



HAL
open science

NEW PROVINCIAL ENVIRONMENTAL LEGISLATION IN NEW CALEDONIA: CONTINUITY AND REFORM IN ENVIRONMENTAL GOVERNANCE IN A FRENCH PACIFIC TERRITORY

Pepe Clarke, Carine David

► **To cite this version:**

Pepe Clarke, Carine David. NEW PROVINCIAL ENVIRONMENTAL LEGISLATION IN NEW CALEDONIA: CONTINUITY AND REFORM IN ENVIRONMENTAL GOVERNANCE IN A FRENCH PACIFIC TERRITORY. *Asia Pacific Journal of Environmental Law*, 2011. hal-02117052

HAL Id: hal-02117052

<https://hal.science/hal-02117052v1>

Submitted on 1 May 2019

HAL is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

NEW PROVINCIAL ENVIRONMENTAL LEGISLATION IN NEW CALEDONIA: CONTINUITY AND REFORM IN ENVIRONMENTAL GOVERNANCE IN A FRENCH PACIFIC TERRITORY

Pepe Clarke, Environmental Law Consultant

Carine David, Senior Lecturer, University of New Caledonia

1. INTRODUCTION

New Caledonia is a French territory in the south west Pacific Ocean, 1200 kilometres east of Australia. The territory consists of a large main island, Grande Terre, the Loyalty Islands archipelago and numerous small islands. Grande Terre is about 400 kilometres long by 40 kilometres wide and is dominated by a central mountain range that runs the length of the island. The Loyalty Islands, by contrast, are low-lying coral atolls with thin soils and limited surface water. The total land area of New Caledonia is 18,575 square kilometres.

The biological diversity of New Caledonia is extraordinary. It is home to more than 3,200 plant species, three quarters of which are found nowhere else in the world. A high proportion of its animals are also endemic, including 89% of reptiles, 67% of mammals and 20% of bird species.¹ The coral reef lagoons of New Caledonia are one of the most extensive reef systems in the world, and feature an exceptional diversity of coral and fish, as well as turtles, whales and dugongs. In 2008, these reefs were inscribed on the World Heritage list in recognition of their outstanding universal value.²

This unique diversity is under threat. New Caledonia has been identified as a global 'biodiversity hotspot': one of the richest and most threatened reservoirs of life on earth. Nickel mining has led to widespread deforestation and habitat destruction, bare slopes and waste heaps. Erosion from mining areas has caused siltation of streams and offshore coral reef areas. Bush fires, logging and hunting have all taken their toll, and the impact of invasive species has been devastating. Evergreen rainforests, which once covered about 70% of New Caledonia, are now reduced to a few scattered pockets. Sclerophyll forest once covered 23% of the country, yet now only exists in tiny fragmented patches, and has been identified as the most threatened tropical dry forest in the world.³

In response to these challenges, two of New Caledonia's three provinces – North Province and South Province – have recently adopted comprehensive environmental codes. These codes build on an existing body of environmental regulations in both provinces, consolidating and amending these regulations to reflect the contemporary environmental challenges and priorities of each province.

In this article, we provide a brief overview of the legal and institutional context in New Caledonia, before outlining the key provisions of the codes and analysing their distinctive features. Key issues addressed include: public participation and access to information; protected areas; ecosystem and species protection; invasive species; forestry, fishing and hunting; biological and genetic resources; pollution control and waste management.

Overall, the codes do not represent a major departure from the previous body of regulation, although early signs of distinctive and diverging provincial approaches to environmental regulation are apparent, most notably in relation to the integration of indigenous custom.

¹ Conservation International, *Biodiversity Hotspots: New Caledonia*, < www.biodiversityhotspots.org/xp/hotspots/new_caledonia>, accessed 21 July 2009.

² World Heritage Commission (2008) *Examination of nomination of natural, mixed and cultural properties to the World Heritage List: Lagoons of New Caledonia, France*, <http://whc.unesco.org/en/decisions/1470>, accessed 21 July 2009.

³ Conservation International, *Biodiversity Hotspots: New Caledonia*, < www.biodiversityhotspots.org/xp/hotspots/new_caledonia>, accessed 21 July 2009.

2. BACKGROUND

2.1. Historical Context

New Caledonia was first settled more than 4,000 years ago by the ancestors of the contemporary Melanesian inhabitants, known as Kanaks. The island group was first visited by Europeans in 1774, and was annexed by France in 1853. The French colonial administration granted large areas of land to settlers and forcibly relocated Kanak land owners. Large-scale land alienation led to two major Kanak uprisings in 1878-9 and 1917. In 1887, indigenous people throughout the French colonial empire became subject to the *Code de l'indigénat*, a statute that imposed onerous restrictions on movement, summary punishments and an authoritarian system of local governance. This system persisted in New Caledonia, virtually unchanged, until after World War II. Kanaks were granted the right to vote in 1951, and became increasingly involved in politics. In the 1970s, demands for greater autonomy from France progressively evolved into a broadbased Kanak independence movement.⁴

In the 1980s, civil unrest associated with Kanak demands for independence led to the signing of the Matignon Accord, which promised a referendum on sovereignty within ten years. However, in 1998, this referendum was deferred, following the signing of the Noumea Accord by the Government of France, the Kanak independence movement *Front de Libération Nationale Kanak et Socialiste* (FLNKS) and the conservative loyalist party *Rassemblement Pour la Calédonie dans la République* (RPCR). In March 1999, the French Parliament adopted an 'organic law' (*Loi Organique 99-209*) to implement the Noumea Accord, which changed New Caledonia's status within the French Republic, created new institutions, initiated a staged and irreversible transfer of administrative powers and provided for a referendum on self-determination following a 15-20 year transition period.

2.2. Institutional Framework

New Caledonia is a 'territorial collectivity' (*collectivité territoriale*) within the Republic of France, with its own territorial government, congress and provincial assemblies. The provincial assemblies – for South Province, North Province and Loyalty Islands Province – are popularly elected, and each assembly has a president elected by its members. The Territorial Congress is made up of a proportion of assembly members from each province. The members of the Congress elect the members of the Territorial Government, who designate their President and Vice-President. The Government is the territory's executive body, and may propose laws for adoption by the Congress. The *Senat Coutumier*, an advisory body comprised of sixteen customary Kanak chiefs, must be consulted on issues related to Kanak identity, including customary land tenure.

The Noumea Accord initiated a staged transfer of all administrative powers from the Government of France to New Caledonia, with the exception of certain 'sovereign' powers – justice, public order, defence, finance and currency – which will remain with the State until after the final referendum on self-determination. The *Loi Organique 99-209* sets out detailed provisions for the distribution of powers between the State, territory and provinces. The internal structure of government in New Caledonia is thus similar to that of a federation. Importantly, the organic law states that the provinces have jurisdiction over all matters that are not expressly vested in the State or territory.

Initially, the provinces were considered by many to have exclusive jurisdiction over environmental matters, as the organic law does not expressly vest broad powers for environmental protection in the State or the territory. However, it is now recognised that jurisdiction in relation to environmental matters is shared between the different levels of government.

⁴ Connell, J. (1987) *New Caledonia or Kanaky: the political history of a French colony*, Australian National University: Canberra.

The legislative and regulatory powers of the territory include certain matters directly or indirectly related to environmental protection, including: oil, nickel, chromium and cobalt; public lands; customary land ownership; taxation; labour law; public health; customs and quarantine; zoosanitary and phytosanitary safety; exploitation and management of natural resources in the exclusive economic zone; traffic and road transport; urban planning; electricity generation, ports and airports.

The organic law requires the establishment of a territorial advisory committee on the environment (established in 2006),⁵ requires the preparation of a territorial land use and development plan, and requires the territory to prepare 'guiding principles' on environmental protection during mining operations (released in 2009).⁶

The State has primary jurisdiction for international affairs, although the territory may participate as an observer or associate member of certain international organisations (for example, the Pacific Regional Environment Program). The State also bears responsibility for protecting constitutionally guaranteed civil rights, including certain rights relevant to environmental matters, such as public participation in government decision-making.

This division of powers has resulted in some uncertainty regarding the responsibilities of each level of government in relation to certain environmental matters. For example, regulation of waste management was initially considered to fall with the territory's jurisdiction over public health, but South Province asserted that waste management was more appropriately categorised as an environmental issue, and chose to intervene in that domain.⁷

3. OVERVIEW OF THE LEGISLATION

3.1. Legal Status

The North Province assembly adopted the *Code de l'environnement de la Province nord* on 24 October 2008.⁸ It came into force on 30 December 2008. The *Code de l'environnement de la Province sud* was adopted by the assembly of South Province on 20 March 2009⁹ and came into force on 10 April 2009. The structure of the two codes is very similar, as it was developed jointly by the provinces, but there are significant differences in their substantive provisions. Both codes are broad in their scope, covering a range of environmental issues within the jurisdiction of the provinces, including nature conservation, natural resource management and prevention of pollution and environmental harm.

The codes build on an existing body of provincial environmental regulations. In French law, codification itself has no legal consequences. Its primary purpose is to clarify and consolidate existing law. For this reason, most of the substantive provisions of the codes are drawn from existing regulations. Nonetheless, there have been significant additions and amendments, including the adoption of general environmental principles and, in South Province, new regulations dealing with ecosystem protection and exploitation of biological, genetic and biochemical resources.

⁵ Délibération n° 155 du 09 janvier 2006 relative au comité consultatif de l'environnement, JONC , 24 janvier 2006, p. 468.

⁶ Délibération n° 466 du 18 mars 2009 arrêtant les dispositions du schéma de mise en valeur des richesses minières, JONC , 2 avril 2009, p. 2278.

⁷ Délibération n° 01-2008/APS instaurant une gestion responsable des déchets en vue de la protection de l'environnement, JONC, 23 avril 2008, p. 3006.

⁸ Délibération n° 306 – 2008/APN relative au Code de l'environnement de la Province Nord, JONC, 29 décembre 2008, p. 8578.

⁹ Délibération n° 25-2009/APS du 20 mars 2009 relative au Code de l'environnement, JONC, 9 avril 2009, p. 2590.

Each code is divided into four ‘books’ (*livres*). Each book is further divided into ‘titles’ (*titres*), ‘chapters’ (*chapitres*) and ‘articles’ (*articles*). In both codes, the first book sets out guiding environmental principles, establishes provincial environmental committees, and enacts new procedures for environmental assessment, access to information and public participation. The second book deals with the preservation of natural heritage, and includes titles on protected areas, landscapes, ecosystems and species, as well as invasive species control.

The third book is devoted to natural resource management, including hunting, fisheries, forestry, quarries and, in the case of South Province, exploitation of biological, genetic and biochemical resources.¹⁰ The fourth and final book deals with the prevention of pollution and environmental harm, management of classified facilities, waste management, groundwater extraction, land clearing, bushfire management and regulation of signage and advertising.

3.2. General Principles

Each code commences with a series of environmental principles.¹¹ These principles are not legally binding, and do not generally go beyond the provisions of France’s *Charter for the Environment*,¹² which was enshrined in the national constitution in March 2005 and is legally binding on the territory and provinces. One exception is South Province’s approach to the ‘polluter pays’ principle, which goes beyond the constitutional text by allocating liability to the ‘perpetrator of environmental harm’ even in the absence of any fault or negligence.¹³

The provinces have adopted certain well-established environmental principles – including the precautionary principle, and principles relating to preventative action and public participation – but largely ignored the opportunity to adopt more innovative principles, despite recommendations made by the codes’ drafters. Innovative provisions that were initially proposed, but not included in the final text, include: prohibition of any activity that is likely to result in irreversible impacts on the environment; a requirement to consider sustainable development when awarding public contracts; and provision for rehabilitation and restoration of existing degraded ecosystems.

Innovative principles that were included in the final text include South Province’s commitment to include climate change considerations in the development and implementation of provincial policies, and North Province’s recognition of traditional Kanak resource management practices. References to traditional resource management practices occur in several parts of the North Province code, while the South Province code is largely silent on this theme. This reflects, at least in part, marked demographic and political differences between North Province – which has a majority Kanak population – and South Province – where Kanak people are a minority.

3.3. Public Participation

In response to developments in international, European and French law, and the expectations of civil society, South Province has adopted a modern legal framework in relation to access to information and public participation in environmental matters.¹⁴ The new provisions modernise and standardise

¹⁰ The latter regulation is about to be adopted in North Province as both provinces worked together on the drafting of the provisions, the aim being to obtain uniformity of the regulations throughout Grande Terre to optimize the efficiency of the provisions.

¹¹ Province Nord, *Code de l’environnement*, Livre I, Titre I, Principes. Province Sud, *Code de l’environnement*, Livre I, Titre I, Principes.

¹² Loi constitutionnelle n° 2005-205 du 1er mars 2005 relative à la Charte de l’environnement, JORF, 2 mars 2005, p. 3697.

¹³ The notion of ‘operator’ recently introduced in French law has been voluntarily dismissed in order to enlarge the scope of the principle, using the notion of ‘perpetrator of the damage’, allowing the recognition of polluting activities of non professional/industrial origin. Article L. 160-1, French Environmental Code.

¹⁴ Province Sud, *Code de l’environnement*, Livre I, Titre IV, Information et participation du public.

procedures relating to public inquiries, commissions of inquiry and requests for information in relation to environmental matters. The South Province code establishes a general right to request environmental documents from provincial authorities (subject to certain exceptions), and obliges the province to publicly disseminate certain documents, including environmental impact statements.

3.4. Environmental Impact Assessment

The South Province code includes new provisions dealing with environmental impact assessment (EIA), which seek to clarify and standardise EIA procedures and requirements for environmental impact studies (EIS).¹⁵ These procedures and requirements are derived from existing local regulations, examples from metropolitan France and feedback from EIA practitioners. The code also clarifies the scope of EIA requirements in the province.

EIA is required for: clearing of land in certain locations (e.g. steep slopes, ridges, riparian areas) or over a certain surface area; development that is likely to have a significant impact on an ecosystem of heritage interest; construction or commercial activity within a protected area; large subdivisions; quarries; certain large buildings and entertainment facilities; and, the creation of a 'joint development zone' for development by a public agency or institution. The EIA provisions of the code do not apply to the maritime public domain, mining activities and certain 'classified' industrial and commercial facilities (*installations classées pour la protection de l'environnement*).

The North Province code does not include provisions dealing with environmental impact assessment.

3.5. Nature Conservation

The second part of each code deals with nature conservation. In particular, the codes deal with protected areas, ecosystem protection, species protection and invasive species control.¹⁶

3.5.1. Protected Areas

The protected area provisions of each code replace and substantially update existing protected area regulations. In South Province, protected areas have been consolidated into four categories, with clearly defined objectives and management rules for each category. These protected area types have been aligned with the internationally recognised IUCN protected area categories,¹⁷ and existing protected areas have been reclassified into the four new categories. The protected area categories for South Province are:

- **strict nature reserve** (IUCN Category Ia)
- **provincial park** (IUCN Category II)
- **nature reserve** (IUCN Category IV)
- **sustainable resource management area** (IUCN Category VI).

In North Province, protected areas have been expressly defined by reference to the IUCN protected area categories. In particular, the code sets out seven protected area categories:

- **strict nature reserve** (IUCN Category Ia)

¹⁵ Province Sud, *Code de l'environnement*, Livre I, Titre III, Evaluation environnementale.

¹⁶ Province Nord, *Code de l'environnement*, Livre II, Protection et valorisation du patrimoine naturel. Province Sud, *Code de l'environnement*, Livre II, Protection du patrimoine naturel.

¹⁷ Dudley, N. (Editor) (2008). *Guidelines for Applying Protected Area Management Categories*. Gland, Switzerland: International Union for Conservation of Nature (IUCN).

- **wilderness reserve** (IUCN Category 1b)
- **provincial park** (IUCN Category II)
- **natural or cultural heritage site** (IUCN Category III)
- **nature reserves** (IUCN Category IV)
- **natural or cultural landscape** (IUCN Category V)
- **sustainable resource management area** (IUCN Category VI).

In North Province, the provincial administration must consult with relevant customary institutions before declaring a protected area. The North Province code also allows for the declaration of protected areas on private land or customary land, with the consent of the relevant landowners.

The marine and coastal areas of each province that fall within the ‘Lagoons of New Caledonia’ World Heritage Area have been classified as provincial parks.

3.5.2. *Ecosystem Protection*

The South Province code provides new protection for the following ‘ecosystems of heritage interest’: dense evergreen rainforest, sclerophyll forest, mangroves, seagrass beds and coral reefs. Listed ecosystems are characterised by their structure and key species, and are protected regardless of their location. Indicative ecosystem maps will be made available to the public, and will be updated periodically, taking into account advances in ecological knowledge and the progressive and mobile characteristics of ecosystems. The provincial administration may add further ecosystems to the list on the advice of the provincial environmental committee.

The code requires provincial authorisation for any development that is likely to have a significant impact on a listed ecosystem. Ordinarily, this authorisation may only be issued if an impact study demonstrates that the development will not significantly undermine the conservation status of the ecosystem. However, in the absence of an alternative, authorisation may be granted on ‘public interest’ grounds, subject to mitigation or compensation conditions. The ‘public interest’ is not defined, creating potential for conflict between economic interests and conservation objectives.

The North Province code does not provide for protection of particular ecosystem types.

3.5.3. *Species Protection*

In both provinces, existing regulations protecting endemic, rare and threatened species have been updated and strengthened, reflecting a growing appreciation of the severe threats to New Caledonia’s extraordinary biodiversity. Listed protected species include bats, whales, dolphins, dugongs, lizards, turtles, birds, fish, freshwater crustaceans, molluscs, a butterfly and range of native plants, including endemic pines, cycads, orchids and palms.

It is prohibited to destroy, cut, uproot, gather, transport, use, trade or possess any protected plant species, including its seeds or fruit. It is prohibited to hunt, capture, destroy, remove, disturb, transport, use, trade or possess a protected animal species, or to destroy or remove its eggs or nest. It is also prohibited to destroy, modify, alter or degrade the habitat of a protected species. Provincial authorisation may be issued for collecting, possessing or trading a protected species for conservation or educational purposes, including breeding, research or presentation to the public.

The provincial codes do not deal with international trade in endangered species, as implementation of the *Convention on International Trade in Endangered Species* (CITES) falls within the jurisdiction of the territory, not the provinces. The territory has not yet implemented the Convention.

3.5.4. *Invasive Species*

Invasive species have had an enormous impact on the New Caledonian environment. Each code lists invasive plant and animal species, including species that are currently found in New Caledonia, as well as highly invasive species that are not yet found in New Caledonia. The codes prohibit wilful, negligent or reckless introduction of listed invasive species into the wild. It is also prohibited to cultivate, transport, use, sell or purchase any invasive plant. The provincial administration may authorise the production, use or possession of listed invasive species for agricultural, fisheries or forestry purposes (for example, rabbits, crayfish and pine trees).

3.6. Natural Resource Management

Each code includes a division dealing with natural resource management.¹⁸ In both cases, this division covers hunting, fisheries and quarries. In the case of South Province, this division also deals with forestry and exploitation of biological, genetic and biochemical resources.

3.6.1. *Hunting*

Hunting has significant economic, social, cultural and environmental significance in New Caledonia.¹⁹ In both provinces, any person wishing to hunt must ordinarily apply for a hunting permit, and obtain the approval of the owner of the land on which they wish to hunt. Each code includes a list of game species, a list of protected species, and a range of restrictions on hunting (e.g. seasonal closures, bag limits, restrictions on sale). These restrictions reflect the conservation status of particular species. For example, deer (common introduced species) may be hunted all year, with no bag limit on does and fawns, while flying foxes (threatened endemic species) may only be hunted during four weekends in April, and are subject to strict bag limits. Interestingly, the legal hunting season for flying foxes corresponds closely with the traditional indigenous hunting season for these species. The South Province code provides for the appointment of game wardens and, in both provinces, significant penalties apply for breaches of hunting regulations.

3.6.2. *Fishing*

The fisheries regulations in both provinces have been substantially modified during the codification process. In each province, the code emphasises the 'long-term preservation' and 'responsible and rational exploitation' of fisheries resources. Professional and artisanal fishers are required to apply for a fishing licence, and recreational fishing is regulated. Fishing methods and gear are controlled, size limits apply and conservation measures are defined for certain marine species (e.g. groupers, lobsters, mud crabs, clams, trocas, oysters, *bêche-de-mer*). Further management measures may be established by decree (e.g. total allowable catch, individual quotas, seasonal closures, area closures, gear restrictions). In each province, a committee is charged with periodically reviewing the effectiveness of the regulations and making recommendations for their amendment. North Province specifically recognises customary marine resource management practices and undertakes to work with customary resource owners to more fully integrate these practices in future regulations.

¹⁸ Province Nord, *Code de l'environnement*, Livre III, Gestion des ressources naturelles. Province Sud, *Code de l'environnement*, Livre III, Gestion des ressources naturelles.

¹⁹ Province Sud, *Code de l'environnement*, Livre III, Gestion des ressources naturelles.

3.6.3. Quarries

In both provinces, the existing regulations dealing with quarries have been codified without amendments. Each code establishes processes for the approval of quarries, and regulates the operation, extension and rehabilitation of quarries.

3.6.4. Forestry

The South Province code includes a division dealing with forestry, which aims to 'ensure the protection, conservation and rational exploitation of timber and forest products'. Cutting or exploitation of timber or forest products on public land, or land owned by a public authority, requires provincial approval. Exploitation of timber or forest products on customary land requires the approval of the local customary council and, in the case of commercial operations, the approval of the province. Customary landowners may cut timber for certain traditional uses (e.g. firewood, houses, fences, canoes) on their own land without approval. The code sets minimum size limits for timber trees, establishes basic restrictions on logging methods, and requires a certificate of origin to be carried for any timber transported in the province. Completion of a resource inventory is mandatory prior to the granting of any authorisation to cut sandalwood, reflecting concerns arising from historical over-exploitation and depletion of this valuable resource.

3.6.5. Biological, Genetic and Biochemical Resources

The South Province code includes new provisions, implementing the *Convention on Biological Diversity*, dealing with the harvesting and exploitation of biological, genetic and biochemical resources. Subject to certain exceptions,²⁰ any person wishing to collect these resources must submit an application for provincial approval, accompanied by the prescribed fee. In processing the application, the province must consider, *inter alia*, the conservation status of the relevant resource, and the potential risks and impacts of the research. The collector must obtain the prior informed consent of the relevant landowner(s), and must enter into a written benefit sharing agreement with the landowner and the province. The code sets minimum benefit sharing standards (10% of research budget, 2% of product sales) and provides for the allocation of payments between the landowner (65%) and the province (35%). Fifty percent of payments received by the province must be allocated to biodiversity conservation measures, including measures to preserve and promote the traditional ecological knowledge and practices of local communities.

3.7. Pollution Control and Waste Management

3.7.1. Classified Facilities

Both codes provide for the regulation of certain 'classified facilities' that may present a risk to the environment, including human health and safety (*les installations classées pour la protection de l'environnement*).²¹ An industrial, commercial or agricultural facility may be categorised as a 'classified facility' due to the nature and quantity of the substances it uses (e.g. explosive, toxic or radioactive substances) or the nature and scale of its activities (e.g. manufacturing, waste management). Existing classified facilities are required to meet strict operational and reporting requirements. The administrative status of proposed facilities depends on their nature and scale.

²⁰ Article 311-3: Domestic use of biological resources, traditional use and exchange by local communities, human genetic resources, *ex situ* biological resources and agricultural resources are exempt.

²¹ Province Nord, *Code de l'environnement*, Livre IV, Titre I, Installations classées pour la protection de l'environnement. Province Sud, *Code de l'environnement*, Livre IV, Titre I, Installations classées pour la protection de l'environnement.

This status determines whether the proponent is required to obtain authorisation prior to commencing operations or merely submit a declaration notifying the province of its intention to conduct its operations in compliance with standard provincial requirements.

3.7.2. Waste Management

New Caledonia, despite having the second highest per capita income in the region after Australia, does not recycle waste on any significant scale. The waste management provisions of each provincial code seek to reduce the production and impact of waste and to promote the recovery of materials and energy from waste by reuse, recycling or other means.²²

South Province has introduced a system of 'extended producer responsibility' (EPR). This system extends the responsibility of importers and local manufacturers to include management of waste from products imported or produced by them. This system currently applies to five types of waste: oils, tyres, vehicles, batteries and capacitors. Electrical and electronic equipment and packaging waste will be soon be regulated. To achieve economics of scale, importers and producers may form collective entities to manage the collection and processing of waste.

The waste management provisions of the North Province code deal primarily with liquid waste, including oil and sewerage. The code refers to the benefits of waste recovery and EPR, but does not include any substantive provisions implementing these concepts.

4. CONCLUSION

The adoption of comprehensive environmental codes by North and South Provinces represents a significant milestone in the development of environmental law in New Caledonia. The codes, while building on an existing body of regulations, display early signs of distinctive and diverging provincial approaches, and the emergence of locally appropriate models of environmental regulation.

The environmental challenges facing New Caledonia are formidable – mining, land clearing, burning and invasive species have all taken a heavy toll on the territory's unique species and ecosystems. The nickel mining and processing industry exerts particularly strong economic and political influence in the territory. Overcoming historical patterns of political capture and under-regulation of the mining industry will not be easy: one mining company has already commenced legal proceedings to challenge the constitutional validity of the South Province environmental code.

Inscription of the coral reef lagoons of New Caledonia on the World Heritage list highlights the need for integrated management of marine fisheries, coral reef ecosystems and coastal catchments, to ensure that the outstanding natural heritage values of the reefs are maintained over time. Climate change presents a severe threat to New Caledonia's unique marine and terrestrial ecosystems: the provinces must be prepared to support both local adaptation measures and global mitigation efforts.

These emerging challenges, combined with the territory's complex historical, cultural and political heritage, present fertile ground for innovation in environmental regulation. The North and South Province environmental codes offer a strong foundation for building, over time, a system of environmental law that responds to New Caledonia's pressing environmental challenges in a manner that is appropriate to the provinces' local circumstances.

²² Province Nord, *Code de l'environnement*, Livre IV, Titre II, Dechets. Province Sud, *Code de l'environnement*, Livre IV, Titre II, Dechets.