



**Report to the United Nations Human Rights Treaty Bodies
CCPR - International Covenant on Civil and Political Rights**

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*The enduring legacy of French colonialism continues to significantly hinder
the exercise of the right to self-determination*

Ma'ohi Nui (French Polynesia) and Kanaky (New Caledonia) case

Introduction

The subjugation of one nation by another, characterised by the conquest of its people and the systematic exploitation of its resources, frequently coupled with the imposition of the coloniser's language and cultural norms, represents a quintessential expression of colonialism. The concept of colonialism is closely linked to that of imperialism, which is the policy or ethos of using power and influence to control another nation or people, that underlies colonialism. France's colonial history is indeed relevant example to colonialism policy, and it has left a lasting adverse impact on various regions.

The legacy of French colonialism is complex and multifaceted, with lasting impacts felt in many parts of the world. From Africa to Southeast Asia, the Caribbean to the Indian Ocean, French colonial rule left indelible marks on culture, politics, and socio-economic structures. France established colonies in Africa (such as Algeria, Senegal, and Tunisia), Asia (including Vietnam, Cambodia, and Laos), the Caribbean (Haiti, Martinique, and Guadeloupe), and the Pacific (New Caledonia and French Polynesia). And this is not an exhaustive list. These territories were often rich in resources, and French colonialists sought to exploit them for economic gain.

Despite the dismantling of colonial empires after World War II aimed to restore sovereignty and self-governance to colonized peoples, France persisted in pursuing colonial policies in French Overseas. Presently, the adverse consequences of French colonialism persist in regions such as Corsica, Melanesia, Polynesia, the Caribbean, and the Antilles. France remains the sole nation with colonial territories spanning all four oceans. Decolonization remains essential to safeguard human rights and promote self-determination.

Decolonization is not merely a legal process; it is also a moral imperative. Human rights play a crucial role in the contemporary world. The emergence of human rights frameworks intersected with decolonization efforts, shaping rhetoric, activism, and policies. However, France's present policies seem to disregard the recognition of those rights.

International Efforts in Facilitating Self-Determination and Decolonization

Following the signing of the United Nations (UN) Charter in 1945, international standards of self-governance for the world's colonies mostly acquired as the spoils of war and adventurism began to evolve. Conditions for genuine self-determination and consequent decolonization were under continual adjustment and modification as reflected in UN General Assembly (UNGA) resolutions from 1946 through 1960 contributory to a global consensus on these international principles.

The international decolonization process accelerated in 1960 with the adoption of the landmark Decolonization Declaration (Resolution 1514 XV) (UN, 1960a), and its companion resolution (Resolution 1541 XV) (1960b) identifying the minimum standards for the Full Measure of Self-Government (FMSG). These developments encouraged the movement to independence of countries in Africa, the Caribbean and Asia/Pacific. Recently, the primacy of the UN Decolonization Declaration to global decolonization was reinforced in the 2019 Advisory Opinion of the International Court of Justice (ICJ) on the Legal Consequences of the Separation of the

Chagos Archipelago from Mauritius in 1965: The resurgence of the decolonization process on the global agenda has been significantly influenced by Azerbaijan assuming the chairmanship of the Non-Aligned Movement and prioritizing this issue as one of the key aspects of its foreign policy.

The adoption of resolution 1514 (XV) of 14 December 1960 represents a defining moment in the consolidation of State practice on decolonization. Prior to that resolution, the General Assembly had affirmed on several occasions the right to self-determination in resolutions 637 (VII) of 16 December 1952, 738 (VIII) of 28 November 1953 and 1188 (XII) of 11 December 1957) and several non-self-governing territories had acceded to independence. General Assembly resolution 1514 (XV) clarifies the content and scope of the right to self-determination.

The international norms establishing minimum standards for a full measure of self-governance are derived primarily from international law and principles beginning with the United Nations (UN) Charter, coupled with subsequent international conventions and United Nations resolutions providing greater specificity. The Covenant of the League of Nations pursuant to Article 23 was the first international instrument to deal with the evolution of peoples under non-self-governing arrangements, with its reference to securing “just treatment of the native inhabitants” of such territories. This realization was later reflected in subsequent international instruments, including the landmark 1960 Decolonization Declaration regarded as the 'magna carta' of decolonization followed by the 1969 “Vienna Convention on the Law of Treaties.”

The United Nations at its creation in 1945 provided international legitimacy to the companion processes of self-determination and decolonization through concrete references in its Charter. Accordingly, both Chapter I of the UN Charter on Purposes and Principles, and Chapter IX on International Economic and Social Co-operation, highlight the critical importance of equal rights and self-determination of peoples;

The Declaration on Non-Self-Governing Territories contained in Chapter XI of the UN Charter gives definition to the principle of self-determination. Accordingly, the Charter affirms that those UN member states which administer territories which have not yet attained a full measure of self-government recognize, inter alia, the obligation to ensure the cultural integrity of the people concerned, and to foster their political, economic, social and educational advancement. The obligation includes the development of self-government through free political institutions (as set forth in the UN Charter).

Chapters I, IX and XI of the United Nations Charter have been repeatedly cited as the basis for prescriptive remedy to address the persistent democratic deficits inherent in the remaining dependency governance arrangements. The Chairman of the United Nations Decolonization Committee in 2005 elevated the global discussion on the issue in characterizing decolonization as the 'unfinished agenda' of the United Nations and emphasized the criticalness of bringing the remaining dependent territories in line with a full measure of self-governance consistent with international principles.

In addition to the UN Charter, other international instruments apply great weight to the international legal mandate of the promotion and subsequent realization of full political equality as a fundamental human right. The most relevant of these instruments are the International

Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic and Social Rights (ICESR), both of which affirm the right of peoples to self-determination. Of particular note is Article 1 of both conventions recognizing the responsibility of administering states to promote the realization of the right to self-determination. Both conventions are generally accepted as preemptory norms of jus cogens. The Convention on the Elimination of Racial Discrimination (CERD) has similar provisions giving further weight to the international legal basis for the realization of self-determination which is intended to culminate in a full measure of self-governance Article 1 of the ICCPR explicitly guarantees the right of self-determination:

1. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

2. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”.

The realization of self-determination is essential for effectively guaranteeing and observing individual human rights, as well as for promoting and strengthening those rights. Notably, self-determination is the only right specifically addressed to peoples rather than individuals, and it is also the only right shared by both the Covenant and the International Covenant on Economic, Social, and Cultural Rights.

According to the Committee’s general comment No. 12 (1984): "The Committee has noted that many state parties completely ignore article 1, provide inadequate information in regard to it or confine themselves to a reference to election laws. The Committee considers it highly desirable that States parties’ reports should contain information on each paragraph of article 1.”

The self-determination and consequent decolonization of erstwhile territories globally were the culmination of centuries of struggle by the people of the colonies against imperial invasion, slavery, colonization, exploitation, settlement, and neo-colonialism by particular European powers. Of note is France which has historically colonized territories in various regions of the world through differing dependency governance (DG) arrangements in the stubborn retention of empire via a stratagem to promote political, economic, social and cultural assimilation.

In 1983, the French Parliament adopted Law No. 83-17 concerning the mechanisms of the election process for the four regions (Guadeloupe, Martinique, Réunion and Guyane) pursuant to specific guidelines. Both the 1982 and 1983 French laws imposed by France were projected by France to the Human Rights Committee as “decentralization acts” (ICCPR, 1997: 4). Further, France stated in its 1997 report to the Human Rights Committee on the disposition of the French territories that “the territory of French Polynesia was established by the Act of 6 September 1984 which set up a regime providing for wide-ranging autonomy characterized, on the one hand, by the existence of a territorial executive consisting of a president of Government and of ministers appointed by the Territorial Assembly and, on the other, by the transfer to the territory of many powers, with those powers to be retained by the central Government being exhaustively enumerated under the regime”

(ICCPR, 1997: 4). The same 1997 French report required under the ICCPR also provided a basic account of the projected evolution of Kanaky (New Caledonia):

The regime for New Caledonia had been established by the Act of 9 November 1988, which included provisions on the status of the territory in preparation for the referendum on the independence of New Caledonia held in 1998. Through reorganization of the government authorities and, in particular, decentralization of the provinces, this regime, which was adopted by referendum in 1988, established the conditions under which the people of New Caledonia would be asked to vote in 1998, through a self-determination referendum, on whether the territory would remain part of the Republic or become independent (ICCPR, 1997).

Notwithstanding the ever-increasingly complex French categorization of the territories under its administration, international law emerging from the UN Charter, the Decolonization Declaration and relevant human rights conventions provided much-needed clarity, at least with respect to New Caledonia and French Polynesia, which the UN concluded were non self-governing territories under the meaning of the UN Charter despite the French insistence that these two dependency models had not been colonies since 1947. Both New Caledonia and French Polynesia were formally designated by the UN General Assembly as Non-Self-Governing Territories (NSGTs) by respective UN General Assembly resolutions in 1986 and 2013. The successful re-inscription of the two French-administered NSGTs has sparked increasing interest from other French dependencies - regardless of their French dependency categorization - and have advanced an international review process to determine whether the procedures utilized to impose the respective dependency governance models were 1) the product of a legitimate process of self-determination, and 2) in compliance with the minimum standards of self-governance sufficiency.

Self-Determination in Kanaky (New Caledonia)

The governance of New Caledonia has been shaped by a complex interplay of French legislative measures, international law, and the aspirations of its indigenous Kanak population. Following the adoption of Law No. 83-17 by the French Parliament in 1983, the framework for the political autonomy of French territories was established under the guise of decentralization. This was followed by the Act of 9 November 1988, which set the stage for a self-determination referendum on New Caledonia's independence. Despite France's claims of providing autonomy, international legal frameworks, including the UN Charter and the Decolonization Declaration, classify New Caledonia as a Non-Self-Governing Territory (NSGT), indicating the persistent colonial underpinnings of its political status.

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The trials and tribulations of Kanaky (New Caledonia) represent a veritable case study in the application of French colonial policy over an extended period without final resolution into 2024. As in the case of Ma'ohi Nui, the 1958 referendum on the French Constitution was a defining point where the people in New Caledonia voted, for strategic reasons, to retain the territorial status with the understanding that this would not preclude future autonomy and that the delegated autonomy under the existent "loi cadre" (so called Reform Act passed by the French National Assembly on 23 June 1956, named after overseas minister Gaston Defferre) would continue. Notwithstanding the promise, such delegated autonomy was reversed in 1963 through the adoption of the "loi jacquinot" law.

This reverse delegation of power in Kanaky was led by French High Commissioner Laurent Péchoux, who had previously implemented similar actions in Côte d'Ivoire. With support from Premier Minister Michel Debré, Péchoux began in 1959 to systematically strip away the self-government powers New Caledonia had gained since World War II. Simultaneously, the commercial exploitation of large nickel deposits spurred European migration, leading to demographic shifts and social tension between the indigenous Kanaky people and French settlers. The 1988 UN publication on Decolonization highlighted France's retreat from its commitment to enhance the territory's autonomy.

With internal support for self-government growing, including independence demands from the indigenous Kanaks, France responded with further dependency reforms through the enactment of the Stirn Statute in 1976 increasing the government Council to seven members providing some internal administrative responsibility. However, the arrangement did not alter, nor was it the intention to alter, the unilateral power of France.

In 1981, faced with increasing Kanak dissatisfaction and escalating tension and violence, the French enacted another series of measures in order to broaden Kanak participation in the Territory's political and economic life. These measures included so called "fiscal and land reforms" and the French government resumed the power to rule the Territory by decree.

A subsequent roundtable was convened of all political parties in 1983 from which a declaration was adopted (over the opposition of the anti-independence Party), recognizing the “legitimacy of the claims of the Kanak people, first occupants of the territory, including their innate and active right to independence.” This was followed by the adoption by the French National Assembly in 1984 of the Lemoine Statute which “provided internal autonomy for five years to be followed by a ‘self-determination’ referendum, including the option of independence, in 1989.

The 1984 Lemoine Statute was opposed by the Kanaks who disagreed with the five-year delay before a referendum would be held, and who argued that the voter eligibility should be for the Kanaks and selected settlers with at least one parent born in the territory. The settlers, on the other hand, disagreed that independence should be on offer at all. The result of the stalemate was a decided non-participation in the elections by the indigenous Kanaks which resulted in the anti-independence party gaining 34 of the 42 seats in the enlarged territorial Assembly. Alternatively, the Kanaks established its own provisional government at the end of 1984, called for an annulment of the territorial Assembly election, and reiterated its call for the vote to be limited to the Kanaks. Civil protest forced the referendum date to be brought forward to 1985.

France attempted to fashion yet another plan of dependency (Pisani Plan) which offered a referendum to be held in September 1985 with a three years residency requirement for voting. The two political status options offered were 1) independence in close association with France or 2) continued French administration of the Territory under a revised statute of ‘autonomy.’ The first option was a re-worked colonial variant whilst the ‘conditional independence’ option was designed to create a semi-sovereign state with a mandatory association with France, in perpetuity. Both options would secure French control of defence and security. Unsurprisingly, the Pisani Plan was rejected, and France responded with the declaration of a state of emergency with the dispatch of thousands of additional troops to the territory. France proceeded with further unilateral dependency reforms to address the crisis created by the settler colonial construct.

In April 1985 the French Government postponed the referendum for two years, dissolved the Territorial Assembly and established, for a 30-month transitional period, four regional Councils and a new 46-member Territorial Congress, as well as an advisory body in which all representatives of the regional councils would participate.

Elections were held in September 1985 for the new political bodies and a number of steps were taken by France in response to the challenging Kanak economic and social conditions emanating from colonial governance. However, the following year in 1986 the new center - right government in France began eroding the arrangements established under the previous French Socialist Government with initiatives such as the redistribution of land without consideration of native land claims. This resulted in over two-thirds of the land going to European settlers. The new French Government reversed the powers that had been delegated to the regional councils created the previous year and transferred the authority to the settler-dominated territorial Congress.

A subsequent 1987 law provided for a referendum between the options of (conditional) independence and the status quo dependency status with a three-year residency requirement for participation. Disregarding the machinations, the UN General Assembly adopted its resolution

41/41 in 1986 to re-inscribe New Caledonia on the UN list of Non-Self-Governing Territories which opposed by France.

As in the case of previous French referendum proposals, the available options were deficient in number and substance even in the face of customary international law which had defined in 1960 the legitimate options of independence, free association and integration, and which had eschewed the legitimacy of the status quo dependency relationship. However, the French-proposed referendum in 1987 offered continued colonial status as an alternative in keeping with the French policy of colonial legitimization. The Front de Libération Nationale Kanak et Socialiste (FLNKS) pro-independence alliance of political parties called for a boycott of the 1987 referendum, and the South Pacific Forum (SPF) comprised of the independent States of the Pacific region, in its 1987 Communiqué, rejected the planned referendum by France.

France went ahead with the 1987 referendum amid a climate of fear which saw additional French security forces posted around the territory, the banning of political demonstrations, and the promised Kanak non-participation in the vote. Clashes occurred between opposing forces including a dramatic hostage crisis on the eve of the presidential elections in France. This resulted in a dawn raid by indigenous nationalists on the gendarmerie at Fayaoué on Ouvéa Island, a French military assault and the killing of nineteen indigenous Kanaks and four gendarmeries, with three additional Kanaks killed whilst in French custody. Emerging from the events was increasing Kanak “anger and resentment. As evidence accumulated to suggest that some militants had been killed after their capture.

In the wake of the discredited 1987 referendum, yet another statute was drafted and unilaterally applied to the territory by France in January 1988 to be given effect in the Spring of that year following territorial elections without Kanak participation and French presidential elections. The new Statute was yet another venture into dependency reform.

Under the Statute, France retained responsibility for foreign relations, currency, defence, maintenance of law and order, justice, and secondary and higher education, while the Territorial government exercise(ed) authority over the organization of public services, primary education, scholarships, regulation of prices and trade and import restrictions.

Matignon Accords

The 1988 French Statute established an Executive Council, a Congress, a Customary Assembly, and other political structures. The Matignon Accords were signed in June 1988 between the Kanaks, French settlers, and the French Government to reduce tensions, with provisions for a ten-year period of institutional and economic development and amnesty for the Ouvéa cave hostage incident.

Provincial Structure: The territory was divided into three provinces: the South, the North (on Grande Terre), and the Loyalty Islands. Each province had its own Assembly responsible for local matters, while the Territorial Congress handled broader issues like the budget and education.

Customary Councils: To safeguard Kanak tradition, eight customary regions were established, each with its own Consultative Customary Council, along with a Territory-wide Customary Council.

Political Parties: The main political groups were the RPCR (Rassemblement pour la Calédonie dans la République), which favored retaining ties with France, and the FLNKS, which sought independence. Elections were held in 1988, with RPCR controlling the South Province and FLNKS controlling the North and the Loyalty Islands.

Self-Determination Referendum: The Matignon Accords included a provision for a self-determination referendum in 1998, after a decade of development aimed at achieving equitable economic distribution and improving Kanak participation in the economy and government.

French Opposition to Sovereignty: In 1996, French Minister Jean-Jacques de Peretti expressed opposition to New Caledonia's independence, raising concerns about whether France could conduct a fair self-determination process. He emphasized the importance of maintaining ties to France for strategic reasons.

FLNKS Response: FLNKS President Rock Wamytan argued for Kanak sovereignty and independence, asserting the Kanak people's right to self-determination as recognized by the UN. He called for a gradual transfer of powers from France to a sovereign New Caledonia.

RPCR's Position: RPCR President Jacques Lafleur stated that belonging to France was non-negotiable, emphasizing a different view of emancipation that did not include independence.

UN Role and French Reservations: France questioned the UN's competence to discuss New Caledonia, arguing that Article 73 of the UN Charter did not apply to the territory and that the issue was within France's domestic jurisdiction.

Nouméa Accords

An agreement signed in May 1998 to follow up on the Matignon Accords of 1988. It provided for a twenty-year transition period and committed France to transfer various governmental responsibilities to New Caledonia, except for sovereign powers.

Referendum on Full Sovereignty: Scheduled between 2014 and 2018, the Nouméa Accord outlined a referendum on the political future of New Caledonia.

French Responsibility: France retained control over areas such as diplomacy, defense, and law and order.

Kanak Identity: The Accord recognized Kanak identity and culture, establishing customary councils and a Senate with consultative roles.

Voter Eligibility: The issue of voter eligibility for the referendum became a point of contention, particularly regarding residency requirements that were perceived as favoring the pro-French settler group.

Political Concerns: Indigenous Kanak people expressed concerns about their exclusion from the power transfer process and underrepresentation in governmental structures.

Referendum Outcomes: The referenda held in 2018, 2020, and 2021 showed increasing support for independence, though the third referendum was boycotted by Kanak leaders due to concerns over the process.

Pursuant to its unilateral authority over New Caledonia under the existent colonial status, France proceeded to hold the poll on 12th December 2021 despite Kanak objections owing to the impact of the ongoing Covid 19 pandemic in the territory that had caused a high number of illnesses and fatalities among the Kanak population. A twelve-month mourning period was declared in the indigenous Kanak community in accordance with cultural grieving customs, and France was requested to postpone the referendum for several months since an effective referendum campaign and subsequent voter turnout was not possible. France declined to change the date and the Kanaks proceeded with a formal 'non-participation' in the third referendum. The results of the 12th December 2021 farce referendaire were unsurprising in view of the official decision of non-participation by the Kanak political leadership. This significantly reduced the voter turnout to 43.9 per cent compared to a turnout of 81 per cent in 2018 and 85.7 per cent in 2020 where the difference between the yes and no votes was less than 10,000 votes.

With the successful non-participation in the vote, the results are being referred to as the "non vote," of a 'farce referendaire.' The French refusal to delay the third referendum revealed its insensitivity to and disregard for the cultural traditions of the Kanak people in favour of a perceived superiority of Frenchness consistent with the longstanding French assimilationist posture.

On a visit to the territory in July 2023 French President Macron rejected the widespread, sustained opposition to the farce referendaire of 2021 and instead announced efforts to address the pervasive economic and social inequality through a rebuild of the economic and social models of New Caledonia with a new dependency Accord. This was in contravention of the proposed FNLKS political agreement tabled in April 2023 to move the process forward consistent with a genuine process of self-determination.

The FNLKS proposal was not taken up by France which, instead, circulated its own proposal in September of 2023 for a new statute to replace the Nouméa Accord reflecting French insistence on adhering to the 'results' of the farce referendaire of 2021, and with the aim of altering the demographic balance of the territory so that, in the long term, the Kanak population will be increasingly in the minority. Changes to the French constitution were proposed to give effect to this initiative. According to this project, residents who have been living in New Caledonia for ten years would be registered on the special electoral rolls, without the consensual agreement of the local stakeholders, in particular that of the FLNKS. The settler colonial project has entered

its new phase. These maneuvers prompted mass public demonstrations and resistance by the people.

To facilitate the adoption of the proposed changes, the French National Assembly voted to postpone elections for New Caledonia's assemblies and Congress scheduled for May 2024 in anticipation that a new expanded voting roll would be in place. This was "designed to give time for the French government to open up the electoral rolls to more French voters, by relaxing residency rules on who can vote in local elections.

The French National Assembly and Senate began debate on constitutional changes in the Spring of 2024 to give effect to the results of the farce referendaire as the next step in the projected process leading to a modernised dependency model. The constitutional changes were subsequently adopted by both Houses of the French Parliament despite vociferous opposition and intense lobbying by Kanak parties.

The next step in the French legislative process would have been the scheduling of the required joint sitting of both houses of the French Parliament (Congress of Versailles) to amend the French Constitution to reflect the changes. This is intended to add "some 25,000 extra voters to electoral rolls for the three provincial assemblies and the national Congress (constituting) a potential increase of 15 per cent in the number of people defined as New Caledonian citizens...(and) allowing larger numbers of recent settlers to vote...(thus... shift(ing) the electoral balance away from indigenous Kanak voters. The intended effect of the constitutional change would be to dilute the pro-sovereignty electorate in favour of a modernised colonial arrangement openly preferred by Paris throughout the referendum process.

Resistance to the French annexationist maneuvers took the form of mass civil demonstrations in the streets of the territory and a militarised reaction from the French colonial power which dispatched several thousand additional heavily armed French marines and gendarmes to the territory. Such militarisation of the territory was revelatory, and consistent with the new French plan to station additional French armed forces in the territory. This is violative of longstanding UN General Assembly resolutions which prohibit the use of NSGTs for military purposes, and which have called for these military bases in NSGTs to be removed. 84 Interestingly, in a bid to garner regional support for further French militarisation in the region, the promise was made to Pacific states for the creation of a New Caledonia-based 'Pacific Academy' to train soldiers from Pacific countries.

An apparent attempt to deflect France's responsibility for the crisis by pushing a foreign interference narrative was regarded in the territory as an insult to the Kanak people. This had taken the form of accusations by the French Interior Minister Gérald Darmanin who inexplicably accused Azerbaijan of foreign interference in the French colony some 14,000 km away from its shores. In effect, Azerbaijan's concentration on the vagaries of contemporary colonialism globally is consistent with the global focus on its eradication in the present fourth international decade and is commendable in view of the slow progress in bringing an end to colonialism in all of its forms and manifestations as called for by the UN General Assembly. In an official statement, the Azerbaijan Ministry of Foreign Affairs urged France "to stop the smear campaign"

(and) to focus attention on France’s failed policy towards the overseas territories that led to such protests.”

University of Papua New Guinea Political Science Teaching Fellow Patrick Kaiku regarded the French attempts at blaming distant countries for their own colonial failures, coupled with its forced shutdown of TikTok in the territory during the resistance, as “unnecessary noise” to drown out the legitimate concerns of Kanaks. Amnesty International expressed its concern that “the state of emergency declared by the French government and the deployment of the French army, coupled with a ban on the social media app TikTok, must not be misused to restrict people’s human rights.”

A lasting solution to the political crisis in New Caledonia is uncertain at the midpoint of 2024 as the position of continued or enhanced colonial reform favoured by France and its supporters in the territory continue to be at odds with the mainly indigenous Kanaks who support a genuine decolonisation process leading to full sovereignty.

As of mid-June 2024, the United Nations Special Committee on Decolonisation was discussing the “Question of New Caledonia,” with a recommendation for a visiting mission to the territory in light of the disturbing events. The Baku Initiative Group fully endorses this recommendation and views it as both essential and urgent.

French Polynesia Case

French Polynesia, as a French overseas territory, holds a unique status known as “*sui generis*.” Unlike traditional colonies or overseas departments, it enjoys a certain level of autonomy. The islands have their own administration and legislative assembly, granting them some self-governance. However, foreign policy, defense, and the legal system remain largely under French administration.

In recent years, there has been a notable movement advocating for increased autonomy or even independence for French Polynesia. Despite this, the French government has not displayed significant enthusiasm for granting the territory greater freedom or independence.

French Polynesia was administered by a series of French officials and missionaries dispatched by the government. However, a significant and controversial chapter in its history unfolded during the mid-20th century when the French government conducted nuclear weapons testing in the region. Between 1966 and 1996, these tests took place on the islands of Moruroa and Fangataufa. Unfortunately, these experiments had severe consequences for the local ecosystem and exposed inhabitants to high levels of radiation. Criticism has been directed at the French government for its perceived failure to adequately protect the population and address the harm caused by these tests.

The impact of the French nuclear testing program on French Polynesians was profound. Numerous cases of radiation-related illnesses, including cancer, emerged, and the delicate ecosystem suffered

severe damage. Unfortunately, the French government's response was inadequate, leaving affected individuals without proper care or compensation. Criticism has been directed at the government for its failure to adequately monitor the health of the local population and provide necessary medical support.

Furthermore, those living in proximity to the testing sites were not adequately compensated for the harm caused by the nuclear experiments. Many lost their homes and livelihoods, and the French government has faced criticism for its insufficient compensation efforts. To this day, French Polynesia remains divided over the legacy of the nuclear testing program, with many advocating for increased compensation and acknowledgment of the harm inflicted by these experiments.

In summary French Polynesia's history is indeed complex, shaped by colonization and its far-reaching effects on the local population and way of life. From the earliest Polynesian settlers to French colonization, the French Nuclear Testing Program, and the present status as a French overseas territory, the region has undergone significant transformations. Unfortunately, native culture and ecology suffered during this process, and the health of the surrounding community was adversely affected by the French nuclear testing program.

Moreover, the current political landscape presents additional challenges.

For Ma'ohi Nui (French Polynesia), the non-self-governing nature of the political status remained intact in the wake of the 1958 referendum on the French Constitution and its entry into force. Since the territory had been prematurely de-listed by France from the UN list of NSGTs in 1947 there was no formal international process to examine and conform the prevailing colonial status of the territory.

The 2013 Self-Governance Assessment of French Polynesia summarized activities over the succeeding two decades from the 1958 referendum. For the next 19 years, a greater measure of autonomy requested at various times by the elected territorial Assembly was denied by the French, while several pro-independence parties emerged. Finally, in 1984 some measure of additional local powers was delegated to the territory, but the final decision-making power remained with the French.

Particular areas of competency were assigned from the French to the territorial government in 1996 through revisions to the French Statute of Autonomy in place during the period (encompassing)...delegated (and reversible) competencies which included the exercise of responsibility for the territorial budget, health, primary education, social welfare, public works and agriculture, along with an increased role in external affairs. As the result of (the French) 2003 constitutional review, the status of the territory was re-designated as an Overseas Collectivity without altering the power relationship between the territory and the cosmopole.

Further delegation of limited powers continued incrementally. Culminating in a 2003 revision in the French constitution (Article 74) which recognized only the local powers of the French territories, and unilaterally subordinating the interests of the inhabitants to the overall interests of the French Republic. This has made the realization of self-determination for French Polynesia even more difficult since - unlike the Noumea Accord for New Caledonia - the autonomy statutes for French Polynesia do not lead to a self-determination process at the end of a transitional period.

The incremental delegation of some powers to the elected government did not constitute a process of self-determination.

The 2004 Statute of Autonomy of French Polynesia (as later amended) was subsequently adopted by the French Parliament as Organic Law 2004-192, and which set forth the current elaboration of Article 74 of the (French) Constitution. As it specifically applies to the dependency governance arrangement with certain delegated competencies put in place for the territorial collectivity of French Polynesia.

The 2004 Statute detailed the prevailing political relationship between the territory and the cosmopole.

In its review of the political and constitutional evolution of the territory, the annual UN Working Paper on French Polynesia for 2024 pointed out that:

The Organic Act No. 2004-192 of 27 February 2004 specified an organization that was different from that under ordinary law and close to an assembly-based parliamentary system. The President of French Polynesia has a representative function, directing the actions of government and administration, and promulgating local “country laws” (lois du pays). The Government of French Polynesia, comprising between 7 and 10 ministers, is responsible for conducting the collectivity’s policy. The collectivity’s deliberative body is the Assembly of French Polynesia, which is elected by direct universal suffrage every five years.

The key findings of the 2013 Assessment provided further elaboration and remain instructive over a decade later through to present day:

The contemporary power relationship between the collectivity of French Polynesia and the French Republic is set forth in the retention of significant and wide-ranging competencies by the cosmopole. The political arrangement is illustrative of a substantial imbalance of power inconsistent with international principles of mutual consent under recognized autonomous governance, and more intrusive than that experienced by a number of territories which have been historically and appropriately classified by the U.N. as non-self-governing.

Of the myriad competencies unilaterally exercised by the French State, the power over the territorial electoral process is illustrative. This includes control of voter eligibility (any French citizen with six months residency) through to the conduct and governance of territorial elections/referenda, confirmation of their results, and power to annul the electoral exercise along with determining eligibility criteria for holding office in the territorial Assembly. Other relevant provisions are specifically referenced in Chapter II of the Autonomy Statute:

Under this authority, there is indication of intervention in the electoral process including the use of ‘restrictive systems of voting registration, the striking down of electoral lists seeking to participate in elections, and pressure from the (French) administration on voters or candidates... Such intervention also includes the 'strategic' setting of electoral constituencies to favour specific political interests including via the establishment of "disparities in the number of votes required to elect an individual representative to the Assembly (Assessment, 2013: 43).

The 2013 Assessment also noted incentives for French citizens from metropolitan France to migrate to the territory having the effect of changing the demographic composition by diluting the percentage of indigenous peoples. Such voter eligibility criteria and encouraged migration “is wholly inconsistent with international standards recognized in relevant resolutions of the U.N. General Assembly which “condemned the policies pursued by certain administering Powers in the territories under their domination,” thus “encouraging the systematic influx of foreign immigrants” which served to circumvent the rights of colonial peoples.

The prevailing 2004 Autonomy Statute also contains severe conditionalities on the conducting of a territorial referendum whereby a request must first be made to the French High Commissioner who can submit it to the French Council of State to determine whether the request would be accepted by France. If deemed acceptable, a referendum could be held pursuant to the Electoral Code written and regularly amended by France. On this basis, the lack of authority for territorial regulation of the electoral system, and the inability to determine the laws and regulations governing that system, have been historical impediments to elections free of external interference from the cosmopole.

An example of interference in the inalienable right to self-determination was seen in the statement of the French President in 2010 indicating that independence for French Polynesia was a “red line that may not be crossed.” This was the same year that public pronouncements were made by the French President in the run-up to the 2010 referendum in Martinique and Guyane that economic and social benefits would be reduced if the change was made from integrated DOM status to ‘autonomous’ collectivity status. The 2024 UN Working Paper on French Polynesia illustrated the complexity of the external interference in the electoral system which had the (intended?) effect of electing a President accommodative to the status quo dependency arrangement:

(The French adopted) two Organic Acts (No. 2007-223 of 21 February 2007), abolishing the electoral rule whereby additional seats were attributed to the party having won the majority of votes; and No. 2007-1720 of 7 December 2007 on introducing motions of no-confidence) failed to remedy; it should be noted that 11 Governments succeeded one another until 2013. In 2011, a new Organic Act (No. 2011-918 of 1 August 2011) on the functioning of the institutions of French Polynesia was adopted to restore stability. That Act modified the electoral process by re-establishing the electoral rule, previously abolished, whereby 19 seats were attributed to the party having won the majority of votes, and by creating a single electoral constituency; it also set a limit on the number of ministers and the possibility of overthrowing the Government. That Act has been implemented since the territorial elections held in May 2013 (United Nations, 2024: 5).

Overall, it is to be emphasized that the 2004 Autonomy Statute of French Polynesia delegated only a degree of limited and reversible internal authority but did not fundamentally change the non-self-governing status of the territory since the key levers of political power and decision-making authority remain with the French Republic to present day. As the UN Working Paper emphasized:

According to the French government portal for collectivities, despite its special institutional organization, French Polynesia does not have political autonomy; However, it does enjoy administrative autonomy and is subject to specific (French) legislation (UN, 2024: 5).

Accordingly, whilst the Assembly of French Polynesia has the statutory authority to adopt ‘country laws’ (lois du pays) in accordance with its delegated competencies, such laws can be appealed to the French Council of State which can repeal them. This confirms the continued unilateral decision-making authority of France and is illustrative of an autonomy which is only administrative in nature. The revelation of the lack of genuine political autonomy was an important finding of the 2013 Self-Governance Assessment which contributed to the substantive evidence favoring the reinscription of French Polynesia on the UN List of NSGTs in 2013– despite the vociferous opposition of France. The 2024 Analysis for Preparation for Self-Government (PSG) prepared after a decade of UN inscription drew relevant conclusions regarding the future of the decolonization of the territory:

France as the administering power of the territory remains out of compliance with its international legal obligations under the UN Charter. Such obligations include Article 73b of the UN Charter to advance Ma’ohi Nui (French Polynesia) to the Full Measure of Self-Government, and Article 73e to provide the UN with requisite information on the territory to the UN on an annual basis. Instead, the focus of effort for over a decade since the reinscription has been an attempt by France to gain international legitimacy of the prevailing status which has already been judged by the UN as non-self-governing;

The French internal reforms have not altered the dependency status of the territory. This lack of French engagement with the UN on the decolonization of Ma’ohi Nui (French Polynesia) contributes to the limited implementation of the UN decolonization mandate under the UN Charter and the relevant resolutions called for in UN resolutions on the territory. The implementation deficit of the decolonization obligations of the UN itself has been the theme of consistent concern in diplomatic and academic circles from the first through the present fourth UN International Decade for the Eradication of Colonialism (IDEC);

To this end, implementation is the key component necessary to thaw the decolonization mandate for territories such as Ma’ohi Nui (French Polynesia) and others similarly situated, and in so doing thwarts the dependency legitimization stratagem being perpetuated by the contemporary colonial powers which continue to govern contemporary colonial arrangements with virtual impunity into the 21st Century;

The election of a government committed to the genuine self-determination of Ma’ohi Nui successfully challenges any degree of legitimacy (ascribed to) the French contention that the people of the territory favour the existent contemporary colonial status. The final determination on internal reforms in Ma’ohi Nui (French Polynesia) lies with France which determines the nature of the dependency arrangement. Of course, these internal reforms do not constitute decolonization even as they may be projected as efforts to make the status quo dependency arrangement more palatable to the international community;

Only a genuine decolonization process overseen by the UN would advance the territory to the full measure of self-government under international law. The General Assembly never intended that the territorial status should be re-defined as a legitimate form of democratic governance since that would constitute an endorsement of permanent political inequality. At best, dependency reform

measures are understood as part of the process of capacity building and preparatory to the achievement of full self-government - not its embodiment.

Self-determination is a fundamental right recognized globally. It is considered a jus cogens norm, meaning that all members of the international community are obligated to respect and uphold it for the benefit of all peoples, regardless of their colonial status. French Polynesia, a non-self-governing territory, holds special significance in discussions about self-determination due to its colonial history. France has a fiduciary duty to facilitate decolonization by promoting political, economic, social, and educational advancement in these territories.

Under international law, France is failing in its duty to protect and ensure self-determination for the people of French Polynesia. Its assertions of control – no matter how indirect or paternalistic – have the effect of impeding local development to the detriment of many French Polynesians. In particular, given the longstanding situation of colonial dependence the solution to these ills may not be as straightforward as immediate independence. Careful evaluation and progressive steps are needed to allow for a successful transition to full self-government. Allowing such processes to occur in good faith would bring France more into line with its obligations as an administering authority under international law.

Conclusion

As the Baku Initiative Group, we seek the implementation of several crucial actions concerning New Caledonia and French Polynesia case.

Call for an Independent Review of the 2021 Referendum: The Decolonization Committee could advocate for an independent international body to review the legitimacy of the 2021 referendum. This review should assess the impact of the COVID-19 pandemic on the Kanak population and whether the referendum was conducted fairly.

Postpone the Constitutional Changes: Urge France to halt the constitutional changes and the expansion of the electoral rolls until a genuine consensus is reached with the indigenous Kanak leadership and other local stakeholders. The aim should be to ensure that any changes reflect the will of the people of New Caledonia, especially the indigenous Kanak population.

Demand Demilitarization: The Committee should push for the withdrawal of additional French military forces from New Caledonia. This militarization violates UN resolutions and exacerbates tensions. A focus on non-violent conflict resolution and the protection of human rights should be prioritized.

Support a UN Visiting Mission: Endorse the recommendation for a UN visiting mission to New Caledonia to assess the situation on the ground. This mission should include discussions with a wide range of local voices and provide an impartial report on the political, social, and economic conditions in the territory.

Advocate for Genuine Decolonization: Reaffirm the right of the Kanak people to self-determination, as recognized by international law. The Committee could emphasize that any process leading to a new political status for New Caledonia must be rooted in the principles of decolonization, rather than maintaining or modernizing colonial structures.

These actions could contribute to addressing the end of French colonialism and ensure that the voices of the indigenous Kanak people are heard and respected in determining the future of New Caledonia.

Recognition and Promotion of Self-Determination: Call for to push for the full implementation of the right to self-determination for the people of French Polynesia. This includes urging the French government to engage in a genuine decolonization process, overseen by the United Nations, to move the territory toward full self-government.

Addressing Historical Injustices: We call for reparations and compensation for the harms caused by French nuclear testing in the region. This could involve financial compensation, health care for those affected by radiation exposure, and environmental rehabilitation.

Ending External Interference: The Baku Initiative Group demand that France to cease its interference in the electoral process and other internal affairs of French Polynesia. They might call for reforms to ensure that the political and electoral processes are free from external influence, allowing the people of French Polynesia to make decisions about their future without outside pressure.

International Advocacy: We call international community to raise awareness and garner international support for the cause of French Polynesia's self-determination. This might include lobbying at international forums like the United Nations to ensure that the situation in French Polynesia receives the attention it deserves.

We advocate for a path that allows French Polynesia to achieve genuine self-determination, address the legacy of colonialism and nuclear testing, and ensure that the territory's political processes are free from external interference.