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Department of Pacific Affairs

Incompatible Struggles? Reclaiming Indigenous Sovereignty and Political Sovereignty in Kanaky and/or New Caledonia

Anthony Tutugoro

Discussion Paper 2020/5

Introduction

The question of sovereignty in Kanaky and/or New Caledonia¹ has been the central political issue for the people of the archipelago for nearly five decades. Over that period, the idea of restitution has matured for the Indigenous population of the territory, with the notion now taking on multiple meanings. The dominant strategy is to achieve sovereignty on a political level through a referendum in which a large part of the New Caledonian population votes (see the following discussion on voter eligibility). The first referendum provided for in the Nouméa Accord was held on 4 November 2018. The ‘no’ vote won 57.67 per cent to 43.33 per cent on the question of the territory’s accession to full sovereignty. Some among the Kanak population have been working in parallel on a plan to regain an alternative form of sovereignty: Indigenous sovereignty. After the run-up to the second referendum, which was also provided for in the Nouméa Accord and took place on 4 October 2020, it seems important to examine the relationship between these two conceptions of sovereignty and consider what is at stake. The ‘no’ won again, but the gap between the ‘no’ and ‘yes’ votes is narrowing. ‘No’ won by 54.26 per cent, while yes obtained 46.74 per cent of the expressed suffrage.² This was a difference of 9970 voices between the ‘no’ and the ‘yes’ votes. Figure 1 shows the distribution of the Kanak vote. Figure 2 provides a breakdown of New Caledonia’s communities in the last two censuses.

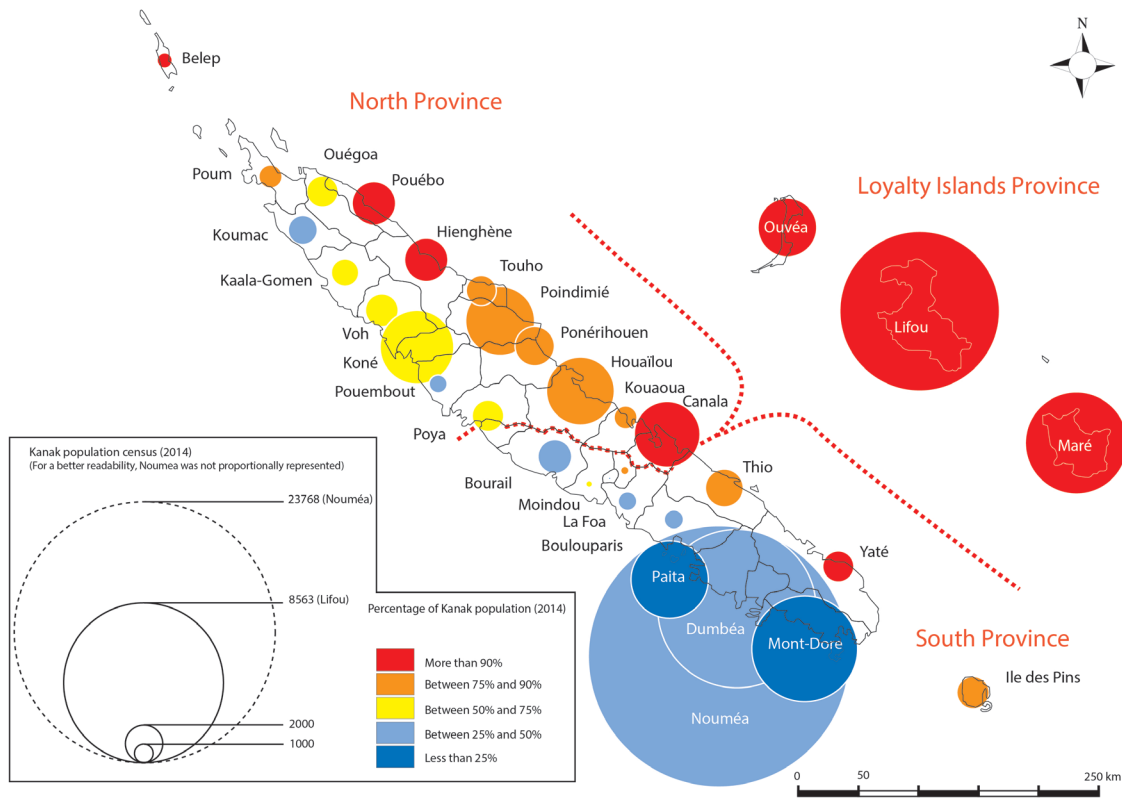
This paper discusses whether, in the movement to reclaim full sovereignty in New Caledonia, there is a sharp duality between pro-independence leaders and pro-Indigenous rights proponents, or a complementarity between their respective programs

and goals. Using tools from different disciplines (public law, Indigenous rights law and different branches of political science), and drawing on various forms of evidence (the media, militant press, academic articles, videos, interviews, lectures and personal interviews with current pro-independence and pro-Indigenous rights leaders), this paper compares the strategies of Indigenous rights proponents as well as pro-independence leaders in order to determine their levels of concordance and dissonance, and to consider areas where they can be complementary. These issues are specifically examined in the context of the period since the 1988 Matignon-Oudinot Agreements. The first part of the paper reviews the different visions and strategies undertaken in New Caledonia in efforts to reclaim sovereignty. The second part exposes the mistrust that can be witnessed between the actors involved. The third part explores possible points of convergence between the approaches of these actors. The paper concludes by considering some scenarios that could take shape in the political landscape of New Caledonia.

Part 1: Background to Sovereignty in New Caledonia

On 24 September 1853, Auguste Febvrier Despointes, setting foot on land in Balade in the north of the Grande Terre, signed the Act of Possession (Archives de la Nouvelle-Calédonie 2018), and thus New Caledonia was officially declared to be French.³ However, from 1887 until 1946, Indigenous people were not considered French citizens, having instead the status of French subjects.⁴ They were restricted to living in reserves, often in areas that did not necessarily correspond with their homeland.

Figure 1. Distribution of the Kanak population in New Caledonia (2019)



Source: Created by Pierre-Christophe Pantz from the results of the general population census in 2019 (ISEE). Reproduced with permission.

Figure 2. Populations of the various communities in New Caledonia in 2009, 2014 and 2019

Community of belonging	2009		2014		2019	
	Headcount	%	Headcount	%	Headcount	%
European	71,721	29.2	73,199	27.2	65,488	24.1
Indonesian	3,985	1.6	3,859	1.4	3,786	1.4
Kanak	99,078	40.3	104,958	39.1	111,856	41.2
Ni-Vanuatu	2,327	1.0	2,568	1.0	2,313	0.9
Tahitian	4,985	2.0	5,608	2.1	5,366	2.0
Vietnamese	2,357	1.0	2,506	0.9	2,230	0.8
Wallisian and Futunian	21,262	8.7	21,926	8.2	22,520	8.3
Other*	39,865	16.2	54,143	20.1	57,848	21.3
Other (including belonging to several communities*)	20,398	8.3	23,007	8.6	30,758	11.3
Total	245,580	100.0	268,767	100.0	271,407	100.0

Source : Recensements de la population (population census) (ISEE).

*Before 1976, the Wallisian, Tahitian, Indonesian, Vietnamese and Ni-Vanuatu communities were counted under 'other'. In 2009, the following were included in the 'other' category: other Asians, those belonging to several communities, the undeclared and others.

The Indigénat (native regulation regime)⁵ was abolished in New Caledonia in 1946. For a period of 10 years after this, only Kanak ‘notables’⁶ (primary school teachers, priests, pastors, chiefs and so forth) could participate in the territory’s various elections. This electorate represented a total of 1042 people out of a total voting body of 10,624. It was only in 1957 — one year before the advent of the French Fifth Republic — that all adult Kanak were allowed to vote, and accordingly to enter a new sphere, that of electoral democracy (Kurtovitch and Guiart 1997; Soriano 2013). Before that, Indigenous people had been expected to submit to external authorities, despite those authorities having been elected in processes devoid of Indigenous participation.

Current pro-independence political strategy to obtain full sovereignty

The period of 1946 to 1988 represents a long era of Kanak people struggling to reclaim their sovereignty in New Caledonia.⁷ In particular, the 1980s were a time of political troubles in New Caledonia often referred to as Les Evènements (The Events) (this term has been contested, however, by those who argue that its use obscures the reality that what New Caledonia experienced during those years was, in fact, an anti-colonial conflict verging on war). In 1983, a discussion was opened in the French city of Nainville-les-Roches between pro-independence leaders, opponents of independence, the French state and the Council of High Chiefs to try to define a new social contract in New Caledonia (Fandos 2018). During the meeting, independence leaders accepted the possibility that the *victimes de l’histoire* (victims of history)⁸ could participate in the emancipation of New Caledonia by voting in a future referendum on self-determination. The ‘victims of history’ were those non-Kanak residents of New Caledonia who found themselves there through no fault of their own: for example, descendants of convicts, free settlers, indentured workers, especially from Asia, and immigrants from French Polynesia and Wallis and Futuna. Such a referendum was organised in 1987, but was boycotted by pro-independence militants, mainly because the electoral roll was established allowing for the registration of voters with a minimum residence period in New Caledonia of just three years. Proponents of Kanak independence regarded the three-year period as far too brief. The Kanak comprise

the largest community in New Caledonia, but during the 1980s comprised only around 43 per cent of the population as a result of successive waves of migration, especially since the early 1950s. In this referendum, the ‘no’ (against independence) won with around 98.3 per cent of the vote, but with a participation rate of only 59.1 per cent. What this indicated was that a very high proportion of non-Kanak voters had voted, and that almost all of them voted against independence.

Then came the Matignon-Oudinot Agreements in 1988; a referendum on self-determination was supposed to happen at the end of this 10-year agreement, in 1998. However, by agreement of all the major parties under the Matignon-Oudinot, this next referendum never occurred⁹ and a new agreement was signed on 5 May 1998 called the Nouméa Accord. Independence leaders accepted this new deal because on 1 February of the same year the Bercy agreement was signed, giving pro-independence representatives the possibility of developing their own nickel-mining strategy to progressively prepare the economy, and thus independence, of the territory.¹⁰

Twenty years after the Nouméa Accord, the first full referendum was finally held on 4 November 2018. It involved the main components of the independence movement, although the Parti Travailleiste (Labour Party) and the trade union Union Syndicale des Travailleurs Kanak et des Exploités (USTKE) chose not to participate. In line with United Nations (UN) General Assembly resolutions 1514 (XV) and 1541 (XV), and because New Caledonia was reinstated on the list of non-self-governing territories on 2 December 1986, the territory at this moment exercised its right to self-determination. However, under the provisions of the Nouméa Accord, the body of voters was not solely composed of the original colonised people. People who arrived before 31 December 1994 and could justify their moral and material interests in the territory could also vote.¹¹ Thus, the electoral body for this referendum was composed of the colonised Kanak people as well as the descendants of people who had settled in New Caledonia for various reasons, including migrants from France who arrived during the 1970s and 1980s. The current political strategy of pro-independence leaders is to include the whole population, Kanak and non-Kanak, living on the islands in a social project aimed at creating a new social contract and finally obtaining full sovereignty.

Proponents of Indigenous rights

Parallel to this pursuit of full sovereignty through the support of a broad section of the population comprising both Kanak and a significant number of non-Kanak, after 1988 some Kanak organisations chose to utilise the terrain of 'Indigenous rights' before the UN (Demmer 2010; Graff 2012:75; Trépiéd 15/5/2012). This involved the use of non-governmental organisations (NGOs) and other kinds of organisations engaged in the area of Indigenous peoples' rights, particularly protecting customary rights and working on Indigenous sovereignty. One of the most relevant examples is the Congrès Populaire Coutumier Kanak (Customary Kanak Popular Congress), a former political organisation active during Les Evènements called the Front Uni de Libération Kanak (FULK, United Front for Kanak Liberation). The political party had been led by Yann Céléne Uregeï, the first elected Kanak leader to proclaim an official desire for New Caledonian independence during a speech in 1975 at the Territorial Assembly (Congrès de la Nouvelle-Calédonie 2011:170–71; see Appendix 2 for transcript). Before the Matignon-Oudinot Agreements, the FULK had agreed to struggle inside the French republican political institutions. However, following the acceptance of these agreements in a 1988 referendum, the FULK decided to dissolve at its 1992 convention at Kumo¹² and act in the customary arena.

So how does the Nouméa Accord deal with Kanak customary rights? Is it true that the Nouméa Accord recognised and put the Kanak people at the centre of the system, as was announced? Looking at the advances contained in the 1998 accord, the fact that it recognises that Kanak sovereignty existed in various parts of New Caledonia before French conquest and colonisation must be acknowledged. At the institutional level, under the Nouméa Accord the previous Conseil Consultatif Coutumier (Customary Consultative Council) became the Senat Coutumier (Customary Senate). One notable difference before and after the 1988 agreements is that the Council of High Chiefs was previously composed of the traditional chiefs of the various chieftaincies (Douglas 1994:80). However, the members of the Customary Consultative Council and the Customary Senate representing different areas are now appointed by local customary councils, and so do not necessarily have to be traditional chiefs. The arrangements established by the Nouméa Accord have been met with a sense of

reserve and some mistrust between pro-independence leaders and the customary senators. As a consultative organ that does not require consent, the Customary Senate has never really been used since its creation by the pro-independence leaders as part of their strategy to reclaim sovereignty. A sense of not being properly appreciated by the Kanak political leadership seems to have encouraged customary senators to become heavily involved in the Indigenous people's rights movement in order to assert their significance through efforts to preserve and protect Kanak identity. Later, the NGO Conseil National du Peuple Autochtone de Kanaky Nouvelle-Calédonie (National Council for Indigenous Peoples Rights of Kanaky New Caledonia) was formed by various activists such as Raphael Mapou and Dick Saihu to actively campaign for Indigenous rights. The NGO presents itself as 'the arms and feet of the Customary Senate on the ground'.¹³

For Trépiéd (15/5/2012), this emergence of Indigenous rights proponents led to:

two alternative and competing Kanak strategies at odds with one another over how to fight the inequalities and discrimination bequeathed by colonisation and which still afflict the Kanak people.

Five years before that assertion, Demmer (2010:48) had already pointed out this dichotomy, explaining:

However, make no mistake, this is not an economic strategy with a commercial aim — to make a profit — but with a political aim. It is a means for the Kanak on the grounds of their autochthony, to (re)valorise themselves in a context where they are not sovereign — whoever governs — by defending their seniority on the land, through so-called 'environmental' rights, as well as their way of life, through so-called 'collective' rights.

It is important to observe now what mistrust may arise between these different strategies before returning later to the possibility of their complementarity.

Part 2: Mutual Mistrust

In this particular context, the existence of mutual mistrust can be observed. This section analyses the causes of this mistrust and its consequences.

Pro-independence leaders' mistrust towards pro-Indigenous rights proponents

The signing of the Matignon-Oudinot Agreements in 1988 was a starting point for the emergence and divergence of the two different sovereignty strategies, exposing the mistrust between their proponents. During the negotiations of the agreements, especially the Oudinot agreement, pro-independence leaders consented to the transformation of the Council of High Chiefs into a consultative organ. As was outlined in the introduction of this discussion paper, this organ then became the Customary Senate in 1998. At its creation, the Customary Senate, which is supposed to incarnate custom into the political institutions, was not given the capacity or mechanisms to be effective. As Professor Carine David (2010) has shown, the Customary Senate has only a consultative role and thus often just a modest influence on the development of legislation. The 54-member Congress of New Caledonia — its elected parliamentary body — must consult the Customary Senate for every piece of draft legislation related to Kanak identity. The congress can also choose to consult the Customary Senate for any other draft law or proposal for legislation, but in both cases the congress is never obliged to follow the Customary Senate's opinion. This reveals the political objectives at play during the negotiation of both the Matignon-Oudinot (1988) and Noumea (1998) agreements. Indeed, since the end of the Indigénat, pro-independence political leaders have undertaken a long period of electoral work to gain seats in institutions, while customary senators, on the other hand, are appointed, not elected. Thus, the mistrust between them seems logical. This is a conflict of legitimacy, because while pro-independence leaders use their election to legitimise their power, customary senators are not involved in elections and thus their legitimacy is located elsewhere.

A second argument to illustrate the self-assuredness of the pro-independence political strategy compared with that of pro-Indigenous rights proponents is linked to the framework of French constitutional law, which in now recognising the Kanak people and the right to self-determination, has buoyed the pro-independence

cause. Since the signing of the Nouméa Accord in 1998, the statute and organic law of New Caledonia has been integrated into the French constitution. Two main components of the Noumea Accord reflect this: the right to self-determination for a specific body of voters and the recognition of the existence of the Kanak people. Traditionally, only one people existed in the French constitution: the French people. It is only because the French state recognised the possibility of its own right to self-determination in New Caledonia that the existence of two peoples was acknowledged in France. This is a major change in the French constitutional landscape, which traditionally rejects all kinds of division and inequality of treatment. During a colloquium in Nouméa in 2010, an expert on the French constitution, Professor Félicien Lemaire, explained that, from a juridical point of view, Indigenous rights are subordinate to the constitution-based Nouméa Accord.

One of the most emblematic examples illustrating the mistrust between pro-independence leaders and pro-Indigenous rights proponents can be observed in the Proposal for a Future Sovereign Nation State, the statement developed in 2018 by the independence coalition Front de Libération Nationale Kanak et Socialiste (Kanak and Socialist National Liberation Front, or FLNKS).¹⁴ This document, emerging from contributions by the coalition's four political parties, is a kind of synthesis of two projects developed by the largest parties, Union Calédonienne (Caledonian Union) in 2015 and Union Nationale pour l'Indépendance (National Union for Independence, or UNI)¹⁵ in 2017. The strategy of the FLNKS in 2018 was directed towards convincing undecided voters, or even members of the non-independence electorate, to vote 'yes' in the referendum on 4 November 2018. The document set out the FLNKS proposal for the post-independence Customary Senate as follows:

Enlargement of its mission to promote and valorise the destin commun (common destiny or shared future), which seems to be a political necessity as part of the new State. The idea to make the Senate a second house of representatives open to other components of the population has been proposed.

This proposition explicitly suggests that after the achievement of full sovereignty, the Customary Senate could be opened to New Caledonian citizens from

other ethnic communities, such as Wallisians and Futunans, Ni-Vanuatu, Indonesians or Europeans. During the 35th FLNKS congress on 4–5 March 2017, which took place in the valley of Nimbayes in Ponérihouen, one of the UNI leaders, Louis Mapou, expressed his concern as to whether the customary representatives would agree to this point.¹⁶ At that time, the Customary Senate was not invited to discuss the issue with the pro-independence leaders or even present its point of view on its own institution. This underlines the lack of communication and subsequent mistrust between the entities.

Pro-Indigenous rights proponents' mistrust towards political pro-independence leaders For some pro-Indigenous rights proponents, two major mistakes occurred during the campaign for independence. The first took place in 1988 after the tragedy in the cave at Watëtö (atoll of Ouvéa), which involved the taking of police hostages by a group of FLNKS activists and the subsequent death of 19 Kanak and two military officers at the height of Les Evènements. Jean-Marie Tjibaou, a pro-independence leader at the time, went to the Matignon in Paris, joining then French prime minister Michel Rocard and the leader of the main non-independence party Jacques Lafleur to discuss a way out of the socio-political conflict that was highlighted by the 1988 Ouvéa crisis. Michel Rocard himself reported that during this meeting, he said to Jean-Marie Tjibaou:

There will not be another meeting. We will take the time we need, but we will end this with peace or war. I hope it's going to be peace. I hope no one here doubts that if you really want war, be aware that France knows how to wage war. We always can double the personnel there.¹⁷

After this persuasive, if not intimidatory, tactic of Michel Rocard, Jean-Marie Tjibaou eventually signed what resonates as a peace treaty with the French state and loyalist leader Jacques Lafleur. Some NGOs that campaign for Indigenous rights, such as the Congrès Populaire Coutumier Kanak (Customary Kanak Popular Congress), argue that the signing was a mistake. For Congrès Populaire Coutumier Kanak coordinator Roger Cho, the Matignon-Oudinot Agreements failed to guarantee the independence of the Kanak people.¹⁸

For these Indigenous rights groups, the second mistake occurred during the Nouméa Accord

negotiations. As outlined in the introduction, Indigenous activists contest the electoral body of voters for the referendum because they believe that arithmetically, in this juridical mechanism, the Kanak people will always be the minority and, by extension, 'no' voters will always win. This is why the Congrès Populaire Coutumier Kanak, for example, did not participate in the 4 November 2018 referendum, a move also followed by other minority political groups.

Smaller pro-independence groups' mistrust of FLNKS independence leaders

Other political and trade union structures such as the Parti Travailleiste (Labour Party) and the Union Syndicale des Travailleurs Kanak et des Exploités (Confederation of Kanak and Exploited Workers' Unions) decided not to participate in the 2018 referendum campaign. Their non-participation reflected their lack of trust in the strategy of the pro-independence political leaders to get New Caledonia full sovereignty. Without expressly campaigning for Indigenous rights, these organisations argued that the referendum should only involve Kanak people. In this respect, the Parti Travailleiste seems to be a pro-independence party with a pro-Indigenous rights vision in its strategy to reclaim sovereignty.

An analysis of the discursive method used by these organisations shows that they mobilised using essentially the same framework noted previously to support their position. They all highlighted the strategy of the French state to make New Caledonia a colony of settlement. For example, they refer to governor Paul Feillet's strategy, used from 1894 to 1902, to mobilise a total of 500 French families to settle in New Caledonia, especially to develop coffee production (Congrès de la Nouvelle-Calédonie 2011:36–39). The document to which they most commonly refer is Pierre Messmer's 18 July 1972 letter, which clearly calls for efforts to encourage people from metropolitan France and its non-Pacific overseas possessions to settle in New Caledonia so that French people could secure a numerical majority and counter any potential independence claim (see Appendix 1 for a transcript).

Part 3: A Possible Convergence of Strategies?

The division between the two broad strategies seems deep. Nonetheless, is it possible to find some areas of complementarity between them?

A deep fracture?

To answer that question, it is necessary to go further in a comparison of both strategies. Firstly, it is important to remember that many pro-independence leaders are also customary leaders. For example, Paul Néaoutyine, the Northern Province president and leader of Union Nationale pour l'Indépendance and Parti de Libération Kanak is also the chief of his own clan. Roch Wamytan, one of the leaders of Union Calédonienne and current speaker of the Congress of New Caledonia, is chief of his tribe, Saint-Louis. This gives some nuance to the argument developed previously. It must be kept in mind that different groups often overlap. This means that many Kanak independence leaders also have, of course, a mastery of the customary arena.

The key difference, however, is that the political leaders avoid positioning themselves using the Indigenous rights strategy. The question is why. One answer has been developed by Stéphanie Graff (2012, 2017) in her research. She shows that Indigenous rights are not a mechanism that permit a colonised people to accede to external decolonisation. This means that a colonised people can use the Indigenous rights strategy, especially for a large minority of people, to decolonise themselves — but only within the colonial state. Every mechanism of the Indigenous rights strategy permits the colonised people to preserve their languages, culture and traditions inside the state. These mechanisms are often used, for example, in Canada¹⁹ or, closer to New Caledonia, in Australia, with the concept of 'sovereignty without statehood'²⁰ advocated by some Aboriginal political organisations.²¹ However, in countries like Australia and Canada, the stakes for Indigenous territories are not the same due to a different demographic balance; they are much smaller minorities in the respective overall populations.

A second relevant explanation is the concept of reparation. In a recent article, Sémir Al Wardi (2018) criticised the potential application of Indigenous rights in New Caledonia because of its goal. For Al Wardi, reparation consists of claiming any kind of compensation in order to affirm an identity, custom, powers and so on while nonetheless submitting to another sovereignty.²² He goes further in his explanation by referring to Jean-Marc Regnault's severe critique of the 13 September 2007 UN Declaration on the Rights of Indigenous People, in which he argues that the declaration is 'the last avatar of colonialism to

avoid colonising carpetbaggers being forced to give up power'.²³ For Regnault, Indigenous rights rarely have any real political aim. For both authors, it appears, a focus on Indigenous rights has led Indigenous people towards seeking reparations for abuses and damages during the colonial era while also accepting that political sovereignty cannot be achieved.

Cadey Korson (2015) analyses 'social rebalancing' in New Caledonia as politically justified in the 'victimisation' speech commonly used by pro-independence leaders. From Korson's point of view, social rebalancing is seen as a kind of reparation for the Kanak people due to colonial scars. But in this author's point of view, social rebalancing gives the Kanak people the tools and means to be able to govern the Northern and Loyalty Islands Provinces and, eventually, the congress and government of New Caledonia. Moreover, the whole pro-independence strategy since 1988 is nothing if not this. During the last provincial elections campaign,²⁴ Paul Néaoutyine presented his point of view on the subject, saying that there is no new plan for a new society; rather, New Caledonia's social project began with the Matignon-Oudinot Agreements. The most striking example in New Caledonia is the Koniambo Nickel SAS operation, a nickel factory 51 per cent owned by a public institution in the Northern Province through the SMSP mining company, which is intended to provide the Kanak people and people from the Northern Province a substantial separate source of wealth and political and economic influence. It is evident that this pro-independence strategy contrasts significantly with the reparation strategy evoked by Regnault and Al Wardi.

A potential common field of action?

There are prospects for a convergence of the pro-independence strategies and the pro-Indigenous rights strategies that will probably be evident in the near future. The first self-determination referendum under the Nouméa Accord in 2018 saw a total of 43.33 per cent for the 'yes' vote (in favour of independence) and 56.67 per cent for the 'no'. It is now necessary to imagine the possibility of a 'no' majority for the two next referendums under the Nouméa Accord, in 2020 and — provided it goes ahead — in 2022. During the 2019 Pacific Islands Political Studies Association (PIPSA) colloquium, held in Nouméa at the University of New Caledonia, Mathias Chauchat (2019) stated

during his presentation that ‘the problem with pro-independence leaders is that no one listens to them.’ He referred to two declarations. The first was by Paul Néaoutyine of UNI and Palika, who stated on 7 May 2019 that there was only one exit door from the Nouméa Accord and that, for him, it is not feasible or even desirable to play for extra time by creating another statute inside the French Republic.²⁵ The second statement was by Daniel Goa, the current Union Calédonienne president and spokesperson for FLNKS. On 6 October 2018, he stated that if after three consultations the ‘no’ vote wins, the gift given by Kanak people would have been in vain. He added that they would officially talk to the other ethnic communities to tell them the Kanak people would act without them.

In the event of three failures to bring New Caledonia to full sovereignty through referendums, it is possible that pro-independence leaders will decide to bilaterally negotiate directly with the French state, and could potentially mount protest campaigns to support their objectives. At this moment, the independence movement will need to gather as many as forces as possible. They could potentially no longer position themselves as pro-independence leaders, but as representatives of all Kanak people, and essentially only the Kanak people. The semantic nuance here is quite important.

In this context, it is fitting to recall that on 12 April 2014 the Customary Senate adopted its Charter of the Kanak People (Senat Coutumier 2014), which outlines the foundations of Kanak civilisation. In the preamble of the charter, the Customary Senate claims that:

We, the customary authorities, High Chiefs, Chiefs, Presidents of District Councils, and Presidents of Council of Clan Chiefs, [are the] sole traditional and legitimate representatives of the Kanak People of New Caledonia (2014:6).

The charter adds further:

Acting on behalf of the indigenous population, Chieftainships and Clans, determined to safeguard and to promote the values and fundamental principles of the Kanak civilisation, and to carry them forward to build, in New Caledonia, a society finally liberated from any form of colonial hold (ibid.).

This semantic and intellectual vision could help change the paradigm. Being from a political movement

involved in the struggle for independence, the leaders, in this case, could eventually find themselves in an Indigenous framework, and so might talk much more explicitly as representatives of the ‘colonised people’, a population different than other other communities of New Caledonia. The discussion would then be between the colonised people and the colonial state, which would be a 180-degree turn from the approach taken by the Kanak political leaders during the last three decades of political negotiations in New Caledonia. The main convergence point can only be found here. If the pro-independence leaders decide to negotiate bilaterally with French state, they would then certainly speak as one voice with customary entities under the banner of ‘the Kanak people’ and no longer ‘the independence movement’, which, though essentially Kanak-based, has sought, at least in theory, to reach out to other New Caledonian communities in an effort to gain electoral support. One may observe that, for both the political sovereignty and the Indigenous sovereignty strategies, there is no final destination, other than exiting from all forms of colonialism.

Conclusion

Three different interpretations of the end of the Nouméa Accord

It is suggested that there are three ways of interpreting the discussions, which are likely to be held in the near future.

Firstly, it is necessary to examine the thoughts of opponents of independence. Those proposed by Philippe Gomès, leader of the Calédonie Ensemble (Caledonia Together) party,²⁶ attempt to transcend all of the sovereignty issues and the complexities they raise by advancing the concept of the ‘*peuple calédonien*’ (New Caledonian people). Quotation marks are used here because this expression, from a juridical point of view, is subject to question. It does not appear in the Nouméa Accord; on the other hand, it might be contended that at least some form of ‘New Caledonian citizenship’ has been established in recent decades. For quite a few years now, Gomès has been advocating for what he calls an ‘enlightened referendum’ (*referendum éclairé*). For him, because New Caledonia was given the right to self-determination, the New Caledonian people are already sovereign — they just have to establish what they agree and disagree about. On the

one hand, Gomès (2017) criticises pro-independence militants for never abandoning their vision of what he calls ‘the mirage of sovereignty’ in order to discuss the possibility of a partnership in association with France. On the other hand, he envisages that loyalists will never let that vision come to pass. Moreover, a kind of ‘crystallisation’ of the pro-independence and non-independence vote seems to have taken place over the last 30 years (Pantz 2020). So, this argument fails to help our aim of finding a way forward. In the recurring way of asking questions in political science, it must be asked more explicitly, ‘what do we do?’²⁷ with the debate between pro-Indigenous rights proponents and pro-independence leaders?

Another line of thought is proposed by Sémir Al Wardi, who questions the proposal that emerged from the recent Solemn Declaration of the High Chiefs and Customary Authorities.²⁸ In this declaration addressed to the French state, the authors ask for ‘the right of self-determination for their Nations, or great chieftaincy, over their territories, lands and resources’ (Senat Coutumier 2018). They also ask for their customary legitimacy to be reinstated in New Caledonia’s governance and institutions (ibid.). Al Wardi (2018) posed two questions (without providing the answers): ‘Would Kanak people agree to submit themselves to a traditional form of governance? How long can “tradition” impose itself?’. At a colloquium in Wellington on 14 March 2019, Cadey Korson raised the same questions and imagined a kind of transfer of political power from the current elected institutions to traditional chiefs. As previously stated, this hypothesis does not seem feasible. The political power elected independence leaders now have is a mandate that they feel was hard-won. Thus, it is quite certain that they would not give this power naturally to traditional chiefs who already have their own form of power in their respective areas.

The third possibility questions the idea of complementarity between the two strategies. Indeed, it is possible that the current fragile balance between them is a way of playing the game on several boards. Instead of creating a duality, recognising the complementary nature of the strategies of the pro-independence political camp and pro-Indigenous rights proponents permits Kanak leaders to occupy different arenas. Customary chiefs and high chiefs exert authority on customary grounds. The Customary Senate and its appointed senators involve

themselves in the Indigenous rights field. Politically, pro-independence Kanak leaders negotiate New Caledonia’s institutional and political future with non-independence leaders and the French state. As such, a strategy of playing on different boards is relevant. In this regard, Patrice Godin, in a colloquium held in November 2019 at the University of French Polynesia, explicitly responded to the idea of an opposition between these two strategies presented by Trépiéd and Demmer. For Godin, the massive vote in favour of independence by the Kanak people in the 2018 referendum demonstrates that rather than being in competition with each other, the two strategies are in fact working in parallel. Support for Godin’s argument can be found in a constant in the history of the independence movement: ‘a will to solve colonial problems not by separation and division, but rather by creating *new* types of relationships’ (ibid.). To support idea, Godin cited all of the historical sequences also mentioned in this paper where the Kanak people called on the other communities inhabiting the territory to form what is currently called in New Caledonia la *communauté de destin* (the community of destiny).²⁹

The 2020 pandemic and a new-found solidarity

COVID-19, which has not spared New Caledonia in 2020, has added a new dimension to be taken into consideration. Indeed, from the beginning of the year, the customary authorities, before the public authorities, of Loyalty Islands Province, were the first to prohibit the docking of cruise ships on their land in order to protect their population (Noukouan et al. 31/1/2020). Subsequently, in order to prevent a health threat, the various customary authorities throughout New Caledonia took a stand against the repatriation of New Caledonians outside the country planned by the government. From the beginning of the pandemic, these representatives set the tone for a possible convergence, since, in a press conference given to the government of New Caledonia, Vice President Gilbert Tyuienon, president of the congress Roch Wamytan, president of the Customary Senate Hippolyte Sinewami Htamumu and Drubea-Kapoumè representative Marcel Paita³⁰ took turns speaking to justify the repatriation of expatriate New Caledonians throughout the globe wishing to return to the territory (Congrès de la Nouvelle-Calédonie 30/3/2020). All this was done while reassuring citizens of the effectiveness

of the health measures that had been mobilised. The customary authorities were initially opposed to these repatriations, but following discussions with various actors from these institutions, their opinions changed. It is interesting here to ask why. The main argument put forward at the time was that it was impossible to leave compatriots abroad, isolated and, for some, financially destitute. How was a solution achieved? The answer is through a comprehensive dialogue leading to consensus in a manner characteristic of Oceanian oratory. Thus, a highly significant and potentially seminal moment in New Caledonian history occurred: it was the first time that the highest representatives of these three institutions, all three Kanak, were officially speaking side by side. The Kanak people finally spoke with one voice to the whole of New Caledonia. Following this event, the position of the customary authorities of the Drubea-Kapoumë area further hardened when a plane loaded with 180 soldiers arriving from France was to land at the Tontouta airport at the end of April 2020 to relieve the troops in place. Clément Païta, Grand Chief of the customary area said, ‘We want to protect our country and our people’ (Tromeur 26/4/2020). In a press release issued by all the pro-independence members of the government of New Caledonia, UNI and UC together said:

These people come all the same from a country where the epidemic is still very present, and their arrival, without all the guarantees being met, would make the Caledonian population take an unacceptable risk (D’Anglebermes et al. 22/4/2020; Les Nouvelles Calédoniennes 23/4/2020).

These recent examples demonstrate that in the particular circumstances of a health emergency, the independent political world and the customary world, including the one that militates in the field of the rights of Indigenous peoples, can work hand in hand towards a common interest. The hypothesis of positioning themselves as ‘Kanak people’ is already being considered, even before the three hypothetical ‘no’ votes in the referendums provided for in the Nouméa Accord, as previously mentioned. This also seems to be the case from an economic point of view. As proof of this, a group initially made up of customary representatives from the Drubéa-Kapoumë area called Usine du Sud = Usine Pays (Southern Factory = Country’s Factory)³¹ rose up in a march on 21 August 2020 against the takeover of the southern Vale plant by

the Australian company New Century. SOFINOR and the company Korea Zinc have formulated a proposal to buy back the plant (Madec et al. 21/8/2020). The collective called for a big demonstration in favour of this buy-back option, which would allow the public authorities of New Caledonia to keep control of the plant —and the profits it will generate. This march brought together the various customary authorities of the archipelago, all the pro-independence political parties and the unions, which are themselves pro-independence. The new Mouvement Nationaliste pour la Souveraineté de Kanaky (Nationalist Movement for the Sovereignty of Kanaky), including a new pro-independence party, the Mouvement Nationaliste Indépendantiste et Souverainiste (Independent and Sovereignist Nationalist Movement), and the Labor Party also took part in the mobilisation. It should be noted here that while the Labor Party abstained from involvement in the 2018 referendum, it campaigned in favour of a ‘yes’ vote in the October 2020 referendum. This contributed modestly towards increasing the overall number of ‘yes’ votes.

It is clear that when the interests of the Indigenous population of the archipelago and the protection of its natural resources are at stake, it is easy for all actors to find points of convergence that allow them to display themselves as one man and, above all, Kanak: the ‘real man’.³²

A necessary orchestration of the political and customary spheres in the near future

Finally, it is important to consider the discussion that would need to take place between political Indigenous sovereignty leaders in the event of a majority ‘yes’ vote to the self-determination referendum question. In this scenario, one could envisage a great public debate between pro-independence leaders and legitimate customary representatives.

In the context of full sovereignty and independence, the new country would have to adopt a constitution. But before that, political leaders (including, of course, leaders of parties that supported a ‘no’ vote) who participated in discussions with the French state to establish a plan to exit the Nouméa Accord will logically have to convene a constituent assembly. The modalities to bring together this assembly would be decided by these leaders, but one thing is sure: it would finally be the occasion for the leaders of both

the Indigenous and independence strategies to discuss and find a way to manage a new form of governance in the new state. This discussion will necessarily need to involve representatives from civil society and especially customary delegates to find a path of convergence between electoral and customary legitimacies. This discussion, in the case of full sovereignty, would also be a way of counteracting what Hamid Mokaddem recently called ‘a foreclosure of Kanak sovereignty’ (2018:327). More than ever, given the results of the second referendum consultation, this hypothesis is not to be ruled out. These possibilities need to be anticipated and prepared for in order to best organise different strategies and understand the entanglement between the political and customary spheres in the future.

There is one final remark to be made. Max Weber gave two lectures in 1917³³ and 1919³⁴ that resulted in the publication of the book *The Scientist and the Politician* (1963). Adapting this precedent to the New Caledonian context, and taking into account all the elements discussed in this paper, it can be suggested that in the future a special ‘practical manual’ could potentially be written by authors from New Caledonia for a better understanding of the logic of empowerment in the archipelago. It would be called *The Scientist, the Politician and the Customary Authority*.

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Endnotes

1. Both New Caledonia and Kanaky are used here at the start to highlight the various possibilities. Officially, the island is still called New Caledonia. The name ‘Kanak-New Caledonia’ is the name of the future state according to the Front de Libération Nationale Kanak et Socialiste (Kanak and Socialist National Liberation Front, FLNKS), while other groups want to keep the term ‘Kanak’ alone. Others still would prefer no change at all.
2. Results are available on the [official website](#) of the high commission of New Caledonia.
3. Another less-known act was signed by the same navigator on 29 September in the Isle of Pines (the customary lands of Kunié), and a few acts were signed up until 20 January 1855. See Actes Relatifs à la Prise de Possession (du 24 septembre 1853 au 20 janvier 1855) (Acts Relating to the Taking of Possession (from September 24, 1853 to January 20, 1855)) published during *le mois du patrimoine* (patrimony’s month) on 15 September 2018. Also available in the Bulletin Officiel de la Nouvelle-Calédonie (BONC).
4. Until 1945, there were two categories of people in New Caledonia: French subjects, the Melanesians who were subject to French sovereignty without the right to participate in its exercise but retained their traditional private law, and French citizens, the Europeans. The latter participated in the political leadership of the French nation and possessed French civil status. ‘The citizens govern the nation, the subjects owe obedience to it’ (Kurtovitch and Guiart 1997).
5. The French Native Code, or Indigénat, was established in New Caledonia in 1887, nine years after the 1878 Grande Révolte (Grand Revolt) of the chief Ataï in the middle of the main island. The Indigénat was a set of laws established by France in its colonies in order to distinguish the French citizen from the French subject, provide for the exploitation of native labour and control the natives. The code was originally intended to be temporary and should have lasted 10 years, however it was reinstated in New Caledonia every 10 years until circumstances changed as a result of the World War II. Général de Gaulle had already declared at the Brazzaville Conference in 1944 that it was time for the emancipation of the French colonies. The Lamine Gueye law was finally adopted on 7 May 1946 proclaiming each and every person originating from its colonies a French citizen. See the recent work of Adrian Muckle and Isabelle Merle in Merle and Muckle 2019.
6. Around 1042 people.
7. The term ‘Kanak’ has been reclaimed by the Indigenous people of New Caledonia. It used to be a pejorative

- term used by Europeans to describe Indigenous people. In the 1970s, especially with Jean Marie Tjibaou's organisation of the Melanesia 2000 Festival, the term Kanak was progressively reclaimed by Melanesians. This semantic reversal can be understood as a reversal of the stigmatisation of the Kanak people (Goffman 1963).
8. At the Nainville-les-Roches roundtable, it was said: 'Recognition of the legitimacy of the Kanak people, the first occupant of the Territory, being recognized, as such, an innate and active right to independence, the exercise of which must be carried out within the framework of self-determination provided for and defined by the Constitution of the French Republic, a self-determination also open, for historical reasons, to other ethnic groups whose legitimacy is recognised by the representatives of the Kanak people' (Lalie 29/7/2013).
 9. The body of voters for the referendum that was supposed to be held in 1998 under the Matignon-Oudinot Accords was the body of voters who voted for this accord (from 1988 to 1998 equals 10 years of residency).
 10. The repurchase of the Société Minière du Sud Pacific (Mining Company of the South Pacific) was carried out by the Northern Province in 1989. The aim of this strategy is to transform the nickel industry in New Caledonia to avoid a situation where Kanak would remain mere handlers of nickel rather than owners of it. See Néaoutyine 2005:157–71.
 11. There are other criteria, such as having customary civil status, or having one parent who is ruled by this statute. This statute allows Kanak people to live under their own customary rules in matters of civil law, although it does not include penal law, which is ruled by the French state.
 12. Kumo is located north of Lifou Island in the Wetr customary district.
 13. See the interview with ex-CNDPA-KNC (Conseil National du Peuple Autochtone de Kanaky-Nouvelle-Calédonie (National Council for Indigenous Peoples Rights – Kanaky-New Caledonia)) president Dick Saihu on 9 August 2012, 5:00. See also [Nouvelle-Calédonie: les Kanak Représentent la Première Communauté](#). The CNDPA in New Caledonia has played an important role in the consideration of UN indigenous rights in the territory.
 14. The FLNKS integrates the major pro-independence parties: Union Calédonienne, Palika, Union Progressiste en Mélanésie (Progressive Union in Melanesia) and Rassemblement Démocratique Océanien (Oceanian Democratic Rally).
 15. At the moment, UNI is a coalition of two political parties, Palika and UPM, and one association, Union Nationale pour l'Indépendance dans la Diversité (National Union for Independence in Diversity). The Union Nationale pour l'Indépendance emerged from an electoral strategy that began in 1995 and continues today. Palika saw itself as an almost exclusively Kanak party, which is why, during the provincial elections of 1995 in the Northern Province, it created an open list to rally Europeans and other electors from different ethnic origins to be able to work together without being expressly tagged as Palika militants.
 16. Personal notes.
 17. See Michel Rocard talking about the famous day of Saturday 25 June 1988 in [L'Outre-Mer Naissance d'une Nation 2013](#), 22:35.
 18. The exact quote in French: 'Nous, au Front Unitaire de Libération Kanak, avons dit que les accords de Matignon-Oudinot ne garantissaient pas l'indépendance du peuple Kanak' (RIDH Human Rights 2017:1:30).
 19. See Otis 2018.
 20. This includes claiming native titles to dispose sovereignly of the land and was declared in 1976 with the Aboriginal Land Rights Act.
 21. See, for example, Jonas 2002.
 22. The exact quote in French: 'Conscient de l'impuissance des Kanak à parvenir démocratiquement à la pleine souveraineté, ils présentent des revendications qui relèvent plutôt du droit 'autochtone'. Autrement dit, réclamer des compensations de tout ordre pour affirmer leurs identités, leurs coutumes, leurs pouvoirs mais aussi leurs revenus tout en se soumettant à une autre souveraineté. Un moindre mal en quelque sorte.'
 23. The exact quote in French: 'Le dernier avatar du colonialisme pour éviter aux profiteurs de la colonisation de céder le pouvoir, l'autochtonie n'ayant souvent pas de projet politique' (Regnault 2013).
 24. Nouvelle-Calédonie La Première 2019.
 25. The exact quote in French: 'Il faut se rendre à l'évidence que l'accord de Nouméa ne prévoit qu'une seule porte de sortie. A terme, il n'est pas envisageable ni souhaitable de jouer les prolongations d'un énième statut au sein de la République.'
 26. This non-independence political party was founded on 14 October 2008.
 27. The reference here is to the words of French political scientist Yves Schemel in his lecture *A Quoi Sert la Science Politique?* (What is political science for?) (Schemel 2013).
 28. The declaration emanates from the Customary Senate and was published on 5 May 2018.
 29. Not to be confused with *le destin commun* (common destiny or shared future) as set out in the Nouméa Accord.
 30. This is the name of the customary area of the south of the Grande Terre and the Isle of Pines, including in particular,

Nouméa and the Tontouta airport.

31. The collective was then supplemented by another more official body, the Instance Coutumière Autochtone de Négociations (Customary Indigenous Negotiating Instance).
32. Here, the concept of the 'real man' embodying the essence of being Kanak is important. In the various Kanak languages, the appellation of the 'real man' is used to describe the Kanak man in order to completely distinguish him from others. For example, in the Paicî language from north of the Grande Terre, it is called *aji âboro*, which literally means 'the real man'. Note that 'real man' relates to human beings, so can apply to both men and women.
33. Weber, M. 1919. *Wissenschaft als Beruf (Science as a Vocation)*. Munich: Duncker & Humblodt, 524–55. Originally delivered as a speech at Munich University, 1918.
34. Weber, M. 1919. *Politik als Beruf (Politics as a Vocation)*. Munich: Duncker & Humblodt, 396–450. Originally delivered as a speech at Munich University, 1918.

Appendix 1

Dans une lettre du 19 juillet 1972, Pierre Messmer, alors Premier ministre, écrit à son secrétaire d'État aux DOM-TOM :

La Nouvelle-Calédonie, colonie de peuplement, bien que vouée à la bigarrure multiraciale, est probablement le dernier territoire tropical non indépendant au monde où un pays développé puisse faire émigrer ses ressortissants.

Il faut donc saisir cette chance ultime de créer un pays francophone supplémentaire. La présence française en Calédonie ne peut être menacée, sauf guerre mondiale, que par une revendication nationaliste des populations autochtones appuyées par quelques alliés éventuels dans d'autres communautés ethniques venant du Pacifique.

À court et moyen terme, l'immigration massive de citoyens français métropolitains ou originaires des départements d'outre-mer (Réunion) devrait permettre d'éviter ce danger en maintenant et en améliorant le rapport numérique des communautés.

À long terme, la revendication nationaliste autochtone ne sera évitée que si les communautés non originaires du Pacifique représentent une masse démographique majoritaire. Il va de soi qu'on n'obtiendra aucun effet démographique à long terme sans immigration systématique de femmes et d'enfants.

Afin de corriger le déséquilibre des sexes dans la population non autochtone, il conviendrait sans doute

de faire réserver des emplois aux immigrants dans les entreprises privées. Le principe idéal serait que tout emploi pouvant être occupé par une femme soit réservé aux femmes (secrétariat, commerce, mécanographie).

Sans qu'il soit besoin de textes, l'administration peut y veiller.

Les conditions sont réunies pour que la Calédonie soit dans vingt ans un petit territoire français prospère comparable au Luxembourg et représentant évidemment, dans le vide du Pacifique, bien plus que le Luxembourg en Europe.

Le succès de cette entreprise indispensable au maintien de positions françaises à l'est de Suez dépend, entre autres conditions, de notre aptitude à réussir enfin, après tant d'échecs dans notre Histoire, une opération de peuplement outre-mer.

In a letter dated 19 July 1972, Pierre Messmer, then Prime Minister, wrote to his Secretary of State for the French Overseas Departments and Territories:

New Caledonia, a settlement colony, although doomed to multiracial variegation, is probably the last non-independent tropical territory in the world where a developed country can send its nationals as migrants.

We must therefore seize this final opportunity to create an additional French-speaking country. The French presence in Caledonia can only be threatened, barring a world war, by a nationalist claim by the indigenous populations supported by a few possible allies in other ethnic communities from the Pacific.

In the short and medium term, the massive immigration of French citizens from metropolitan France or the overseas departments (Réunion) should make it possible to avoid this danger by maintaining and improving the numerical ratio of the communities.

In the long term, indigenous nationalist claims will only be avoided if the non-Pacific communities represent a majority demographic mass. Of course, no long-term demographic effects will be achieved without systematic immigration of women and children.

In order to correct the gender imbalance in the non-indigenous population, it might be appropriate to set aside jobs for immigrants in private companies. The ideal principle would be that any job that could be held by a woman should be reserved for women (secretarial, commercial, data management and processing).

Without the need for texts [legal instruments], the administration can ensure this.

The conditions are right for Caledonia to be in twenty years' time a small prosperous French territory comparable to Luxembourg and obviously representing, in the vacuum of the Pacific, much more than Luxembourg in Europe.

The success of this undertaking, which is essential to maintain French positions east of Suez, depends, among other conditions, on our ability to finally succeed, after so many failures in our history, a project of overseas settlement.

Source: Carpentier, P. 2014. 1972, L'Esprit et la Lettre Explicites du Colonialisme Français, par Pierre Messmer à son Secrétaire d'État aux 'DOM-TOM'. Mediapart.

Appendix 2

Discours de Yann Céléne Uregei à l'Assemblée Territoriale le 9 septembre 1975

Monsieur le président,

Plus jamais le Gouvernement Français ne pourra dire qu'en Calédonie, personne ne demande l'indépendance. Onze élus mélanésiens dont le député de la Nouvelle-Calédonie et cinq groupements de jeunes Canaques ont approuvé dans un communiqué commun la prise de position pour l'Indépendance proclamée officiellement par l'Union Multiraciale.

L'indépendance Canaque que nous réclamons est l'aboutissement logique d'une politique d'exploitation coloniale au profit d'une seule petite minorité de bourgeois capitalistes. Le projet de réforme de statut qui nous est soumis aujourd'hui pour avis, signifie la départementalisation du Territoire renforcée avec la réforme fiscale, la régionalisation et bientôt l'étatisation de toutes les sociétés d'investissement du nickel.

Nous avons rejeté l'intégration en proclamant l'Indépendance Canaque qui seule pourra faire reconnaître véritablement l'existence du peuple canaque, sa propre identité culturelle.

Les canaques doivent faire le procès de la France après 122 ans de présence française en Calédonie.

Le Canaque est absents dans son pays. Il est absent dans toutes les activités de son pays.

Accepter ce projet de réforme, c'est accepter cette politique coloniale qui a fait des Canaques des absents dans leur propre pays.

Le peuple Canaque ne peut s'épanouir que sur les ruines du colonialisme.

La seule voie vers cette émancipation Canaque, c'est l'indépendance canaque car le procès de la France, après 122 ans de présence française, prouve que les Canaques ne peuvent compter que sur eux-mêmes.

Nous disons NON au gouvernement français et à la France, OUI à l'indépendance canaque, Vive la Calédonie libre!

Speech by Yann Céléne Uregei to the Territorial Assembly on 9 September 1975

Mr President,

Never again will the French Government be able to say that in Caledonia nobody is asking for independence. Eleven Melanesian elected representatives, including the deputy from New Caledonia, and five groups of young Canaques approved in a joint communiqué the position paper for independence officially proclaimed by the Multiracial Union.

The Canaque independence that we demand is the logical outcome of a policy of colonial exploitation for the benefit of a single small minority of capitalist bourgeoisie. The draft reform of the statute that is submitted to us today for our opinion, means the departmentalisation of the territory strengthened with the tax reform, regionalisation and soon the transfer of all the nickel investment companies to state ownership.

We have rejected integration by proclaiming Canaque independence, which is the only way to truly recognise the existence of the Canaque people and their own cultural identity.

The Canaques must put France on trial after 122 years of French presence in Caledonia.

The Canaque are absent in his country. He is absent in all the activities of his country.

To accept this reform project is to accept this colonial policy which has made the Canaques absent in their own country.

The Canaque people can only flourish on the ruins of colonialism.

The only way to this Canaque emancipation is Canaque independence, because the trial of France, after 122 years of French presence, proves that the Canaques must now rely only on themselves.

We say NO to the French government and to France, YES to Canaque independence, Long live free Caledonia!

Note: The spelling of ‘Canaque’ here is taken from a transcript of the speech published by the Congrès de la Nouvelle-Calédonie (2011:287).

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