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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya**

### **Addendum**

### **The situation of Kanak people in New Caledonia, France\***

#### *Summary*

The Special Rapporteur on the rights of indigenous peoples, James Anaya, conducted an official visit to New Caledonia, a sui generis collectivity of France, from 6 to 13 February 2011, where he visited North Province and South Province on the main island of New Caledonia, as well as Loyalty Islands Province. He met with representatives of the Government of France, officials of the Government of New Caledonia, municipal authorities, members of several Kanak communities and their authorities, including chiefs and customary councils, representatives of a number of Kanak organizations, members of political parties, labour unions, various civil society organizations and mining interests. He also conducted a visit to Paris from 22 to 24 June 2011, where he met with French officials to further discuss the situation of indigenous peoples in New Caledonia.

The present report is based on information provided to the Special Rapporteur during his visits, as well as on written submissions and independent research. The Special Rapporteur makes a number of observations and recommendations, in light of relevant international standards, to assist with ongoing efforts to advance the rights of the Kanak people in the context of the implementation of the Nouméa Accord and the United Nations-supported decolonization process.

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\* The summary is being circulated in all official languages. The report, which is annexed to the summary, is being circulated in the language of submission and in French only.

## Annex

### Report of the Special Rapporteur on the rights of indigenous peoples on the situation of Kanak people in New Caledonia, France

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## I. Introduction

1. The present report examines the human rights situation of the Kanak people of New Caledonia, a *sui generis* collectivity of France.<sup>1</sup> It is based on information provided to the Special Rapporteur during his visits to New Caledonia from 6 to 13 February 2011 and to Paris from 22 to 24 July 2011, written submissions provided to the Special Rapporteur and independent research. The visits were carried out with the cooperation of the Government of France and the authorities and indigenous leaders in New Caledonia.

2. During his visit to New Caledonia, the Special Rapporteur visited North Province and South Province on Grand Terre, the main island of New Caledonia, as well as Loyalty Islands Province. On Grand Terre, he visited the communes of Nouméa, Koné, Poro, Thío, and Sarraméa, and in the Loyalty Islands, the islands of Lifou and Ouvéa. He met with representatives of the French Government, including the High Commissioner, subprefects (*sous-préfets*) of North and Loyalty Islands provinces, and the judge of the court established in Lifou. He also met with officials of the Government of New Caledonia, including the President, Vice-President and cabinet members, the First and Second Vice-Presidents of Congress, the full Customary Senate (*Sénat coutumier*), representatives of the Rural Development and Land Planning Agency (ADRAF), Presidents of the Provincial Assemblies in North, South and Loyalty Islands provinces or their deputies, Mayors of Koné and Maré, and a representative of the Mayor's office in Nouméa.

3. The Special Rapporteur was pleased to have been received by, and have the opportunity to meet with, the authorities and members of several Kanak communities, including the chiefs and customary Councils (*Conseils coutumiers*) of Ajië Aro, Hoot ma Waap and Paici-Camuki. He also met with representatives of a number of Kanak organizations, including the Conseil national pour les droits des peuples autochtones (CNDPA); neighbourhood associations in the communities of Montravel, Tindu and Nouville in the commune of Nouméa; the Comité de revendication indigène (CRI); the Association des 33 communes; the Groupe dynamique autochtone LKS; the Union nationale du peuple Kanak (UNPK); the Association de la renaissance culturelle; several Groupements de droit particulier local (GDPLs); women's councils in North and Loyalty Islands provinces; and several associations representing Kanak youth. The Special Rapporteur met with members of political parties, namely the Front de libération nationale kanak socialiste (FLNKS) and the Parti travailliste (PT); labour unions, including the Union des syndicats des travailleurs Kanak et des exploités, the Confédération nationale des travailleurs de la Pacifique, the Syndicat autonome des policiers de Nouvelle-Calédonie; the revenue services of New Caledonia; the Union des groupements de parents d'élèves (EGPE) and environment protection associations, including Corail vivant, Réveil quotidien and Sauvegarde de la nature néo-Calédonienne. Finally, the Special Rapporteur spoke with representatives of the Koniambo and Vale-New Caledonia mining interests, and visited the Camp Est prison facility in Nouméa.

4. In Paris, the Special Rapporteur was pleased to be received by Marie-Luce Penchard, Minister in charge of the Overseas Territories; the adviser to the Prime Minister on overseas issues; Pierre Frogier and Maurice Ponga, members of the French National

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<sup>1</sup> New Caledonia is the only overseas territory of the Republic of France with this special status, which reflects its path toward autonomy, including the progressive and irreversible transfer of governmental responsibilities from the Government of France to the New Caledonia Government (see Ministère de l'Outre-Mer) and the creation of New Caledonian citizenship (see Organic law no. 99-209 of 19 March 1999 concerning New Caledonia, art. 4).

Assembly and the European Parliament for the New Caledonia constituency, respectively; Vincent Bouvier, Delegate-General for the Overseas Territories; and Nicolas de Rivière, Director for United Nations and international organizations at the Ministry of Foreign Affairs. The Special Rapporteur also had the opportunity to interact with members of the National Consultative Commission on Human Rights (CNCDH) and the General Secretary of the Inspector General of Detention Facilities. Finally, a visit to New Caledonia House and to Quai Branly Museum (dedicated to indigenous art) was also organized.

5. The Special Rapporteur would like to thank the Kanak communities visited for their generous hospitality. He is also grateful to the officials in France and New Caledonia, especially the members of the Customary Senate, for their assistance in organizing and facilitating the visit to New Caledonia, and to the French officials for their cooperation and assistance for the visit to Paris.

## II. The Kanak people

6. The indigenous people of New Caledonia are the Kanak people. They are one of the ethnic Melanesian groups that inhabit a number of islands across the South Pacific. Kanak social organization is traditionally based around clans, the members of which share common ancestry and geographic origin. Historically, and to a significant extent still, the Kanak people have relied on fishing, gathering, and agriculture, although today, many are employed and seek economic opportunities in the market economy. Kanak clans identify as either “land” or “sea” clans, based on the original location and occupation of their ancestors.

7. France claimed possession of New Caledonia in 1853, beginning a period of violent confrontation in which Kanak clans were forcibly displaced and lost large areas of land. The Kanak were moved onto indigenous “reserves” and came under the indigenous regime (*régime de l'indigénat*), a legal structure that, among other restrictions, prohibited the Kanak from leaving the reserves without permission. During this period, France actively settled New Caledonia, first by establishing a penal colony for prisoners who, upon completion of their sentences, were each given land, then by encouraging settlement by Europeans, and bringing in labourers from Asia. The Kanaks struggled against colonization in a series of bloody battles but by 1920, overpowered by the military and decimated by disease, the Kanak population had dropped to just 27,000 from around 60,000 at the time of European contact. After the Second World War, France abolished the Indigenous Code (*Code de l'Indigénat*) and granted French citizenship to the Kanak.

8. According to the Government of France, census data collected in 2009 placed the the Kanak population at 99,078, which is just over 40 per cent of the total population of New Caledonia. The Kanak are unevenly distributed among the three provinces, constituting, according to the 2009 census data reported by France, 94 per cent of the Loyalty Islands Province, 74 per cent of North Province and 27 per cent of the more densely populated South Province. These percentages are thought to be similar today.

9. While constituting the largest population group in New Caledonia, the Kanak live in relatively poor socio-economic situations (see para. 49 below). In recent years, a number of initiatives have emerged to address the disadvantaged conditions faced by the Kanak people as a result of colonization, and points of consensus have emerged among the various Kanak and non-Kanak sectors of New Caledonia society, and in France, about the future of the territory. While these hold some promise of improved conditions for the Kanak people and for overcoming the entrenched legacies of an oppressive colonial past, obstacles remain to the full enjoyment of their human rights.

### III. The Nouméa Accord

10. Significant consensus on how to build New Caledonia's future and address the inequities faced by the Kanak people is represented by the Nouméa Accord. This framework agreement defines the status of the relationship between New Caledonia and France, created the current government institutions in New Caledonia and advanced the territory along its present path to decolonization. Signed in 1998 between the Government of France, the New Caledonia pro-independence coalition (FLNKS) and the New Caledonia pro-unity movement (RPCR<sup>2</sup>), the Nouméa Accord has broad support from both Kanak and non-Kanak people in New Caledonia. It became law through its incorporation into the French Civil Code by Organic law no. 99-209 of 19 March 1999 concerning New Caledonia, and the related amendment of the French Constitution. The Nouméa Accord builds on the landmark peace agreement, the Matignon Accord signed in 1988, which brought an end to violent confrontations that took place in the 1970s and 1980s that surrounded responses to the Kanak nationalist movement led by the FLNKS.

11. The Nouméa Accord of 1998 is often cited for the principles laid out in the preamble, which acknowledge the Kanak people as the original indigenous inhabitants of the territory, describe the devastation wrought by the early stages of French colonialism and its lasting effects on Kanak identity and well-being, and describe the waves of migration that populated New Caledonia. The Accord prescribes a shared future in which the Kanak people, the French settler communities and others living in New Caledonia have equal rights to reside in the country. The Special Rapporteur found that this basic framework – while described by many individuals as a compromise of political necessity – has been broadly embraced as the foundation for the future of New Caledonia. Within this framework, the Accord recognizes Kanak identity and customary institutions, along with certain measures to advance Kanak cultural expression. It further provides an impetus for economic investment and capacity building in the less populated and more impoverished, mostly Kanak North and Loyalty Islands provinces, in order to “rebalance” the country.

12. More comprehensively, the Accord establishes the process for the gradual decolonization and self-determination of New Caledonia. This includes the irreversible transfer of governmental functions from France, except for certain reserved powers,<sup>3</sup> to government institutions representative of and controlled by the people of New Caledonia, and a timeline for a referendum on the question of independence of New Caledonia from France, to be held during the fourth five-year congressional term following the signing of the Accord – between 2014 and 2019. The referendum will address whether the reserved powers should also be transferred to New Caledonia; whether New Caledonia should become an independent State, with the responsibilities thereof; and whether Caledonian citizenship should become Caledonian nationality. In the event of a vote against full independence, the Accord provides for annual referenda in the subsequent two years, after which, if there is no vote in favour of independence, the partners will meet to decide on the way forward.<sup>4</sup>

13. Under the Nouméa Accord, New Caledonian citizenship gives the right to vote in special elections such as the upcoming independence referendum. Citizenship is premised on residence prior to the signing of the Matignon Accord in 1988. Issues concerning electoral rolls are addressed further in section V below.

<sup>2</sup> Rassemblement pour la Calédonie dans la République.

<sup>3</sup> These are related to administration of justice, maintenance of public order, security and defence, nationality, currency and budgeting, and international relations.

<sup>4</sup> Nouméa Accord, sect. 5.

#### **IV. Rights of the Kanak in the context of decolonization and international protections for indigenous peoples**

14. With the Nouméa Accord, New Caledonia is advancing in a process that falls within the United Nations decolonization regime. The General Assembly (resolution 65/113) welcomed the developments that have taken place in New Caledonia further to the Nouméa Accord. The Accord provides the domestic framework for the process by which decolonization will take place. It explicitly embraces Kanak indigenous identity, but also affirms the legitimacy of the presence of the French and other groups in the territory.

15. At the same time, the Kanak people benefit from specific international protections for indigenous peoples which find expression in the Declaration on the Rights of Indigenous Peoples; these protections buttress and complement the key principles of the Nouméa Accord. France, along with an overwhelming majority of United Nations member States, voted in favour of the Declaration when it was adopted by the General Assembly on 13 September 2007. While the Declaration envisages primarily the rights of indigenous peoples in the context of independent countries, its principles apply with equal force in New Caledonia, as acknowledged to the Special Rapporteur by the Government of France.

16. The Special Rapporteur notes the centrality of the right of self-determination to both the decolonization and indigenous rights regimes, self-determination being affirmed as a right of all peoples in General Assembly resolutions 1514 (XV) of 14 December 1960 and 1541 (XV) of 15 December 1960, which promote the decolonization of non-self-governing territories, and as a right of indigenous peoples in particular in the 2007 Declaration. As made evident by the Declaration, the exercise of the right to self-determination by indigenous peoples, such as the Kanak, is not necessarily fulfilled by decolonization of the entire broader territory in which they live alongside others.

17. As New Caledonia prepares for the post-2014 referendum on the status of the territory, it will be crucial for both Kanak and non-Kanak citizens to appreciate that self-determination has many aspects beyond and apart from statehood or the formal political status of New Caledonia as a whole. Having apparently drawn broad support from among the Kanak people, the Nouméa Accord can itself be seen as a step in their exercise of self-determination; and the question of New Caledonian sovereignty that is anticipated by the Accord will fundamentally shape the context in which Kanak self-determination will be expressed in the future. However, the right of the Kanak people to self-determination as an indigenous people, along with other rights affirmed in the Declaration, has distinct significance. Likewise, the affirmation of Kanak identity and the related principles in the Nouméa Accord will continue to resonate with meaning, whatever the decision on sovereignty of New Caledonia as a whole.

#### **V. Human rights issues**

18. The Special Rapporteur is convinced that the Nouméa Accord and the processes it has advanced represent significant steps towards reversing historical trends of oppression against the Kanak and establishing conditions for them with dignity in New Caledonia. Yet it is evident that the Kanak people face ongoing challenges to maintain and develop on their own terms the multiple aspects of their cultural identity, to fully participate in political processes and government, to improve the economic and social conditions of daily life, and to be free from discrimination. The Special Rapporteur heard repeatedly that the Nouméa Accord is not adequately or completely implemented in relation to these issues, and that dominant political actors in New Caledonia and French Government officials do not

adequately understand or respect the contemporary significance of central aspects of Kanak identity, such as customary authority, institutions, and land and resource tenure.

19. The following discussion addresses some of the major human rights issues facing the Kanak people, taking note of positive developments as well as ongoing challenges. It is by no means a comprehensive overview of all the issues they confront or of the information provided to the Special Rapporteur in this regard.

## A. Customary authority and administration of justice

20. A defining aspect of Kanak cultural identity and self-determination is the system of customary institutions and laws that govern relations within and among Kanak clans and communities. Kanak society has several layers of customary authority that derive from historical institutions and their adaptation over time, from the 4,000-5,000 family-based clans to the eight customary areas (*aires coutumières*) that make up the territory.<sup>5</sup> Clans are led by clan chiefs and constitute 341 tribes,<sup>6</sup> each headed by a tribal chief. The tribes are further grouped into 57 customary districts or chiefdoms (*chefferies*), each headed by a Head Chief, and forming the administrative subdivisions of the customary areas. The 1988 Matignon Accord formalized the eight customary areas and their customary councils, which together formed the Customary Council of New Caledonia. The Nouméa Accord converted the Customary Council into the current Customary Senate, with two representatives from each of the eight customary areas, and generally recognized the legitimacy of the customary authorities.<sup>7</sup>

21. This layered system of customary authority is also the basis for the exercise of customary justice – disputes are settled, when possible, by consensus among lower chiefs or headmen, then referred, as necessary, to clan chiefs, tribal chiefs and head chiefs. Under French law, Kanak people are accorded a particular status known as “customary civil status” and with that status may have recourse to customary authorities regarding civil matters such as marriage, adoption, inheritance and some land issues. The Special Rapporteur was informed that the preferred method of resolution for Kanak civil disputes is by the customary system and that the French system typically respects decisions made in the customary system. However, the Special Rapporteur was also made aware of the frustration of customary authorities that their jurisdiction is sharply limited by France, especially in penal matters.

22. Despite the continued functioning of the Kanak customary justice system, “justice” remains one of the “reserved powers” of France, which will not be transferred to New Caledonia before independence. Some efforts have been made to apply or give consideration to Kanak customary law in civil proceedings in State courts. The State provides for customary assessors (*assesseurs coutumiers*) to help judges understand customary law and its role in settling disputes. Assessors may be used when both parties are Kanak, but from different tribes or clans with different customary justice systems, or when Kanak parties choose, for whatever reason, to take their disputes to the State civil court.

23. In practice, a judge can consider the social context in criminal sentencing, including customary justice already applied. However, there is no specific provision in French law to permit the application of customary law in criminal matters. Indeed, elements of the

<sup>5</sup> While each Kanak clan traces its history to a founding myth, the customary areas were created in the 1980s by Law no. 84-821 of 6 September 1984, relating to the status of the territory of New Caledonia, a precursor to the Matignon Accord.

<sup>6</sup> Maison de la Nouvelle Calédonie, *La Population de Nouvelle Calédonie* (2008).

<sup>7</sup> Nouméa Accord, art. 1.2.

customary criminal justice system – including the use of corporal punishment, lack of provisions for the accused to speak in his/her own defence and collective punishment – are not permitted under French penal law and are viewed as inconsistent with France’s human rights obligations. Furthermore, execution of punishments by Kanak authorities under customary law is, in some cases, itself a crime under French penal law. According to information received by the Special Rapporteur, this has created a kind of legal vacuum, whereby the French criminal justice system is viewed by customary authorities as insufficient to correct Kanak offenders, but at the same time, the exercise of customary criminal justice is not permitted under French law. Moreover, as with civil matters, criminal offences are often, as a matter of practice, handled by customary chiefs who follow customary criminal procedure and sentencing.

## **B. Kanak participation in the political arena and governance**

24. Self-determination for indigenous peoples entails, in addition to maintaining their own autonomous institutions of authority, the right to participate fully in the life of the State, as affirmed by the Declaration on the Rights of Indigenous Peoples (art. 5). The Nouméa Accord provides for the establishment of a Congress of New Caledonia made up of representatives of the three provincial Assemblies, with 59 per cent of representatives from South Province, 28 per cent from North Province and 13 per cent from Loyalty Islands Province, reflecting the population distribution.<sup>8</sup> In total, Kanak representatives make up roughly 48 per cent of Congress. It is apparent that most Kanaks support pro-independence political parties affiliated with FLNKS, the national liberation movement of the 1970s and 1980s, while most New Caledonians of European descent favour loyalist or non-independentist parties. Under the Accord, Congress appoints the Government of New Caledonia, also with proportionate representation, led by a chief executive as President of the Government of New Caledonia.

25. Under the framework of the Nouméa Accord, Kanaks also have broader participation in the political life of the territory through the Customary Senate, an advisory body made up of 16 senators, two from each of the eight customary areas of New Caledonia.<sup>9</sup> Congress must consult the Customary Senate on all issues affecting Kanak identity, although in the event of a stalemate between the two bodies, the position of Congress shall prevail.<sup>10</sup> The Customary Senate has the power to propose and call for a vote on new laws related to Kanak identity.<sup>11</sup> In addition, members of the Customary Senate sit on the Economic and Social Council, an advisory body that must be consulted whenever Congress debates any issues of economic or social character.<sup>12</sup>

26. While the Special Rapporteur heard a great deal of support for the Customary Senate, he also heard broad frustration that there is no obligation on the part of Congress to take up proposals made by the Customary Senate, that it lacks binding decision-making powers, and that its ability to support activities is hampered by limited funding. Additionally, Kanak representatives expressed concern that the influence of the Customary

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<sup>8</sup> See Government of New Caledonia, Composition of Congress available at [http://www.gouv.nc/portal/page/portal/gouv/institutions/congres/composition\\_congres](http://www.gouv.nc/portal/page/portal/gouv/institutions/congres/composition_congres).

<sup>9</sup> Senators are selected according to the customs of their constituency, except for the initial selection in 2005, when they were all elected by popular vote. See Organic law no. 99-209 of 19 March 1999, concerning New Caledonia, art. 137.

<sup>10</sup> Nouméa Accord, art. 2.1.4(a).

<sup>11</sup> Organic law no. 99-209 (1999), art. 145.

<sup>12</sup> Nouméa Accord, art. 2.1.4(b).



Senate will be diminished as powers are transferred from France to New Caledonia, and decentralized to provincial and communal authorities.

27. While Kanaks enjoy significant representation in political bodies and through the Customary Senate, their participation at administrative levels of government remains low. Some efforts are being made to address this situation. The “400 cadres” programme for managers, referred to in the Nouméa Accord (art. 4.1.2), has trained between 600 and 750 Kanak management professionals, representing roughly 75 per cent of programme graduates; the programme now requires 80 per cent Melanesian participation. However, increased efforts are needed to ensure Kanak representation in public administration, especially in higher level positions. According to data provided by the Customary Senate, while there are 528 Kanaks in the civil service today (out of a total of 3,660), only 57 are in positions of middle or upper management.

28. A final challenge to Kanak political participation emerges from the voting process. The Special Rapporteur was informed that as many as 1,500 Kanaks, for a variety of reasons, are not registered on the proper electoral list. The Special Rapporteur notes with approval the efforts underway to rectify this situation in order to ensure that all Kanak citizens can exercise their right to vote, not only in the post-2014 referendum, but in all national and provincial elections. Voting rights are also hampered by regulations requiring citizens to vote in the province in which they are registered. Many Kanaks who are registered to vote in North or Loyalty Islands provinces have migrated to greater Nouméa, and given the cost of travel, these voters are effectively disenfranchised.

### C. Lands and resources

29. Also important to Kanak self-determination and identity, as well as to their well-being and economic development potential, are rights over lands and natural resources. The Declaration on the Rights of Indigenous Peoples (see especially art. 26) affirms the fundamental connection between indigenous peoples and the lands and resources that they have traditionally used or occupied. The Nouméa Accord (art. 1.4) echoes this affirmation, recognizing that “every Kanak’s identity is defined primarily to an area of land.” Myths about the origin of the Kanak people invoke particular landscape features, and clan names often reference the place of origin of the clan’s founding ancestor. During ceremonies, a clan member may recite the names of places through which his ancestors would have passed, defining his origins and establishing alliances to other clans having rights over the places named. Multiple clans might have overlapping customary rights to particular land.

#### **Land reform: role of the Rural Development and Land Planning Agency**

30. The French State-run Rural Development and Land Planning Agency (ADRAF) is tasked, under the Nouméa Accord, with managing land reform and surveying and registering customary lands. ADRAF has an annual budget to purchase land from private settlers or public entities and assign it to Kanak clans having traditional ownership rights. Over the past 20 years, ADRAF has registered 125,000 hectares of land to Kanak clans, primarily from lands identified as public lands, but with some redistribution from privately-held lands. To facilitate these land assignments, Kanak clans have been incorporated as “Groupements de droit particulier local” (GDPLs), that is groups subject to special local law, which are given title deeds to the lands. The titled lands have special customary legal status, under which it is inalienable, non-transferrable (*incessible*) and indivisible. In total, roughly 300,000 hectares of land on Grand Terre is now customary land, equivalent to the

amount of privately owned land on this island, the largest of the islands that form New Caledonia.<sup>13</sup>

31. Nevertheless, while the land redistribution process has resulted in the transfer of significant tracts of land to the Kanak people, Kanak representatives have expressed frustration that their land claims had been stalled after submission to ADRAF, and that numerous land claims remain outstanding. Furthermore, the Nouméa Accord (art. 1.4) provides for the creation of a customary land survey and registry to assist with resolving land disputes, but to date this provision has not been implemented. The Customary Senate, which has a seat on the Board of ADRAF, has expressed an interest in taking a leadership role in the Agency in order to establish the customary land registry and a trust fund for the development of customary land, as well as to create a new mechanism for the resolution of land disputes arising between indigenous individuals or clans.<sup>14</sup>

#### **Access to the sea**

32. Sea access is important to the Kanak people for subsistence fishing, shellfish harvesting as well as ceremonies. For some clans, the sea is an integral part of clan identity. However, the Special Rapporteur heard from several Kanak sources that their access to fishing areas in some places is blocked by owners of private property adjacent to coastal areas.

33. The Special Rapporteur notes a potential incompatibility between the State legal system, under which maritime and coastal areas are public domain, and traditional Kanak resource and land use in these areas. The Special Rapporteur heard complaints from Kanak chiefs of their inability to exclude others from coastal areas during ceremonies, which impinges on their ability to practice their religious customs and ceremonies. This can lead to conflict, as in one example in Loyalty Islands, when a Kanak mayor attempted to prevent tourists from accessing the beach during a yam ceremony and was taken to court.

34. The Special Rapporteur notes that although the Kanak are subject to the same fishing permit requirements as all New Caledonian citizens, the provinces may grant exemptions to Kanak people for ceremonial purposes, particularly for capturing tortoises and dugongs, or for fishing in bio-reserves.<sup>15</sup>

#### **Extractive industries and environmental protection**

35. Nickel extraction has taken place in New Caledonia since the mineral was first discovered there in the 1860s. Typically, nickel mining has been carried out on lands considered to be public lands, but to which the Kanak people continue to have cultural ties. Mining activities in proximity to Kanak communities have invariably affected the natural environment on which Kanak people depend. In the past, many small miners operated open-pit mines throughout the central massif with minimal regulation, which led to considerable water and soil pollution and degradation. The eventual establishment of large-

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<sup>13</sup> See ADRAF, *Cartographie des Terres Coutumières*, available at [http://www.adraf.nc/index.php?option=com\\_content&view=article&id=58&Itemid=78](http://www.adraf.nc/index.php?option=com_content&view=article&id=58&Itemid=78).

<sup>14</sup> Customary Senate, *Report of the Customary Senate of New Caledonia on the Current Situation of the Kanak People of Kanaky-New Caledonia*, 8 February 2011.

<sup>15</sup> Fishing in New Caledonia is regulated by the provinces; provincial fishing regulations, including exemptions available to Kanak for ceremonial purposes by the President of the relevant Provincial Assembly, are contained in the *Memento sur la réglementation des pêches maritimes* (June 2004) of the Service de la Marine Marchande et des Pêches Maritimes, available at <https://www.spc.int/coastfish/Countries/NCaledonia/Nouvelle-Caledonie-regs.pdf>.

scale mining operations continued and, in some cases, intensified the environmental damage, the effects of which are still felt today.

36. In recent years, changes to the regulation and conduct of mining operations indicate a trend towards more responsible mining practices, and offer promising examples of joint environmental stewardship by the Kanak people and mining companies. For example, Société Le Nickel (SLN), a major mining company, has undertaken a number of environmental recovery and reforestation activities and participated in the creation of a fund to enable mining companies to partner with local authorities to clean up mines in use prior to 1975. However, runoff from other open and abandoned mines has not abated. For example, in the northern areas of South Province, Kanaks have expressed frustration over the runoff from open-pit and abandoned mines. According to reports, the runoff clogs streams, suffocating fish, crabs and other living creatures, reduces the quality of the soil for farming and, as it washes out to sea, damages the reef.

37. Mechanisms for monitoring and mitigating the impact of a new nickel-processing plant in South Province has been included in the innovative “Pacte pour un développement durable du Grand Sud,” a development agreement between local Kanak authorities, the Customary Senate, the indigenous environmental organization Rheebeu Nuu, and the Brazilian-owned mining company, Vale-NC.<sup>16</sup> The agreement ensures Kanak oversight of the environmental impact of the project and incorporates consultation with the Kanak during nearly every phase of project development. It also includes provisions for the reforestation of land beyond the project area and the creation of a Customary Environmental Consultative Committee to oversee environmental assessments and respond to concerns. Kanak authorities reported satisfaction with the agreement and the plans to train staff and managers from among the local population for plant operations. At the same time, they highlighted their concerns over the environmental impacts of the nickel mining and processing operations, and emphasized the need to ensure effective implementation of environmental controls under the terms of the agreement.

### **Extractive industries and innovative models to generate income**

38. The Special Rapporteur heard a number of Kanak chiefs and representatives express frustration over the absence of economic benefits to their people from the enormous nickel wealth being generated in the country. The Grand Sud agreement addresses this concern with an innovative mechanism to deliver economic benefits. While it does not provide for profit sharing with the affected Kanak clans or for royalties to be paid to them, it does establish a corporate foundation with a mandate to invest in development projects in the neighbouring communities. The foundation, under the leadership of a board of directors composed of customary authorities, Kanak environmental activists, customary senators and representatives of Goro Nickel Company, the joint-venture company in charge of developing the mine, will fund projects proposed by local communities. Possible project areas include social and cultural development, including education and training, environmental protection, development of economic activities not linked to mining operations, and any other initiatives contributing to sustainable and participatory development in the area. Goro Nickel has committed to invest 160 million CFP francs (US\$1.95 million) per year for the first four years of the agreement.

39. Another innovative arrangement to generate economic benefits in which Kanak people can share is in North Province, which is mostly populated by Kanaks. Under the leadership of the Kanak political coalition FLNKS, the Province has entered into a novel

<sup>16</sup> See Vale, *Les Communautés voisines: Pacte pour un développement durable du Grand Sud*, available at <http://www.vale.nc/pages/communautes/developpement-durable.html>.

form of joint venture centred around the construction of the Koniambo nickel-processing plant that reflects the rebalancing emphasis of the Nouméa Accord. Ownership of the plant is shared by North Province – through a wholly owned public-private corporation – and a private-sector corporation, with the province holding 51 per cent.

40. The Koniambo project has created significant opportunities for employment and for Kanak clans to leverage their customary lands for associated economic development. The three largest communes in the area, Voh, Koné and Pouembout, joined together in a public-private partnership (*société d'économie mixte*) with the mining company to invest in a limited liability corporation (*société par actions simplifiée*) for land development. This corporation has partnered with Kanak clans to lease plots of customary land to a variety of service and retail businesses that have emerged to service the growing industrial area of the province, as well as to high-end housing development. Kanak clans receive rental income for the property, and the expectation is that once the private creditors are paid (after 15-20 years), the clans will own and manage a profitable commercial zone. Apart from the profits to be gained by the Province from the joint venture and the revenue generated for Kanak owners of the leased plots of customary land, the project benefits the local, mostly Kanak, population in a number of ways. The construction force for the plant is 82 per cent New Caledonian, including 52 per cent from North Province, and local companies were constituted to bid for contracts connected to the construction. Plant operators estimate that it has already generated over 37 billion CFP francs (US\$450 million) in economic benefits in North Province, and expect future benefits of five times that amount (as the plant begins its operations).<sup>17</sup>

#### D. Kanak language

41. It goes without saying that language is a critical marker of indigenous identity, and this is certainly the case for the Kanak people. The Nouméa Accord (art. 1.3.3) declares Kanak languages to be, alongside French, the “languages of education and culture in New Caledonia,” and it calls for increasing the prominence of Kanak languages in school curricula and media, developing university courses on Kanak languages, training primary and secondary school Kanak-language teachers, and establishing a Public Academy of Kanak Languages. However, it was repeatedly brought to the attention of the Special Rapporteur that there has been limited implementation of these directives.

42. A number of Kanak languages are in danger of disappearing. The Academy of Kanak Languages lists 28 spoken languages and a handful of additional dialects, including four with less than 100 reported speakers.<sup>18</sup> At least one of the languages listed in the 1996 census – Zire – no longer appears on the Academy’s list. The Customary Senate expressed alarm at the decline in speakers of Kanak languages, and numerous Kanak individuals and organizations expressed concern to the Special Rapporteur at the lack of attention given to preserving and acknowledging Kanak languages, particularly in the educational setting, and the need for immediate action to counter the threat of future loss.

43. The Special Rapporteur understands that one obstacle to providing education in Kanak language and culture has been the difficulty in meeting the need for teachers outside

<sup>17</sup> Voh-Koné-Pouembout, *Grand projet VKP*, (provided to Special Rapporteur, 9 February 2011); see Koniambo Nickel, “Retombées économiques,” available at [http://www.koniambonickel.nc/index.php?option=com\\_content&task=view&id=35&Itemid=79](http://www.koniambonickel.nc/index.php?option=com_content&task=view&id=35&Itemid=79).

<sup>18</sup> Académie des langues kanak, “Langues,” at <http://www.alk.gouv.nc/portal/page/portal/alk/langues>; see also Ethnologue, “Languages of New Caledonia” (for numbers of speakers as at last census), at [http://www.ethnologue.com/show\\_country.asp?name=NC](http://www.ethnologue.com/show_country.asp?name=NC).

Nouméa. He welcomes the initiative that members of the New Caledonia Congress discussed with him to identify teachers who already know Kanak languages, rather than wait for language-specific training or certification for teachers. Furthermore, the Special Rapporteur learned that France has a programme in place to promote greater inclusion of Kanak people in the teaching profession.

44. The Special Rapporteur was encouraged to hear that a congressional commission was to be convened in February 2011 to discuss the teaching of Kanak languages and culture,<sup>19</sup> and hopes that this initiative will contribute concretely to achieving integration of Kanak languages and culture in school curricula. An interesting former initiative by Kanak people, which was created during the conflicts preceding the Matignon Accord, was the establishment of schools (*écoles populaires kanak*) that provided instruction in Kanak languages, as well as in French and English, and that incorporated training in traditional practices, such as yam cultivation, into the curricula. These schools are now closed, but Kanak chiefs have recommended that they be set up again.<sup>20</sup>

## E. Maintaining and broadening awareness of Kanak culture and heritage

45. Building social cohesion, protecting the integrity of Kanak culture and ending discrimination against the Kanak people in New Caledonia call for increased understanding and valorization of Kanak culture by New Caledonian society in general. To this end, the Nouméa Accord (art. 4.4) transfers responsibility for the Agency for the Development of Kanak Culture (ADCK)<sup>21</sup> to New Caledonia and commits France to provide technical assistance and the required funding for the Tjibaou Cultural Centre. Housed in an architecturally inspiring structure in Nouméa, the Centre advances the preservation, continuity and learning of Kanak culture. Additionally, in 2002, the “Accord particulier sur le développement culturel de la Nouvelle Calédonie”<sup>22</sup> between New Caledonia and France established a regime to protect and promote Kanak cultural heritage. Under this Accord, France agreed to inventory Kanak cultural artifacts in museums and promote the appropriate use or disposition of them, and to provide funding and technical support to assist ADCK in fulfilling its mandate of promoting Kanak culture. The Special Rapporteur learned about a loan program between museums in France and New Caledonia intended to maximize cultural and educational display or use of Kanak artefacts.

46. The Customary Senate communicated to the Special Rapporteur that it should have a leadership role in ADCK so that it could better work to ensure the appropriate return of artefacts to New Caledonia and the effective creation of the academy of Kanak languages.<sup>23</sup> The Customary Senate has also raised concerns regarding the need to secure rights over intellectual property and traditional knowledge.<sup>24</sup> The Special Rapporteur read with interest a bill relating to the customary status of traditional knowledge and the protection of

<sup>19</sup> Leonard Sam, Vice-President of New Caledonia Congress, at a meeting with the Special Rapporteur on 7 February 2011; Commission scheduled to be launched on 8 February 2011.

<sup>20</sup> Customary Senate, *Report* (see footnote 17 above).

<sup>21</sup> See also Organic law no. 99-209 (1999), art. 23.

<sup>22</sup> Accord particulier sur le développement culturel de la Nouvelle Calédonie, 22 January 2002, available at <http://www.paclii.org/oldpits/french/traites/2002/1.html>.

<sup>23</sup> Customary Senate, *Report* (see footnote 17 above).

<sup>24</sup> *Ibid.*

indigenous intellectual property rights, and will follow with interest the development of this legislative initiative.<sup>25</sup>

47. The Special Rapporteur heard concerns that the current primary school curriculum fails to adequately convey the history of Kanak culture and experience of colonization; the secondary school curriculum, which is adopted from the French system, does not treat this material at all; and teacher-training curricula do not include sufficient instruction on Kanak history and culture. The Special Rapporteur understands that outside of the education setting, society at large has very limited exposure to information about Kanak culture. He heard anecdotal accounts of news media portraying political disputes in ways that cast the Kanak in a negative light and contribute to the deterioration of the public image of the Kanak people. The Special Rapporteur encourages collaboration to identify opportunities to share Kanak culture more broadly – for example, through innovative education curricula, radio programmes, knowledge-sharing programmes around Kanak traditional festivals, or other means.

48. The Special Rapporteur acknowledges the hard work that has led to the adoption of the anthem, motto and bank note design for New Caledonia, and encourages all parties to continue working collaboratively to reach consensus on the remaining symbols, such as the national flag and country name.

## F. Persistent social and economic disparities

49. The Kanak people are experiencing poor levels of educational attainment, employment, health, as well as over-representation in Government-subsidized housing, urban poverty, exposure to dangerously high levels of pollution of their lands and waters. A disproportionate number of Kanak people live in poverty, despite the fact that many continue to benefit from subsistence practices, and at least 90 per cent of the detainees in New Caledonia prison are Kanak, half of them below the age of 25.<sup>26</sup>

50. Quantifying and responding to the socio-economic disparities is complicated by the constraints under French law against collection and publication of ethnically disaggregated data.<sup>27</sup> These constraints, and the policy of formal equality underlying them, mask ongoing discrimination as well as uneven impacts of facially neutral legislation and programmes. In the absence of reliable comparative data on the education, health, employment, poverty and other socio-economic indicators of the different population groups in New Caledonia, it is difficult for government agencies to design and implement policies that target actual needs or to remedy actual disparities. In this policy context of formal equality but uneven conditions, the Kanak people struggle to protect and promote their distinctive identity while advocating for their socio-economic development.

51. Historically, economic development, wealth, and population have been concentrated in South Province, particularly in Greater Nouméa. The Nouméa Accord promotes the rebalancing of resources to encourage private-sector investment in North and Loyalty Islands provinces, and to favour these provinces in the redistribution of national tax revenue

<sup>25</sup> Loi du pays (projet) relative au statut coutumier des savoirs traditionnels et à la protection des droits intellectuels autochtones, Nouméa, 9 September 2010 (provided to the Special Rapporteur, February 2011).

<sup>26</sup> Conseil national pour les droits des peuples autochtones en Kanaky-Nouvelle-Calédonie, *Report on the Situation of Indigenous People of Kanaky*.

<sup>27</sup> However, some data on social and economic indicators is provided for each Kanak tribe by the Institute of Statistics and Economic Studies of New Caledonia (Institute de la statistique et des études économiques). See <http://www.isee.nc/portraittribu/tribus.html>.

Additionally, France negotiates development programme contracts with New Caledonia, the provinces, and the communes every five years. These contracts include substantial funds for development activities that flow directly to the provinces and the communes. The next set of contracts, for the period 2011-2015, is expected to be valued at 44 billion CFP francs<sup>28</sup> (US\$727 million).

52. Although there is no explicit goal of rebalancing along ethnic lines, with significant majority Kanak populations in North Province and the Loyalty Islands, the indigenous people in these areas are likely to benefit from the rebalancing initiatives. However, rebalancing is not sufficient to rectify persistent disparities based on generations of discrimination, particularly for Kanaks in South Province, who do not benefit from rebalancing programs and have limited representation in their Provincial Assembly.

53. Urban Kanak poverty is a growing concern. Roughly 8,000 Kanaks live in precarious housing settlements (often referred to as “squats”) in Greater Nouméa, without access to municipal water, electricity, or sewage services.<sup>29</sup> Available public housing is insufficient to meet demand and Kanak residents question the structural integrity of the housing constructed in the 1970s. The Special Rapporteur was interested to hear about recent initiatives by the provincial government to shift resources towards developing the spontaneous settlements into permanent housing with adequate living conditions and services. This initiative is based on the understanding that the physical layout of the spontaneous settlements better approximates Kanak cultural patterns.

54. Urban Kanak communities in Nouméa suffer exposure to raw sewage and dangerously polluted water in the Bay of Tindu, a lagoon abutting the Tindu and Montravel neighbourhoods, which has been closed to swimming, fishing, crabbing and other traditional uses by the Kanak people since 1992, due to high levels of bacteria in the water. Despite the closure, the Kanak continue to use the bay, exposing themselves to high levels of contamination. Community organizers express frustration at the lack of urgency on the part of the Government to rectify the situation. Nouméa municipal authorities have stated that clean-up operations in the bay will be completed in 2016.

55. Residents of Kanak neighbourhoods in Nouméa expressed additional concerns about exposure to dangerous toxins from the 100-year-old Doniambo nickel-processing plant, which has been engulfed by the expansion of Nouméa’s industrial and residential areas. Residents claim that the plant dumps waste directly into the lagoon, damaging the mangroves that line the coast and provide essential habitat for crabs and fish on which Kanak sea clans traditionally depend. Levels of atmospheric sulphur in the area around the Doniambo plant were reportedly above international limits in 2010.<sup>30</sup>

56. The Kanak people’s ability to lead change is hampered by the severe shortage of Kanak professionals. There are no Kanak lawyers, judges, university lecturers, police chiefs or doctors, and there are only six Kanak midwives registered with the State health system, out of a total of 300 midwives in New Caledonia. The “400 cadres” programme (discussed in sect. V above) is one of the few examples of a programme specifically targeting Kanak youth and aimed at building a class of Kanak professionals. Since much of the professional training for citizens of New Caledonia is done in metropolitan France, training individual

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<sup>28</sup> Information provided to the Special Rapporteur by the Customary Senate, 8 February 2011.

<sup>29</sup> See “Les squats du Grand Nouméa: un phénomène urbain original,” *Le Monde.fr*, 5 December 2009, available at <http://villes.blog.lemonde.fr/2009/12/05/les-squats-du-grand-noumea-un-phenomene-urbain-original/>.

<sup>30</sup> Information from community representatives on a tour with the Special Rapporteur, Nouméa, 6 February 2011.

professionals for New Caledonia is quite costly. Furthermore, less than 5 per cent of public-sector employees are Kanak, with most working in the lowest salary categories.<sup>31</sup>

57. In the area of health, reports to the Special Rapporteur indicated that, despite the high level of health care that is generally provided in New Caledonia, the Kanak population compares unfavourably to its European counterpart in terms of life expectancy, infant mortality, thyroid cancer, leprosy, tuberculosis, rheumatoid arthritis and suicide.<sup>32</sup> There is a strong preference in Kanak communities for traditional medicine, access to Kanak midwives, and increased emphasis on prevention.

58. The composition of the prison population is a predictable outcome of the socio-economic disparities in New Caledonia; at least 90 per cent of the prison population at Camp Est (the central prison facility) and 99 per cent of incarcerated youth are Kanak, according to the Customary Senate and prison authorities. While the crime rate in New Caledonia is no higher than in France, the rate of convictions is higher, according to prison authorities, indicating a troubling tendency by the judiciary in New Caledonia to incarcerate offenders at a higher rate or impose harsher sentences. The Special Rapporteur was interested to hear of new initiatives to reduce incarceration time, by introducing electronic monitoring, and of ongoing renovations supported by the Government of France to bring detention facilities up to European Union standards. Although the newly opened juvenile facility is fully compliant with these standards, the facilities for adult male inmates are overcrowded with insufficient air circulation.

## **G. Children and youth**

59. The Special Rapporteur found a general perception that Kanak youth are in crisis, with high rates of school dropouts, alcohol and marijuana abuse, high-risk sexual behaviour, reckless driving, suicide, low employment, and pervasive alienation from both traditional Kanak culture and Western culture in Nouméa. The Customary Senate also noted among Kanak youth high levels of disrespect for parental authority and loss of customary knowledge, and recommended the creation of Kanak youth or cultural centres. However, community leaders have faced obstacles in developing such centres and related initiatives. Despite strongly supporting the idea of targeted initiatives to respond to the needs of Kanak youth, the Customary Senate complains that it has neither the decision-making authority nor budgetary capability to effectively pursue them.

## **H. Issues confronting Kanak women**

60. The Special Rapporteur heard from a number of Kanak women who expressed concern over the pollution, lack of garbage collection, clean drinking water and employment opportunities that would enable them to better care for their families and children. Women's groups expressed frustration at their inability to access funding and support to implement their own development projects, such as small-income generating projects, local training programmes and similar initiatives.

61. Some women with whom the Special Rapporteur met identified a tension between certain aspects of Kanak culture and their legal entitlement to be treated equally – for

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<sup>31</sup> Information provided to the Special Rapporteur by the Union des syndicats des travailleurs Kanak et des exploités (USTKE), 8 February 2011.

<sup>32</sup> Dynamique FLNKS Sud, "Droits autochtones secteur santé: à l'intention de Monsieur James Anaya, Rapporteur Special à l'ONU", 8 February 2011.



example, in areas of education, remuneration, inheritance and succession, speech or other forms of expression. Especially noted were customary rules by which a Kanak woman does not have inheritance rights; her estate reverts to her husband's clan on the death of her husband. Women also noted their lack of representation in customary institutions, while at the same time pointing out that in the past, there were exceptions to the typical gender roles, such that, for example, sometimes women were chiefs.

62. However, in all cases in which such concerns were raised to the Special Rapporteur, women affirmed the need to maintain and strengthen the overall integrity of Kanak culture, while encouraging changes to bring about greater equality for women within Kanak cultural patterns. The Special Rapporteur was encouraged to hear that the Customary Senate – which is exclusively composed of male chiefs – had agreed to meet with the women to discuss how they could participate in the work and decision-making processes of the Senate. Furthermore, Kanak women members of the New Caledonia Government informed the Special Rapporteur that the application in New Caledonia of the French gender parity law has led to the presence of more women, including Kanak women, in the provincial assemblies, Congress and Government.<sup>33</sup>

63. The Customary Senate raised the issue of violence against women, a global issue that also plagues the Kanak people. The Senate's concern was echoed by women's representatives and is further underscored when one looks at the breakdown of offenders in the Nouméa prison: nearly 25 per cent of offenders in prison are charged with an offence of sexual violence.<sup>34</sup> The Special Rapporteur encourages the Customary Senate, the provinces, women's associations and others to continue working to eliminate violence against women.

## VI. Conclusions and recommendations

### A. General legal and policy framework

64. **Significant steps have been taken to acknowledge and advance the rights of the Kanak people within the framework of the process of decolonization of New Caledonia, put in place by the Nouméa Accord of 1998. The Nouméa Accord, which has been incorporated into French law, has broad support from both Kanak and non-Kanak people living in New Caledonia.**

65. **The Nouméa Accord provides for the gradual, irreversible transfer of powers from France to New Caledonia with the possibility of full independence in the future, while at the same time recognizing the distinct identity of the Kanak people and the need to reverse historical trends of oppression against them, consistent with international standards on both decolonization and indigenous peoples.**

66. **While being participants in the decolonization process along with others who are deemed to be legitimate inhabitants of New Caledonia, the Kanak people are the subject of specific international protections for indigenous peoples. These protections**

<sup>33</sup> Government of New Caledonia, *Guide éducatif sur les droits des femmes et sur l'égalité entre les sexes* (2009), p. 82, (which states that French parity law of 2000 was applied for the first time in New Caledonia in 2001, in provincial elections in 2004, and in municipal elections in 2008, resulting in a considerable increase in the percentage of women holding public office).

<sup>34</sup> Statistics presented in a slide show by Camp Est prison authorities, 8 February 2011. Unreported assaults are likely to be high, as it was explained to the Special Rapporteur that victims of violence confront a "law of penitence" through which a violent offender, including in cases of sexual assault and rape, can apologize the day after an assault and the matter will be considered finished.

find expression in the United Nations Declaration on the Rights of Indigenous Peoples, among other international instruments. Many of the provisions of the Nouméa Accord further the objectives of the Declaration, and the Declaration should guide the interpretation and application of the Nouméa Accord and the development of all laws and policies that affect the Kanak people.

67. Concerted efforts should be made to ensure that officials of both the French and New Caledonia governments and members of the New Caledonia Congress, as well as New Caledonia society, in general, are aware of the Declaration on the Rights of Indigenous Peoples and its implications.

## **B. Human rights issues**

### *Customary authority and the administration of justice*

68. There is a significant level of official recognition of the system of customary institutions and laws that govern relations within and among Kanak clans and communities.

69. This system of customary justice represents an important part of the exercise of Kanak self-governance and self-determination, and the Special Rapporteur was pleased to learn that under French law decisions made in the customary system as to civil matters are generally respected by the State legal system.

70. Nevertheless, continued efforts should be made to enhance the control of Kanak people over their communities, territories and natural resources, including providing effective recognition of their own institutions of authority and customary laws, to the extent compatible with universal human rights standards.

71. In particular, the Government of France should review existing limitations on the exercise of customary justice by Kanak authorities, especially in criminal matters.

### *Kanak participation in the political arena and governance*

72. The Nouméa Accord affirms an important level of recognition of Kanak participation in national decision-making, in particular through the establishment and functioning of the Customary Senate and the participation of Kanak people in the Congress of New Caledonia. However, more needs to be done to enhance Kanak participation in decision-making at the territorial level.

73. Consideration should be given to providing the Customary Senate greater influence, and for some matters binding authority, over decision-making in areas of concern to the Kanak people.

74. The Customary Senate should be provided with sufficient funding to effectively exercise its functions. Further, all efforts should be made to ensure that the powers of the Customary Senate are not diminished as powers are transferred from France to New Caledonia.

75. The ability of Kanak people to participate in decision-making at the national level is hampered by the shortage of Kanak individuals in mid- and high-level civil service positions within the Government. As New Caledonia becomes increasingly autonomous, it is necessary to ensure that Kanak people benefit equally from the opportunities presented by the decolonization process. France and the Government of New Caledonia should redouble efforts to prepare the Kanak people for leadership positions, through programmes like the “400 cadres” programme referred to in the Nouméa Accord.

76. Efforts should be made to increase Kanak participation in voting and to remove any existing obstacles to this participation. Special attention should be given to ensure Kanak registration for participation in future referenda on the status of New Caledonia.

*Lands and resources*

77. The Special Rapporteur recognizes the achievements of the Rural Development and Land Planning Agency (ADRAF) in returning significant areas of land to Kanak ownership and control. France and the Government of New Caledonia should make all necessary efforts to facilitate the resolution of outstanding claims and ensure that all legitimate Kanak land claims can proceed to a conclusion, without being constrained by the comparison of total area of Kanak land and private land in the collectivity.

78. Consideration should be given to granting customary authorities an increased role in the functioning of ADRAF, especially in order to establish a customary land registry and a trust fund for the development of customary land, and also to create a new resolution mechanism for land disputes arising between indigenous individuals or clans.

79. Efforts should be made to ensure that Kanak have access to the sea for subsistence fishing, shellfish harvesting, as well as cultural and religious ceremonies.

80. The Special Rapporteur recommends that the responsible governmental authorities redouble efforts to clean up the harmful environmental effects of past and current mining activities. The environmental recovery initiatives of the Société Le Nickel in partnership with local Kanak authorities and the agreed mechanisms for environmental monitoring of the Goro Nickel mine and processing plant in South Province offer positive models in this regard.

81. While in general, Kanaks continue to fail to benefit economically from mining activities in New Caledonia, the Special Rapporteur is pleased to observe a few promising innovative models for Kanaks to share in the economic benefits of these activities. These include arrangements negotiated for the operation of the Goro Nickel mine and processing plant under the “Pacte pour un développement durable du Grand Sud” and the joint-venture and related agreements centred around the Koniambo nickel mine and processing plant. The Special Rapporteur hopes that consideration will also be given to the establishment of profit-sharing arrangements with affected Kanak communities as part of these and future initiatives.

*Kanak language*

82. The Special Rapporteur is concerned that a number of Kanak languages are threatened and in danger of disappearing. Greater attention should be given to preserving and developing Kanak languages, particularly in the educational setting, and immediate action should be taken to counter the threat of future loss. The Special Rapporteur notes with approval the steps taken to provide instruction in 15 different Kanak languages in 59 preschools (*écoles maternelles*) in New Caledonia, and encourages the Government and provinces to prioritize expanding this programme to reach all students in all primary schools in New Caledonia.

*Kanak culture and heritage*

83. France and the Government of New Caledonia should make all necessary efforts to increase understanding and valorization of Kanak culture by New Caledonia society in general, for example through innovative education curricula,

radio programmes and other means. In order to assist in addressing ongoing concerns related to Kanak culture and heritage, the Customary Senate should be granted more of a leadership role in the Agency for the Development of Kanak Culture (ADCK).

*Social and economic disparities*

84. Overall, Kanaks suffer poor social and economic conditions, especially in relation to the other demographic groups in New Caledonia. In order to better assess the conditions of the Kanak people and develop adequate policies and programmes to address those conditions, the Government of France should encourage the collection and publication of ethnically disaggregated statistical data on socio-economic indicators. The Special Rapporteur believes that access to such data would further, rather than violate, the French constitutional pledge of equality.

85. The Special Rapporteur applauds the decision to direct resources to providing public services to the spontaneous settlements in Greater Nouméa, and the initiative to adapt housing policy to Kanak social and cultural patterns.

86. The competent authorities should immediately implement the projected six-year clean-up of the Bay of Tindu and develop a rapid-response process to ensure that any future water contaminations are cleaned up within a shorter time frame.

87. Available health statistics raise serious concerns that, despite relatively high levels of health available in New Caledonia, Kanaks are not receiving the standard of health services received by other groups. The competent authorities should continue efforts to improve the delivery of health services to Kanak people and every effort should be employed to enhance Kanak participation in the formation of health policy and delivery of services, including with a view to better incorporating traditional Kanak health practices.

88. In consultation with Kanak leaders, the French and New Caledonia Governments should redouble efforts to address the problem of high rates of incarceration among Kanak people, especially youth. The Special Rapporteur welcomes the ongoing improvements at the Camp Est Prison to bring the facility up to international standards. He is encouraged to hear that prison leadership is interested in initiating rehabilitation programmes and is considering alternatives to incarceration to reduce overcrowding, and encourages officials to consult with customary authorities to design and implement such programmes.

*Children and youth*

89. The situation of Kanak children and youth is a particular subject of concern. The French and New Caledonia Governments should focus increased attention on the issues faced by Kanak children and youth in consultation with Kanak leaders and the Customary Senate. Affirmative action programmes could help to rapidly scale up Kanak eligibility for and participation in professional training programs. Government officials should work with the Customary Senate to create programs that will encourage Kanak students to pursue professional and vocational careers, in order to increase employment opportunities.

*Kanak women*

90. Kanak women play important roles in Kanak society and in the building of New Caledonia's future, but they suffer from discrimination in various ways. Greater efforts should be employed to assist Kanak women in their efforts to eradicate this discrimination.

91. **The Special Rapporteur welcomes the Customary Senate's initiative to consult with Kanak women's associations, and encourages that body to continue to seek the input of Kanak women on a regular basis to ensure that their unique concerns and perspectives are taken into account in law and policy development.**

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