuman and degrading treatment inflicted on Kanak people because of their race and political opinions:

The conditions of detention and imprisonment in New Caledonia, which had already been denounced by the United Nations Special Rapporteur on Indigenous Peoples in his 2011 report and by the Contrôleur Général des Lieux de Privation de Liberté (CGLPL) in his 2011 and 2019 reports⁶⁷.

As the Special Rapporteur on the Rights of Indigenous Peoples pointed out in this report, Kanak people are also discriminated against in terms of access to justice. According to the Customary Senate and the prison authorities, *"at least 90% of inmates at Camp Est (the central prison) and 99% of young inmates are Kanak. The crime rate is not higher in New Caledonia than in France, it's the conviction rate that is, according to the prison authorities, demonstrating a disturbing tendency on the part of the judiciary to incarcerate offenders more often or to impose heavier sentences on them in New Caledonia (.....). The adult establishments are overcrowded and short of air"*.

At 12 September, the balance sheet was as follows:

- **2235 arrests⁶⁸ i.e. around 2% of the Kanak population**
- At least 269 people were held in police custody for 48 to 72 hours;
- **Around 63 deportations or forced transfers of Kanak activists to France, more than 20,000 kilometres from their country of origin;**

Conditions of detention in New Caledonia are alarming.

In 2011, the Contrôleuse générale des lieux de privation de liberté mentioned in her report a "serious violation of fundamental rights" in New Caledonia due to prison overcrowding at Camp-Est, which reached 155%. This situation led to France being condemned by the European Court of Human Rights in 2020, and paved the way for numerous appeals⁶⁹. The current prison capacity in Noumea is 391 places in 230 cells.

Nevertheless, in the face of the current crisis, the 130 Raid police officers and GIGN gendarmes deployed in New Caledonia have been tasked with identifying and locating the leaders of the riots in order to isolate them through incarceration or, if necessary for the GIGN, to eliminate them.

This judicial strategy is exacerbating the already critical prison situation. Nouville prison, with a capacity of 414 places, currently houses more than 600 inmates. Since the riots began, more than 300

⁶⁷ <https://www.cglpl.fr/2019/recommandations-en-urgence-relatives-au-centre-penitentiaire-de-noumea-nouvelle-caledonie/>, <https://www.cglpl.fr/2021/rapport-de-la-deuxieme-visite-du-centre-penitentiaire-de-noumea-nouvelle-caledonie/>

⁶⁸ <https://www.nouvelle-caledonie.gouv.fr/Actualites/Point-de-situation-Nouvelle-Caledonie8>

⁶⁹ <https://www.lefigaro.fr/actualite-france/en-nouvelle-caledonie-eric-dupond-moretti-confirme-que-une-nouvelle-prison-sera-construite-a-noumea-20240222>

people have been arrested and several dozen have been brought before the courts. According to territorial intelligence, the number of rioters has been estimated at between 3,000 and 5,000⁷⁰ .

Similarly, before convictions are handed down, the question of police custody conditions also arises, given the capacity of local police stations and gendarmeries. The Meunier barracks in Noumea do not have the capacity to hold hundreds of detainees in decent conditions.

In this context, the people arrested during the 2024 events were necessarily subjected to inhuman and degrading treatment during their detention and imprisonment.

Secondly, aware of this problem, the government decided to deport some Kanak activists to mainland France, more than 20,000 kilometres from their country of origin.

It has been established that such deportations are detrimental to the maintenance of family ties, uprooting, possible adaptation to the climate, language, etc.⁷¹

Some of these deportations were carried out without the families being informed.

Article 7 of the Covenant has clearly been violated by the authorities of the French State.

⁷⁰ <https://www.lejdd.fr/societe/nouvelle-caledonie-vers-un-transfert-en-metropole-demeutiers-condamnes-145648>

⁷¹ https://www.portroyal-avocats.com/transferes-dans-les-prisons-de-l-hexagone--comment-vivent-les-detenus-d-outre-mer---_ad101.html

CONCLUSION

France cannot shift the burden of established violations of articles 1, 2, 6, 7, 18, 25, 26 and 27 of the Covenant onto the territory and institutions of New Caledonia as a result of transfers of jurisdiction.

Nor can France justify the seriousness of the violations of which it has been guilty since the beginning of 2024 by invoking State action that would have been proportionate to the legitimate aspiration of the indigenous Kanak people to see their rights, dignity and the free expression of their right to self-determination protected.

Firstly, the situation of the fundamental rights of the indigenous Kanak people has been denounced by the international community for decades without any positive developments being noted. The violation of all the rights guaranteed to the indigenous Kanaks and to everyone else by the Covenant is systemic and widespread.

Secondly, France has violated Article 1 of the Covenant by calling into question the legal, political and institutional system established by the Nouméa Accord, which represents a first level of implementation of the right to self-determination (internal self-determination).

Thirdly, France violated Articles 1, 25, 18 and 27 by holding a referendum on New Caledonia's accession to full sovereignty in the midst of the Covid pandemic, even though this epidemic, as elsewhere in the world, had had a particularly serious health and psychological impact on the indigenous communities. This failure to take into account the reality of the trauma experienced by the Kanak people in terms of their own perceptions, beliefs and history, resulted in an infringement of their right to political participation in a crucial vote on self-determination.

Fourthly, France violated Articles 1, 25, 26 and 27 and the right to political participation of the indigenous Kanaks. On the one hand, France did not take into account the wishes expressed by the representatives of the Customary Senate who had requested a postponement of the consultation. Secondly, by holding the consultation during the Covid period, the Kanaks were unable to take part in the ballot in a normal manner due to the trauma caused by the current pandemic.

Fifthly, France also violated Articles 1, 25 and 27 of the Covenant and the Kanaks' right to participation, by failing to consult the Sénat Coutumier in an appropriate manner during the French Government's attempts to impose a new political agreement to replace the Nouméa Accord and to reform the electoral rules arising from the Accord.

Finally, the above violations were the sole cause of the civil conflict that has ravaged New Caledonia since May 2024.

In the context of this conflict, France's violations of the Covenant were even more direct and systematic, resulting in the following:

- a violation of the Kanak people's right to security;
- attacks on the life and physical integrity of individuals perpetrated by the forces of law and order and/or auxiliary militias;
- discrimination and a lack of fair and equal access to justice;
- arbitrary arrests,
- inhuman and degrading treatment, particularly in the context of arrest and detention;

The resulting situation of tension in this territory, which is still on the list of countries to be decolonised, can only be explained by a deliberate doctrinal position on the part of France aimed at preventing any direct control by the Kanak people over decision-making or standard-setting processes that affect them.

RECOMMENDATIONS

We ask the Committee to make the following recommendations to the State Party:

France's reservation to Article 27

- Reiterate its 2015 recommendation and ask the State party to review the restrictive interpretation given to article 27 of the Covenant, particularly in view of the existence of overseas indigenous peoples

Disaggregated data on indigenous peoples

- Reiterate its 2015 recommendation and request the State party to collect and publish disaggregated data on indigenous peoples, in particular the Kanak people, to enable the Committee to assess fully the enjoyment of the rights enshrined in the Covenant by the indigenous Kanak people in New Caledonia.

On the Nouméa Accord, the bill to unfreeze the electorate and the decolonisation process

- To recognise the right of the indigenous Kanak people to self-determination and self-determination in accordance with Article 1 of the Covenant and Articles 3 and 4 of the UNDRIP.
- To implement the right of the indigenous Kanak people to political participation, to take part in the direction of public affairs, to consultation and to free, prior and informed consent before the adoption of legislative measures, reforms and the organisation of consultations concerning their rights.
- Respect the Nouméa Accord and the principle of constitutional irreversibility set out in Article 5 of the Accord, which guarantees the integrity of the decolonisation process and the non-regression of the legal gains enshrined in the Accord and Organic Law 1999-209.
- Abandon the Electoral Roll Unfreezing Bill

On the right to land and natural resources

- In consultation with the Kanak customary authorities, resume and finalise the land restitution process, the drawing up of the customary land register and the demarcation of Kanak customary land and ensure that all Kanak land claims are processed to their conclusion, without taking into account the total proportion of Kanak land, private land and state land (Recommendation of the Special Rapporteur on Indigenous Rights during his visit to New Caledonia in 2011).

Racial disparities in the criminal justice system, over-representation of indigenous Kanaks in prisons and conditions of detention in New Caledonia

- Take energetic measures to remedy the over-representation of people of Kanak origin in New Caledonian prisons, by increasing the use of non-custodial measures and diversion programmes.
- Improving prison conditions and meeting the basic needs of indigenous peoples deprived of their liberty;

On the crisis violations and the crisis of May 2024.

- Put an end to the excessive use of force, militarisation, police violence and the criminalisation of Kanak rights defenders,
- Put an end to arbitrary arrests and detentions and to the arbitrary and discriminatory deportation of Kanak rights defenders to mainland France
- To put an end to acts of racist violence against Kanaks by armed militias opposed to independence
- Dismantle armed militias opposed to independence and open investigations into incitement to racial hatred and other violations against Kanaks
- To investigate impartially the murders of 4 Kanak demonstrators by agents of the State party and the murders of 3 Kanak demonstrators by armed militia.
- Guarantee that demonstrators defending the rights of Kanaks can fully exercise their right to freedom of thought, their right to freedom of opinion and expression, and their right to freedom of assembly and freedom of movement.
- Guaranteeing adequate and non-discriminatory access to justice
- To implement a process of transitional justice and to overcome the fractures associated with colonisation and the neo-colonial legacy, with a view to reconciliation.

On the Convention 169

- Ratify the International Labour Organisation's Indigenous and Tribal Peoples Convention, 1989 (No. 169).

Nouméa and Rennes, 13 September 2024

**Mr Mahe Agueil GOWE
President of the Customary Senate
New Caledonia**

**M. Mahe Agueil GOWE
Président du Sénat Coutumier
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5. A-HRC-18-35-Add6_en ;
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12. Indigenous peoples put to the test by Covid-19, CNRS JOURNAL ;
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15. "Respect the Kanak mourning, postpone the referendum in New Caledonia", by Monde, 23 November 2021 ;
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