Understanding New Caledonia

Caroline Gravelat

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UNDERSTANDING NEW CALEDONIA

Edited by Caroline Gravelat

Translated into English by Elaine Sutton – Editorial coordination, Françoise Cayrol

LARJE

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COLLECTION LARJE

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My warmest thanks to the authors of this book, research professors who are either in post at the University of New Caledonia or have been involved in research in the University's laboratories, all of whom have generously shared their findings in various fields of research, and have succeeded so splendidly in condensing their knowledge to meet the confines of this volume. Without their commitment, willingness and goodwill, this volume would not have seen the light of day.

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INTRODUCTION

Gaël LAGADEC
UNC President (2013-2021)

This edited volume is intended to respond to concerns voiced by the French diplomatic service, aware of the need for clearer understanding of New Caledonia within a context of growing international and, above all, regional interest.

The self-determination process which began in 2018 has undeniably made New Caledonia a focus for the international and, more particularly, regional community: Pacific Islands Forum Ministerial Missions to observe progress of the referendums and monitor implementation of the Noumea Accord, United Nations Observer Missions, coverage by global media. Statements made in the wake of the ballots by the heads of Oceanian States reveal marked regional interest in New Caledonia's circumstances and future.

As a result of becoming a member of the Pacific Islands Forum in 2016, New Caledonia has made significant advances in terms of visibility and regional integration. However, it still encounters difficulties in raising awareness of its history, its particularities, its institutions and its degree of autonomy.

The University of New Caledonia, a member of the Pacific Islands University Research Network (PIURN), therefore took on the task of offering insight and information in English in a multidisciplinary work covering the areas which best represent the diverse facets which make contemporary New Caledonia unique. Designed, encyclopedia-like, to instruct and enlighten, this collection of articles explores the fields of history, political and legal science, economics, and geography, together with the humanities and social science.

This edited volume, funded by the Economic, Social, and Cultural Cooperation Fund for the Pacific (Pacific Fund), itself financed by the French Ministry for Europe and Foreign Affairs, seeks to help raise New Caledonia's profile and reach. Serving as an introduction to the country, the work also aims to stimulate other studies and research shedding light on already active links with the rest of the Pacific to provide more insight into the things we have in common, and to help further New Caledonia's integration into its regional environment.

While the LARJE (Laboratory of Legal and Economic Research) has provided scientific oversight and overall management, this volume would never have seen the light of day without the collaboration of research and teaching staff working in all the University's laboratories, and of academics who, as experts on New Caledonia, work in other centres of learning. The LARJE provided expertise on the economic and legal aspects of New Caledonia's development. The TROCA team (TRajectoires d'OCéAnie) supplied essential insight into the dynamics of evolution in terms of history, society and literature. The ERALO team (MobilitÉs, cRéation, lAngues et idéoLogies en Océanie) contributed to the section on languages and society. The Institut de sciences exactes et appliquées (Institute of Exact and Applied Sciences – ISEA) provided expertise in physical and human geography.

New Caledonia, an Oceanian archipelago and a French possession since 24 September 1853, is a land where Melanesia and France meet and converge. A land of contrasting landscapes, unique biodiversity, ethnically-diverse communities and history steeped in stories of human suffering, courage and hope, all facets reflecting the rich profusion and vulnerability of New Caledonia. Commitment to freedom and issues of identity both play an integral role in a quest to simultaneously define New Caledonia's place within a French framework and to free itself therefrom. That the country faces a crossroads is not only true in administrative, legal and historical terms but is, above all, a human and social reality.

The work opens with a description of New Caledonia's human and physical geography, characterized by landscapes of great diversity and very uneven spatial distribution of the population, and with a presentation of the natural environment, distinguished by a very high degree of endemism and by outstanding and vulnerable biodiversity (Part I). The next section explores New Caledonia's communities, their roots, their life stories and sufferings, and looks at the demands for independence, addressing the issue of the community of destiny prefigured by the Noumea Accord. An ideal of "living together" in a context of incomplete decolonization, which the key stakeholders, the indigenous Kanak people and the communities of European, Wallisian-Futunan, Tahitian, Indonesian, Vietnamese, Japanese, Kabyle, Caribbean, and Malabar descent, all arrivals in New Caledonia after 1853, are struggling to build (Parts II and III). Focussing on themes including Kanak culture, religion, languages, health and literature, the authors then proceed to draw a picture of New Caledonian society in all its complexity (Part IV).

The Noumea Accord, New Caledonia's current status and the role of the French government are all discussed with a view to providing a clearer understanding of the legal and political autonomy enjoyed by New Caledonia, unparalleled in current French constitutional settings. This autonomy is reflected in areas such as citizenship, which could be extended to nationality, the management of natural resources, on land and at sea, by local authorities, and expanding civil procedure rules to encompass Kanak custom... all areas examined in detail in the edited volume (Part V).

New Caledonia, half the world away from France, stands out in Oceania in enjoying high levels of development not far behind New Zealand. An achievement which obscures the far less flattering reality of socio-economic disparities which public rebalancing[1] policies have been trying to mitigate for three decades. New Caledonia's autonomy is curtailed so severely by its poorly developed production structure that the sustainability of its development model is called into question. Nickel, the primary resource on which the country's economic system is founded, is a source of conflict and prey to ideological positions which sometimes run counter to economic logic. New Caledonia may well be fiscally independent but its public finances remain heavily dependent on French government funding (Part VI).

Since the signing of the Noumea Accord, which expressly provides for the United Nations to be kept informed of New Caledonia's progress towards decolonization, and for New Caledonian authorities to enjoy diplomatic freedom in keeping with the concept of "shared sovereignty" with France, the country has committed to a groundbreaking policy of regional

1 For a definition of this term, see Riss, in this volume, p 325-328.

integration. Over and above its now formalized relations with the United Nations and with regional bodies, New Caledonia is eager to play a useful role as an OCT (Overseas Countries and Territories) representing the European Union in Oceania (Part VII).

On 12 December 2021, the people of New Caledonia will be asked to choose between independence or remaining within the French Republic, and therefore to decide on the terms and conditions for exiting the Noumea Accord. This decisive step forms part of a process of emancipation begun in 1988 and due to end with the 3rd self-determination referendum provided for in the Accord. This is the final topic covered by this edited volume, which attempts to provide a clearer understanding of the driving forces behind this referendum, the outcome of which remains impossible to predict.

PART I

THE ARCHIPELAGO

THE PHYSICAL AND HUMAN GEOGRAPHY OF THE NEW CALEDONIAN ARCHIPELAGO

Jean-Marie FOTSING
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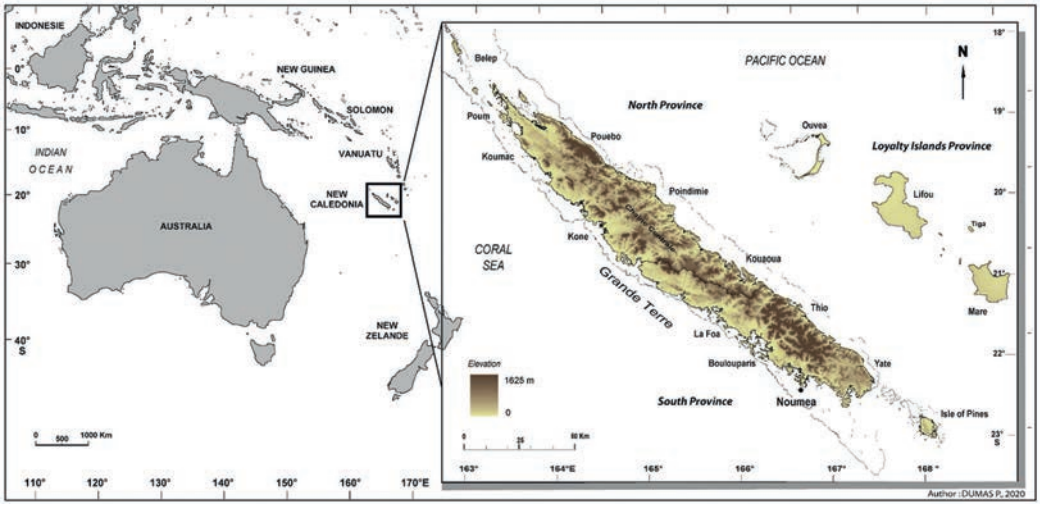
New Caledonia lies in the southern hemisphere, in the southwest Pacific Ocean, south of Melanesia and north of the Tropic of Capricorn. Its closest neighbours are Vanuatu to the north, with capital Port Vila approximately 550 km away, Australia, about 1,500 km to the east, and New Zealand, 1,700 km to the south. New Caledonia has a surface area of 18,575 km² and is the fourth largest archipelago in the South Pacific, only Papua New Guinea, New Zealand and the Solomon Islands being larger. New Caledonia is structured around two geographical groupings, making it an archipelago with dual insularity. On one hand, the principal island known as "Grande Terre" (Main Island), with the Isle of Pines to the south and the Belep Islands to the north (16,750 km², 90% of the archipelago's surface area); and on the other, the four Loyalty Islands (Lifou, Maré, Ouvéa and Tiga), lying 150 to 200 km east of the Main Island and covering 1,974 km², i.e. 10% of New Caledonia's land surface (Figure 1).

Figure 1: The place of New Caledonia in the Southwest Pacific Ocean



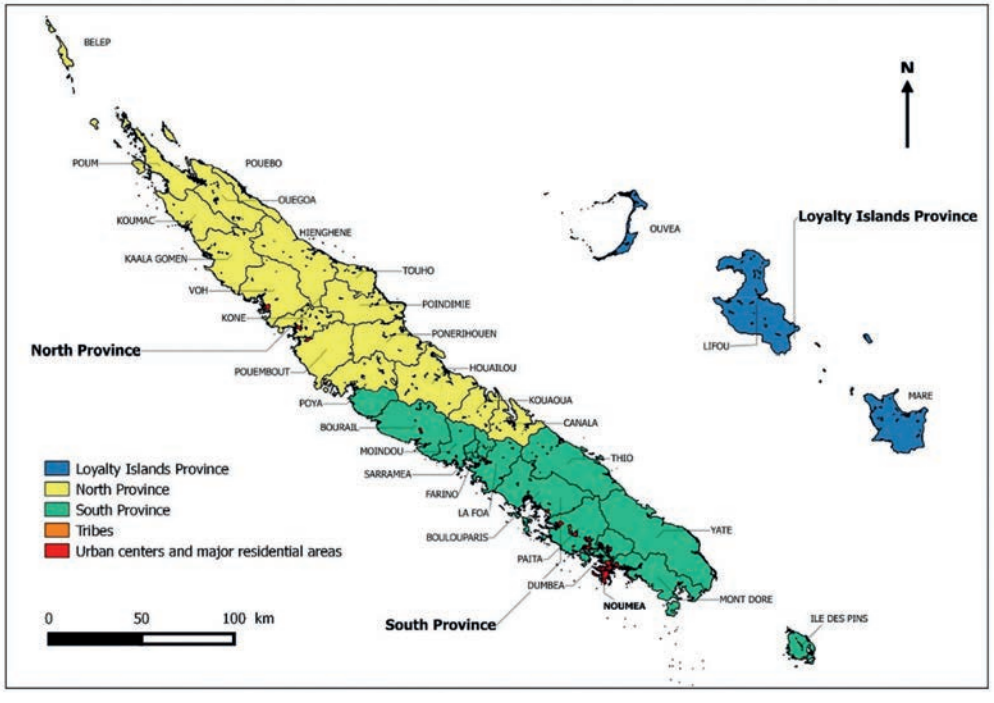
From north to south, the archipelago stretches from 19°32' south (Pott Island, to the north of the Belep Archipelago) to 22°43' south (Brosse islet, to the south of the Isle of Pines). From west to east, East of the International Date Line, the archipelago extends from 163°30' (Pott island) to 168°10' (Maré island). A few remote coral islets (Entrecasteaux atolls and

Chesterfield and Bellona plateaus to the north and west of the Main Island) and volcanic islets (Matthew and Hunter to the south-east) are dependencies of New Caledonia. This island group spans a vast exclusive economic zone (EEZ) covering 1,774,000 km², the second largest EEZ boasted by France's overseas territories after French Polynesia, and the 9th most extensive in Oceania (Gay, 2014).

New Caledonia's geographical location means that the archipelago enjoys a tropical oceanic climate with two seasons, and an average annual temperature of 23.5°C. The rainy season, from mid-November to mid-April, is characterized by tropical depressions which sometimes escalate into tropical cyclones. The dry season, from mid-April to mid-November, is marked by multiple "bush fires" and wild fires. Seasonal climatic variances exist between the south and north and between the east and west coasts. Regardless, New Caledonia's climate is tropical and humid, with both seasons marked by rainfall events, ensuring reasonable water availability for vegetation and crops.

According to the 2019 census, New Caledonia has a population of 271,400, making it a sparsely populated area overall, with an average population density of about 14.6 pop./km². This low human impact on the environment is evident in landscapes which appear mainly as pristine or affected by little human alteration except in urban areas, especially those in the southwest of the Main Island. Nevertheless, like everywhere else on the planet, most of New Caledonia's land areas were transformed when the first peoples settled there, around three thousand years ago. The human footprint increased with colonization in the 19th and 20th centuries, with the process speeding up over the past three decades as a result of population growth and the development of economic activities.

Figure 2: Administrative organization of New Caledonia



In administrative terms, the archipelago was split into four subdivisions in 1969 (South, West, East and Loyalty Islands). In 1985, the subdivisions were reorganized into four regions (South, Central, North and Loyalty). The current three administrative Provinces were established under the Matignon Accords in 1988. The three provinces are divided into thirty-three municipalities: South Province (13 municipalities), North Province (16 municipalities) and Loyalty Islands Province (3 municipalities). The land area of the Poya municipality was divided in 1999 into two parts, one allocated to the South Province and one to the North Province (Figure 2). At local level, this administrative division into provinces covers 341 tribes grouped into 57 customary districts, with 13 in the South Province, 28 in the North Province and 16 in the Loyalty Islands Province (cf. figure 2, p. 20).

This chapter on "the physical and human geography of the New Caledonian archipelago" is divided into two parts. The first part focusses on physical environments and associated variations. The second part deals with population trends, spatial patterns, and urbanization and its impact on the territory of New Caledonia.

I. CLEARLY DIFFERENTIATED PHYSICAL ENVIRONMENTS

A. The Main Island's central mountain range: a mountainous environment impacted by mining

The Main Island represents 90% of New Caledonia's land surface. It is a mountainous island oriented NW-SE, a fairly narrow strip around 400 km long and 40 to 65 km wide. An ancient mountain range comprising geological features dating from before the Permian period (225-280 million years ago) runs the entire length of this lofty island. This relatively low mountain range, commonly known as the Chaîne centrale rises to a height of 1,628 metres at Mount Panié in the northeast, and 1,618 metres at Mount Humboldt in the southeast (Cappechi, 1994). The highly varied terrain features steep slopes, deep valleys and cliffs at the edges of the mountain ridge. To the west, hills and plateaus overlook vast prairies and wetlands. To the east, steep, craggy cliffs tower over narrow lowlands or plunge straight into the sea.

Exposure to prevailing winds creates variations in climate on the eastern and western slopes of the central mountain range. The East Coast or "windward side" is exposed to the Trade Winds; warm, humid maritime air masses release significant rainfall as they rise and cool in response to adiabatic expansion. Conversely, the West Coast or "leeward side" is drier, as a result of the Foehn effect which warms and desaturates the cloud masses forced over the peaks. This dissimilarity in weather conditions explains the contrasting landscapes and differences in land use.

The central mountain range is mainly covered by dense tropical rainforests growing above 500 metres above sea level. Below 500 metres above sea level, forests are found only at a few thalweg lines and along river banks. This is the most luxuriant and varied plant formation, sheltering around 2,000 species of vascular plants (ferns, conifers and flowering plants), with 82% of endemic species. It is home to all 38 species of palm trees found in New Caledonia and 35 of the 43 conifer species. It also features species such as kauris (*Agathis* spp.), tamanu *(Calophyllum caledonicum),* araucarias (including *Araucaria columnaris* column pines, a species of Araucariaceae) and tree ferns (including *Cyathea intermedia* which grows to a height of 35 m, one of the tallest tree ferns in the world).

Currently, forest formations cover a total area of around 4,000 km² and are found on a variety of geological substrates (volcano-sedimentary and ultramafic). However, New Caledonia's forests are frequently threatened by bush fires, one of the leading causes of biodiversity loss in the country; in 99% of cases, such fires are triggered by humans (Œil, 2019). Slash-and-burn techniques are traditionally used by Kanak farmers (Toussaint, 2018). Due to agricultural fire-setting, forest areas diminish every year and are replaced by savannah and scrub vegetation. Such human-induced vegetation change increasingly affects the south of the Main Island, where nearly 3,700 km² are now covered by scrubland characterized by evergreen shrubs and a dense layer of grasses and sedges. This type of vegetation develops on soils derived from ultramafic rocks (peridotites and serpentinites), rich in iron, magnesium and nickel but nutrient-deficient. These very specific conditions are the reason why 90% of plant species found in New Caledonia (out of a total of around 1,140 listed species) are endemic.

The mountainous areas are generally underpopulated (with a population density of one inhabitant/km² or less) and are the exclusive domain of mining. New Caledonia is a major player in the global nickel industry, ranked in 2018 as 5th largest producer in the world by the *International Nickel Study Group* (INSG). According to the *United States Geological Survey* (USGS), the country's subsoil contains around 7% of the world's estimated nickel reserves. Mining areas comprise approximately 270,000 hectares of concessions, i.e. 15% of New Caledonia's total surface area (ISEE, 2017). Mining operations are carried out by thirty or so dedicated mining centres, based at 500 to 1,200 metres above sea level. The municipalities of Koumac, Kaala Gomen, Thio, Canala and Kouaoua are the primary locations for major mining operations.

Mining, using mainly manual methods, began early in the 20th century, then expanded in the 1950s with the benefits of mechanization. The technique used was open-cast mining, which left indelible scars on the landscapes of the Main Island: stripped soils, exposed peaks, talus slopes, solid tailings dumped at the foot of slopes or left as tailing mounds, polluted rivers, bays swamped by sediments and made barren… However, since the 1970s, mining legislation has become much more restrictive in order to mitigate environmental impacts, with the implementation of stabilized tailings heaps, runoff water management, and the revegetation of degraded sites, etc.

B. Coastal areas: a land-sea continuum subject to human impact

The coastal areas facing the sea, in contrast to the mountainous areas, are characterized by unusual marine ecosystems and well-populated flatlands which are extensively human-modified. The Main Island is encircled by a coral barrier reef extending over more than 1,600 km and representing the world's longest continuous coral reef structure, only second, in terms of surface area, to Australia's Great Barrier Reef. The barrier reef encloses a vast lagoon covering 24,000 km² and forming an ecosystem of outstanding biodiversity sheltering 15,000 animal species (Payri *et al.,* 2018). The lagoon is home to over 350 coral species out of the 845 identified worldwide, and around 1,700 fish species (Richer de Forges *et al.*, 2000). By comparison, Europe's total area of rocky seabeds boasts only 600 species.

This uniquely rich biological and landscape diversity resulted firstly in a part of the lagoon (an area covering 15,000 km²) being inscribed on the UNESCO World Heritage List and led later, in 2014, to the establishment of the Natural Park of the Coral Sea. This marine nature park encompasses 1.3 million km², an area two and a half times greater than the land

surface of France and, in 2018, constituted France's largest protected marine area, and the fourth largest in the world. This luxuriant marine wilderness lends itself to a wide range of uses. Importantly, it provides substantial fishery resources, supporting both subsistence and commercial fishing, key activities in New Caledonia. Subsistence fishing plays a particularly important role in Kanak communities, providing an essential source of dietary protein. Commercial fishing is mainly deep-sea fishing, focussing on catches of albacore tuna *(Thunnus alalunga)* and, to a lesser extent, yellowfin tuna *(Thunnus albacares)*. Given the advantages of New Caledonia's vast exclusive economic zone (EEZ), this type of fishing could offer promising development prospects (Dumas, 2020).

The lagoon is also an immense playground for tourists and locals keen on water sports and leisure activities, with a focus on recreational boating and scuba diving. More than 26,000 boats are registered in New Caledonia, mainly in Noumea. The lagoon environment is healthy and relatively well-preserved due to population pressure remaining low. But New Caledonia's growing population and economic development inevitably endanger this fragile ecosystem, with the southwestern area of the lagoon under particularly acute threat.

Mangroves grow on coastal margins where land meets sea, bathed by intertidal flows on sheltered coasts where waters are shallow. These forests of mangrove trees (*Rhizophora*, *Avicennia marina* and *Bruguiera gymnorhiza* being the commonest mangrove species found in New Caledonia) cover around 360 km², i.e. almost 2% of the archipelago's surface area. They are mainly found on the West Coast and at the Northern tip of the Main Island, thriving in the muddy shallows of bays or along the edges of river estuaries. Recognized as precious and highly productive ecosystems (they protect the coastline by reducing erosion and serve as a nursery for many lagoon species), mangrove forests also have strong symbolic and cultural value in New Caledonia and play a major socio-economic role. They offer coastal communities ideal conditions for gathering shellfish and fishing, providing protein-rich food sources (e.g., mangrove crabs, mollusks and fish) and also underpin the growing prawn aquaculture industry established on the salt flats fringing the mangroves. Twenty or so private prawn farms spread over a total area of about 650 ha, mainly located on the West Coast, currently form the basis for the prawn farming industry (IEOM, 2019). Importantly, aquaculture plays a key role in encouraging people to settle in the rural "bush", outside urban centres.

The West Coast is characterized by a succession of vast coastal plains, small plateaus and hills. These topographic features provide environments for a variety of plant species. The coastal strip is home to dry sclerophyll forests, a transitional plant formation found growing between areas of rainforest and mangrove forest. New Caledonia's dry forests have now been reduced to a few more or less well-preserved patches coupled with secondary shrub undergrowth dominated by leucaena *(Leucaena leucocephala)* and gaïac *(Acacia spirorbis)*. Nonetheless, the dry forest is an ecosystem of outstanding biodiversity, home to 252 endemic species. New Caledonia's dry forest is under severe threat due to human activity and introduced, often invasive, species; it now covers around 45 km², namely 1% of the original surface area of the country's dry forests.

Grasslands scattered by clumps of niaouli trees (*Melaleuca quinquenervia*), gaïac-type shrubs, sweet acacia *(Acacia farnesiana)* and common guava *(Psidium guajava)* form the prevailing feature of the West Coast landscape. This is the quintessential "brousse calédonienne" – New Caledonian bush country – (Lebigre and Dumas, 2008), typical of the West Coast and North of the Main Island. These secondary plant formations replace virgin rainforest or dry forest

destroyed by land clearing and wildfires. Such habitats, shaped by humans since settlement of the first peoples, are frequently encountered from the coastline to 600 metres above sea level. They now cover around 8,000 km², constituting the country's most widespread plant formation.

Despite low soil fertility and increased drought, the flat topography of the West Coast makes it New Caledonia's prime farming and livestock breeding region. Cattle breeding is the key activity throughout the region, with the exception of a few orchards and vegetable crops cultivated in the municipalities of Mont-Dore, La Foa, Païta and Bourail. Cattle are reared at liberty in an extensive system based around large mechanized livestock farms which have been established by European settlers since the 19th century. The municipalities of Voh, Pouembout, Boulouparis, Bourail, Païta, Poya and Kaala Gomen are currently the main livestock breeding locations.

Although the East Coast benefits from greater rainfall, it only possesses a narrow coastal strip overshadowed by the mountain range, a circumstance acting as a major obstacle to agricultural development. Due to the extremely reduced cultivable area, narrow humid valleys are used for agriculture, mainly traditional subsistence farming and occasionally vegetable crops and fruit. Canala, Ouégoa and Houaïlou are key fruit growing locations, boasting orchards of mandarins, bananas and litchis. Coconut palm groves, which were long cultivated and cared for by Kanak communities, are now neglected. All the same, crop farming and livestock grazing remain leading ways of using land in New Caledonia (Dumas, 2012). Since the natural conditions are not conducive to agricultural development, the utilised agricultural area totals only around 180,000 ha, i.e. 10% of the country's entire surface area.

C. The Loyalty Islands: an archipelago on the fringes, little affected by human alteration

The Loyalty Islands archipelago stretches over a distance of 500 km and lies 150 to 200 km off the East Coast of the Main Island, from which it is separated by the Loyalty Islands basin, about 2,300 metres deep. Covering a total surface area of approximately 2,000 km², the archipelago comprises four main islands of very unequal dimensions: Lifou (1,150 km²), Maré (650 km²), Ouvéa (160 km²) and Tiga (14 km²). An extensive karst system lies beneath these islands, the product of a tumultuous geological history giving rise to a well-developed network of inland caves and sinkholes and numerous cliffs and rock terraces along the coastline.

Lifou and Maré are raised atolls with steep, rugged coastlines commanding a central plain overlaid by a sedimentary mantle formed by organic material once part of an ancient lagoon. Rainwater filters easily down through the highly porous limestone bedrock, explaining why there is no surface water system. Drinking water is provided by a low-density freshwater lens floating above a layer of seawater. Management of these fragile reserves and water supply are key issues in the Loyalty Islands. At present, the use of individual tanks to collect rainwater and water from the desalination plant in Ouvéa represent effective solutions.

The island of Ouvéa is a crescent-shaped atoll tilted westward. A lagoon to the west of the island is closed off by a series of reefs and islets: the Southern and Northern Pleiades. The higher eastern edge of the island is lined with a series of coral cliffs over 30 metres high. To the west, the lagoon is fringed by a beach of fine sand 25 km long. These exotic landscapes of pristine, white sand beaches bordered by coconut palms are often featured on tourist brochures and leaflets showcasing the beauties of the archipelago.

Exposed to the prevailing winds, the Loyalty Islands enjoy a humid tropical climate with an annual average rainfall of 1,600 mm spread over two seasons. Vegetation is dense and lush, especially along the shorelines, despite the inhospitable nature of the coral soils. However, the central plateaus of Lifou and Maré are covered by sparser brush and grassland vegetation, partly the result of the slash-and-burn land clearing and farming methods commonly used by Melanesian communities.

In administrative terms, the Loyalty Islands form one of New Caledonia's three Provinces - the Loyalty Islands Province - comprising three municipalities (Lifou, Maré and Ouvéa) and with headquarters in Wé, the principal town of Lifou, the largest and most densely populated island. Most of this sparsely populated Province's administrative and commercial services are based in Wé. In 2019, the Loyalty Islands Province accounted for less than 7% of New Caledonia's total population, living on one tenth of the archipelago's surface area. Since no European settlers ever established themselves in these islands, the Province is entirely made up of customary lands. The Loyalty Islands Kanak tribal organization is very active and governs the daily lives of the mainly Melanesian communities. The islands are home to around a hundred tribes (37 in Lifou, 31 in Maré and 20 in Ouvéa), grouped into customary districts, with three in Lifou (Wetr district in the north of the island, Gaïtcha in the centre and Lössi in the south).

The Loyalty Islands still offer few economic and employment opportunities and traditional subsistence farming remains the most widespread activity, with a focus on self-sufficiency and, in particular, customary exchanges of gifts. Four out of five families are involved in subsistence farming despite a decrease in Utilised Agricultural Area (UAA) and numbers of farms. Nevertheless, there is increased diversification in the agricultural sector, the agro-food industry is becoming more structured, and developments are being seen: vanilla processing and marketing in Lifou, tree farming development in Maré, copra oil-based soap manufacture and fish and shellfish processing/packaging in Ouvéa. Apart from such agricultural and agri-food activities, tourism plays a major economic role in the Loyalty Islands. Over one quarter of tourists arriving in New Caledonia visit the Loyalty Islands Province, with Japanese visitors especially keen to spend time in the islands. The tourism industry has considerable development potential for the Loyalty Islands, which are blessed with a richly diverse natural and cultural heritage.

II. CONTRASTS IN HUMAN GEOGRAPHY

A. An ever-growing population

The recent growth of New Caledonia's population is analyzed over a period of thirty years, starting in 1989, the year the territory was divided into three administrative provinces. Table 1, based on successive official censuses, presents population numbers and trends in percentage points for the whole archipelago (NC) and for the provinces (South Province: SP, North Province: NP and Loyalty Islands Province: LIP) (cf. table 1, p. 26).

The population of New Caledonia was recorded as 271,407 by the 2019 census. Compared to the 1989 census, population growth was 107,407 over a thirty-year period. The overall rate of change was 65.5%, i.e. an average annual rate of 2.1% over the entire period. Over the same period, the population of the South Province increased by 91,409 (81.80%), the population

Table 1: Population counts and rate of change from 1989 to 2019

	A 1989	B 2004	Ch. 1 (B-A)	C 2009	Ch. 2 (C-B)	D 2014	Ch. 3 (D-C)	E 2019	Ch. 4 (E-D)	Ch. 5 (E-B)
N-C	164,000	229,728		245,580		268,767		271,407		
Ch. NC1	(+ 65,728)		**+ 2.6%**	(+15,852)	**+1.3%**	(+23,187)	+1.9%	(+2,640)	**+ 0.2%**	**(+1.2%)**
Ch. NC2	**+ 107,407 pop. (+ 65.5%, i.e. 2.1%/year)**									
South Prov.	111,735 (68.1%)	163,206 **(71.1%)**		183,007 **(75.5%)**		199,983 **(74.4%)**		203,144 **(74.8%)**		+ 39,938
Ch. SP1	(+ 51,471)		+ 3%	(+19,801)	+ 2.4%	(+16,976)	+ 1.8%	(+3,161)	+ 0.3%	+ 1.6%
Ch. SP2	**+ 91,409 pop. (81.80%, i.e. 2.7%/year)**									
North Prov.	34,526 **(21%)**	44,442 **(19.3%)**		45,137 **(18.3%)**		50,487 **(18.8%)**		49,910 **(18.4%)**		+ 5,468
Ch. NP1	(+ 9,916)		+ 1.9%	(+ 695)	+ 0.3%	(+ 5,350)	+ 2.3%	(- 577)	- 0.2%	**+0.8%**
Ch. NP2	**+ 15,384 pop. (44.5%, i.e. 1.4%/year)**									
Loyalty Islands Prov.	17,912 **(10.9%)**	22,080 **(9.6%)**		17,436 **(7.2%)**		18,297 **(6.8%)**		18,353 **(6.8%)**		**- 3,727**
Ch. LIP1	(+ 4,168)		+ 1.5%	(- 4,644)	- 4.2%	(+ 861)	+1%	(+ 56)	+ 0.06	**- 1.1%**
Ch. LIP2	**+ 441 pop. (2.5 %, i.e. 0.08 %/year)**									

Source: Insee-ISEE, Population Census (data updated 27/02/2020)

Notes on Table 1 data

The data in the above table are drawn from official INSEE-ISEE population census statistics for New Caledonia from 1989 to 2019.

Columns **A, B, C, D and E** show population counts corresponding to census years, and the population percentage for each province as part of the total population for the year in question, in brackets.

Columns **Ch.1, Ch.2, Ch.3 and Ch.4** show the annual rates of population change for the whole territory and for each of the three provinces, computed on the basis of the population counts recorded by the two previous censuses: for example, Ch.1 gives the annual rate of change between 1989 and 2004; Ch.2 the annual rate of change between 2004 and 2009. The calculation-based counts are given in brackets, together with the annual rates of change for the provinces (Ch. SP1) and for the archipelago as a whole (Ch. NC1).

Column **Ch.5** shows the annual rate of population change for the whole territory (NC) and the Provinces (SP, NP, LIP) for the period 2004 to 2019, i.e. a 15-year period.

The lines **Ch. NC2, Ch. SP2, Ch. NP2 and Ch. LIP2** show overall data on population trends in New Caledonia over the 30-year period (population counts followed - in brackets - by the overall growth rate and the annual growth rate).

of the North Province by 15,384 (44.5%), while the population of the Loyalty Islands saw only a small increase of 441 (2.5%, a very low annual growth rate of 0.08%). The data given in the table show significant variation in growth rates between provinces, and also successive censuses.

Overall, the 1989 to 2004 period is characterized by a population increase of 65,728, with an overall growth rate of 40%, corresponding to an annual rate of 2.6%. The next 15 years (2004 to 2019) are characterized by slower growth, barely half that recorded over the previous 15 years, with a population increase of 41,679 and an overall growth rate of 18.1 %. More precisely, the annual growth rate of New Caledonia's population rose from 1.3% between 2004 and 2009 to 1.9% between 2009 and 2014, then fell to 0.2% between 2014 and 2019.

The overarching population growth trend in New Caledonia is attributable to a combination of several factors, the most significant thereof being a falling birth rate, lengthening life expectancy and a drop in mortality. From 1989 to 2009, the birth rate declined from 23.6 births per 1,000/pop. to fewer than 17 births per 1,000/pop. over the same period. The current figure is around 15 births per 1,000/pop. Over the same periods, there was a sharp decline in mortality, bringing the natural growth rate down from 18 per 1,000/pop. in 1989 to below 11 per 1,000/pop. in 2009. The current figure is around 10 per 1,000/pop. The natural growth rate was supplemented by an overall positive net migration rate between inflows and outflows up until 2009, making New Caledonia one the few countries in the South Pacific with positive net migration. However, net migration has been negative since 2014 and the rate has increased since 2016 (Insee, 2020).

Added to these factors are the country's youthful population (half the population is aged under 30), the increase in life expectancy, particularly amongst women, and the fact, attributable to immigration, that males slightly outnumber females (103 males per 100 females in 2009). These overall variations in New Caledonia's population cannot conceal the major disparities between provinces or the disparities between municipalities within the provinces.

B. Very uneven spatial distribution

Population distribution in New Caledonia is extremely uneven, with significant disparities between the three provinces and also between the 30 municipalities making up these provinces. Moreover, there is increasing divergence in demographic trends: high growth in the South, moderate in the North, and negative in the Loyalty Islands.

From 1969 to 2019, the population remained very unevenly distributed amongst the three provinces. The South Province is by far the most populated (74.8%), followed distantly by the North Province (18.4%) and finally the Loyalty Islands Province (6.8%). In 1989, the figures were respectively 68.1%, 21% and 11%. Demographic discrepancies have endured from one census to another and disparities between the South Province and the other two provinces have increased.

The demographic weight of the South Province within New Caledonia's overall population has increased steadily, rising from 68.1% in 1989 to 71.1% in 2004, reaching 75.5% in 2009, followed by a slight drop to 74.4 and 74.8% in 2014 and 2019. Over the past 30 years, the South Province has seen sustained population increase, despite a slight decrease in annual rates of population change. In point of fact, the annual rate declined from 3% between 1989 and 2004 to 2.4% between 2004 and 2009, then to 1.8% between 2009 and 2014, dropping to 0.3%

between 2014 and 2019. However, the South Province's average annual growth rate for the period 2004 to 2019 was 1.6%, well above that of the North Province (0.8%) and the Loyalty Islands Province (-1.1%).

The North Province saw a gradual decline in demographic weight within New Caledonia's overall population; it fell from 21% in 1989 to 19.3% in 2004, then to 18.3% in 2009, 18.8% in 2014 and 18.4% in 2019. The population of the North Province declined by 577 from 2014 to 2019, i.e. a negative annual rate of change of - 0.2%. However, as a share of New Caledonia's overall population, the North Province population showed a slight annual growth of 0.8%.

The Loyalty Islands Province has the smallest share of New Caledonia's population, and that share has undergone a greater reduction than the North Province. From 10.9% in 1989, it fell to 9.6% in 2004, to 7.2% in 2009 and to 6.8% in 2014 and 2019. The population of the Loyalty Islands Province declined by 4,644 from 2004 to 2009, i.e. a drop of 21% giving a negative annual rate of change of - 4,2%. Over the 2004 to 2019 period, the Loyalty Islands showed a negative annual rate of population change, standing at -1.1%. This demographic shift is primarily attributable to a strongly negative net migration rate corresponding in the main to young people of working age migrating to the South Province, chiefly to Greater Noumea, a more appealing location and a major source of employment.

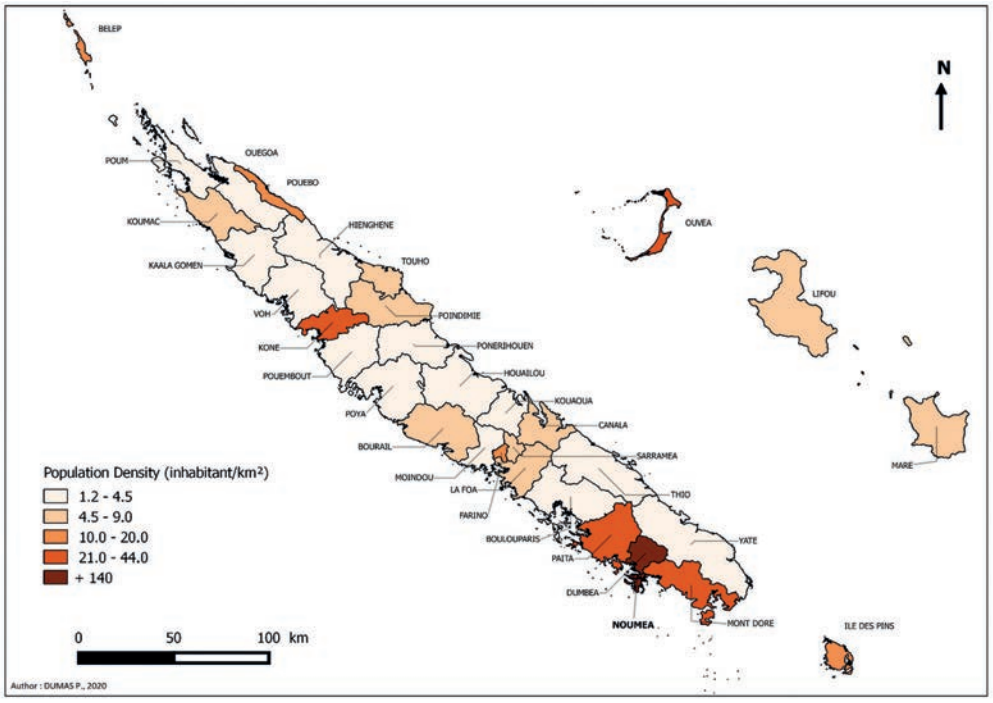
Disparities in population density are even more striking among the country's municipalities. With a total population of 271,407 in 2019, New Caledonia's average population density stands at 14.6 pop./km². This makes New Caledonia one of the least densely populated of the Oceanian island nations, on a par with New Zealand (15 pop./km²) and Vanuatu (20 pop./km²). Populated areas are found mainly along the coastal strip, in valleys or at low altitude. Over 97% of the population lives below 100 m above sea level, and over 70% less than one kilometre from the coastline of the Main Island (Dumas et al., 2005). Two thirds of the Main Island is taken up by the central mountain range and is almost empty; population density is no greater than 1 pop./km². Less than 3% of New Caledonia's population live in Kanak village communities made up of remote tribes living over 100 m above sea level (Dumas *et al.*, 2004).

This very selective use of available land makes it difficult to arrive at an objective assessment of the spatial distribution of New Caledonia's population. Notwithstanding, in addition to general land use characteristics, we have the average population densities of municipalities computed on the basis of population numbers in 2019. Population density differs greatly across municipalities, the lowest figure being 1.25 pop./km² for the municipality of Yaté and the highest 1,190 pop./km² for the municipality of Noumea. Average density figures have been grouped in ranges of significance to constitute categories of municipalities representative of various levels of property and population pressure.

Figure 3 (cf. p. 29) shows five categories of municipalities, based on their population densities compared to the average population density for the whole of New Caledonia.

Underpopulated municipalities with a density of less than 5 pop./ km². 14 municipalities covering areas almost void of inhabitants represent 11.8% of the population and 58% of the surface area of the archipelago. 9 of these municipalities are located in the North Province, 5 in the South Province; they are equally spread between the East and West Coasts. They mainly comprise rural areas inhabited by inland tribes and mountainous countryside, little developed or affected by human alteration.

Figure 3: Population densities for municipalities in 2019



Sparsely populated municipalities with a density ranging from 5 to 9 pop./km². This category includes 9 municipalities covering 27.3% of New Caledonia's surface area and representing 15% of the population. 4 of these municipalities are located in the North Province, 3 in the South Province and 2 in the Loyalty Islands Province. They comprise partially developed rural areas, relatively accessible and more or less closely linked to small and medium-sized secondary urban centres.

Moderately populated municipalities with a density ranging from 10 to 20 pop./km². This category includes 4 municipalities covering 2.1% of New Caledonia's surface area and representing 2.5% of the population. Two municipalities are located in the North Province and two in the South Province. They comprise relatively accessible rural areas provided with medium-sized secondary urban centres.

Relatively well-populated municipalities with a density ranging from 21 to 44 pop./km². The four municipalities concerned represent 23.5% of the total population and occupy 10% of New Caledonia's surface area. They have been divided into two categories: lower-level well-populated municipalities with densities in excess of 20 pop./km² but less than twice the average population density for the whole country (Koné and Ouvéa). Higher-level well-populated municipalities with densities more than twice but less than three times the average population density for the whole country (Païta and Mont-Dore). Apart from the island of Ouvéa, these are suburban municipalities consisting of hybrid rural-urban spaces actively linked to regional initiatives driven by the drawing power of a major urban centre.

Densely populated municipalities with densities nearly 10 times higher than the national average (140 pop./km²) or even over 130 times higher. The two municipalities concerned are Noumea and Dumbea, representing 47.9% of New Caledonia's population and occupying just 1.7% of the country's surface area. They comprise urban spaces or hybrid rural-urban spaces with very high urban footprints, subject to the gravitational pull of Noumea, New Caledonia's primary urban hub.

C. Urbanization – concentration & macrocephaly

Urbanization is the most significant feature of spatial differentiation in New Caledonia. It can be seen in the hyper-urbanization of Noumea, coupled with urban spread to neighbouring municipalities, and a scattering of secondary centres combining rural and urban areas and forming local development hubs which impact on more or less extensive nearby spaces.

1. Noumea and Greater Noumea

Noumea was established in 1866 on a site of gently rolling hills interspersed with mangrove swamps. The colonial town developed around the central districts and stayed within its original boundaries until the Second World War, when it began to spread to the east and north. When the US Navy brought convoys of troops in 1942, new neighbourhoods sprang up in the south (Trianon, Motor Pool, Anse Vata) and east (Magenta). But it was not until the 1970s and the "nickel boom" that more distant neighbourhoods took shape to the north and northeast (Montravel, Ducos, Rivière-Salée…) and even further off, on land belonging to the adjacent municipalities of Mont-Dore to the east and Dumbéa to the north.

Over time, Noumea expanded to absorb almost all the areas conducive to property development on the Noumea peninsula. In recent years, land within built-up areas has undergone urban consolidation, remaining unbuildable areas have been gradually used for construction, and new property development has expanded into neighbouring municipalities. Urban landscapes reflect four main types of city districts: well-served affluent primarily white European neighbourhoods (South Noumea, Tina peninsula); intermediate districts with mixed European and Melanesian populations (Faubourg Blanchot, Latin Quarter, eastern districts extending up to the 7 km boundary); working class districts with widespread public housing and primarily Oceanian populations (western and northern part of Noumea from Vallée du Tir to Normandie) and marginalized districts, little urbanized or mainly industrial (Nouville peninsula, Ducos industrial estate, Numbo…). Beyond the Noumea peninsula, the city has expanded along main roads and near or around formerly rural hubs, now locations for housing estates, in the municipalities of Mont-Dore, Dumbea and Païta. This mushroom spread, the product of rapid but uneven urban development without any consistent road system, has resulted in the creation of an urban entity covering four municipalities, known as "Greater Noumea".

Table 3 (cf. p. 31) shows population growth for Greater Noumea compared to population growth for New Caledonia over the last 50 years, from 1969 to 2019.

In 2019, the multi-municipality agglomeration of Greater Noumea had a population of 182,341, i.e. 67.1% of New Caledonia's population, concentrated in less than 10% of the entire territory. In 1969, Greater Noumea's population of 50,488 represented 50.1% of the entire population for New Caledonia; in half a century, the headcount has more than tripled.

Table 3: Greater Noumea - population counts and rate of change from 1969 to 2019

Years	A 1969	B 1989	C 1996	D 2004	E 2009	F 2014	G 2019	Ch.1 (F-E) 2009-2014	Ch. 2 (G-F) 2014-2019
Municipalities	Counts	Counts	Counts	Counts	Counts	Counts	Counts	% total (Pop. rate/yr.)	% total (Pop. rate/yr.)
Greater Noumea (% NC)	50,488 **(50.1%)**	97,581 **(59.4%)**	118,823 **(60.3%)**	**146,245 (63.3%)**	163,723 **(66.6%)**	179,509 +15,578 **(66.7%)**	182,341 +2,832 **(67.1%)**	+ 9.64% **(+ 1.9%)**	+ 1.57% **(+ 0.3%)**
Noumea	41,853	65,110	76,293	**91,386**	97,579	99,926 **+ 2,347**	94,285 **- 5,641**	+ 2.47% (+ 0.4%)	- 5.64% (- 1.1%)
(% GN1)	**(82.8%)**	**(66.7%)**	(64.2%)	(62.48%)	(59.6%)	**(55.66%)**	**(51.7%)**		
Dumbea (% GN2)	1,304 **(2.58%)**	10,052 **(10.3%)**	13,888 **(11.6%)**	18,602 (12.8%)	24,103 **(14.7%)**	31,812 **+7,709 (17.7%)**	35,873 **(19.6%) +4,031**	+ 31.98% (+ 6.4%)	+ 12.67% **(+ 2.5%)**
Mont-Dore (% GN2)	4,809 **(9.52%)**	16,370 **(16.7%)**	20,780 **(17.4%)**	**24,195 (16.5%)**	25,683 **(15.6%)**	27,155 **+1,472 (15.1%)**	27,620 +465 **(15.1%)**	+ 5.7% (+ 1.14%)	+ 1.71% **(+ 0.3%)**
Païta (% GN2)	2,522 **(4.9%)**	6,049 **(6.1%)**	7,862 **(6.6 %)**	**12,062 (8.24%)**	16,358 **(9.9%)**	20,616 **+4,256 (11.4%)**	24,563 **+3,947 (13.4%)**	+ 26.01% (+ 5.2%)	+19.14% **(+ 3.8%)**
New Caledonia	**100,579**	**164,173**	**196,836**	**230,789**	245,580	268,767 +23,187	271,407 +2,640	+ 8.44% (+ 0.4%)	+ 0.98% (+ 0.02%)

Source ISEE, 2020

Note on Table 3 data

% NC: Greater Noumea as a percentage of total population of New Caledonia (NC).

% GN1: Noumea as a percentage of total Greater Noumea population (GN).

% GN2: Municipality concerned as a percentage of total Greater Noumea population.

Ch. 1: Population trends between 2009 and 2014: overall rate for the period; annual rate (in brackets).

Ch. 2: Population trends between 2014 and 2019: overall rate for the period; annual rate (in brackets).

Between 2009 and 2014, Greater Noumea recorded an increase of 15,578 inhabitants and, between 2014 and 2019, an increase of only 2,832. Annual rates of change fell from 1.9% to 0.3%, respectively. Although these rates are low, they are higher than growth rates for New Caledonia's population: 1.8% and 0.02%, respectively.

In 2019, 94,285 people lived in Noumea - the country's largest conurbation - representing 34.7% of New Caledonia's population and 51.7% of the population of Greater Noumea. Nevertheless, compared to its wider urban agglomeration, the city's share has steadily declined over the past fifty years, falling from 82.8% in 1969 to 64.2% in 1996, and to 51.7% in 2019. According to the most recent censuses, Noumea's population first increased by 2,347 inhabitants from 2009 to 2014, then dropped by - 5,641 inhabitants from 2014 to 2019. The overall trend shows a slight upward rate of + 0.4% p.a. followed by a downward rate of -1.1% p.a., respectively, reflecting a gradual saturation of the capital city, offset by sharp population growth in surrounding suburban districts.

Dumbea has seen the highest population growth, with numbers multiplied by a factor of 27 in half a century. A small village with 1,304 inhabitants in 1969, Dumbea's population swelled to 10,052 by 1989 and to 35,873 by 2019. Concurrently, Dumbea's share of the urban population grew from under 3% in 1969 to almost 20% in 2019. The population of the municipality increased by 7,709 from 2009 to 2014 and by 4,031 from 2014 to 2019. These figures show annual rates of change of 6.4% and 2.5%, respectively. Dumbea represents New Caledonia's second largest urban municipality, a long way behind Noumea.

The population of the municipality of Mont-Dore grew to a lesser extent than Dumbea over the same period, with a six-fold rise in fifty years, from 4,809 in 1969 to 27,155 in 2019. Mont-Dore's share of the urban population increased from 9.52% to 15% and has remained stable at 16% for over 30 years. More recently, the municipality recorded an increase of 1,472 inhabitants between 2009 and 2014, and just 465 inhabitants between 2014 and 2009. These figures reflect annual rates of change of 1.1% and 0.3%, respectively. Despite being close to Noumea, Mont-Dore's rugged landscape makes it a less appealing choice. Nevertheless, it ranks as New Caledonia's third largest urban municipality.

The municipality of Païta has developed along similar lines to Dumbea but from a smaller population base, with numbers multiplied by 10 over half a century. Païta's share of the urban population rose from less than 5% in 1969 to 13.4% in 2019. Païta recorded the most spectacular growth of the last ten years, with population increasing by 4,256 between 2009 and 2014 and by 3,947 between 2014 and 2019. These figures represent the highest annual rates of urban population growth, 5.2% and 3.8% respectively. Païta is New Caledonia's fourth largest urban municipality.

The three neighbouring municipalities are dormitory towns characterized by daily commutes to the capital city, leaving them deserted by the working population during the day. The fact that these municipalities lack real centres reinforces and underlines their position of dependence on Noumea. As the main administrative, economic and industrial centre and gateway to and from New Caledonia via Tontouta international airport and the conurbation's multipurpose port hubs, Greater Noumea is also the magnet for migration flows from rural areas and the islands. These migration flows are evidence not only of excessive demographic and economic growth but also hyper-urbanization and urban macrocephaly.

Greater Noumea today is a fragmented urban area comprising two constituent parts distinguished by characteristic landscapes. A dense, continuous urban area on the Noumea peninsula and, on the outskirts of this area, a more dispersed urban sprawl covering thirty kilometres, stretching from Mont-Dore to Païta and forming a discontinuous urban fabric. The dense urban fabric spreads along a south-north axis over a dozen or so kilometres from

Noumea's southern districts (Anse Vata) to Normandie in the north. It extends into the residential districts of Auteuil and Koutio (Dumbea), Robinson and Boulari (Mont-Dore), forming Noumea's close periphery. The rest of the urban area consists of built-up pockets comprising low-density housing estates and residential clusters. These scattered residential centres are separated by vast agricultural or forest areas including wetlands and rugged countryside. The urban landscape on the outskirts of Noumea has a marked rural character which conveys the impression of an unfinished sub-urbanization process.

To these legally established districts can be added informal, impromptu Melanesian residential areas known locally as squats. These unplanned settlements abound on waste ground and unbuildable areas (valley clefts, hillsides, by the sea, mangroves). In 2020, around 3,000 families comprising some 10,000 people were living in around fifty squats in Greater Noumea (Indépendent KNC, 2020). The number and increase of these unofficial neighbourhoods highlight the issue of urban planning and development in Oceania.

2. Secondary centres and areas of local influence

The excessive hyper-urbanization and gravitational pull of New Caledonia's capital city have a braking effect on urban development outside Greater Noumea. The result is a scattering of small urban centres which do not qualify as towns, since none can boast over 2,000 inhabitants grouped in a single location (official minimum defining a town in France). The key feature of these small towns or "bush centres" is a bloated public sector together with commercial and/or industrial jobs (Gay, 2014). There are currently six main bush centres which can be divided into three categories: provincial capitals (Koné and Wé), small satellites of Greater Noumea (La Foa and Bourail) and remote centres (Poindimié and Koumac). With the exception of Bourail and Koumac (to a lesser extent), all these townships owe their development to their status as the former or current bases of administrative and public services (sub divisional, regional or provincial centres). Via trade and communication flows, these centres pull in areas at a greater or lesser distance, corresponding to five areas of influence. These areas cover nearby rural expanses, from 1,600 to 2,700 km², with relatively similar population counts in 2019 (12,000 to 18,000 in 2019, ISEE sources).

Koné – VKP and the North-West coastal region. Koné, principal town and capital of the North Province, forms, together with the villages of Voh and Pouembout, the VKP area (Voh, Koné-Pouembout). These three population centres constitute, along with the Hôtel de Province housing estates, an extended urban hub with an impact sustained by flows of workers and day-to-day population dynamics centred around the North Plant in Vavouto. This urban and economic hub, established as part of the rebalancing policy, boasts a hospital and a wide range of facilities and services. Since 2018, the University of New Caledonia has operated its Baco campus branch in Koné. Koné is a spreading multi-centre coastal town with outreach to four municipalities on the west coast, including Poya; overall they form the VKPP area, New Caledonia's North West Coastal region covering an area of 2,674.65 km² (14.3%) with a population of 16,554 in 2019, i.e. 6% of the country's population. The area's reach includes part of the East Coast, namely the municipalities of Touho and Poindimié, with employees at the plant in Voh returning home at weekends.

La Foa – Bourail and the rural South-West. La Foa is a small town about an hour's drive from Noumea. It owes its development to its status as headquarters of administrative and public services for the South Subdivision in 1969 and later for the South Region in 1985.

Bourail, further north, lies two hours from Noumea, at the starting point of the West-East cross-country road. Bourail serves as a crossroads between the East Coast, Noumea and the North Province. These two secondary centres constitute twin stopping-off points centrally located on the Main Island, halfway between Noumea and Koumac. As administrative and healthcare centres offering specialized services/attractions (Bourail Fair & Field Days and La Foa Festival), their sphere of influence extends over six West Coast municipalities (La Foa, Boulouparis, Sarraméa, Farino, Moindou and Bourail). These municipalities form the rural South West, a satellite region adjacent to Noumea which covers an area of 2,591.74 km² (14% of NC) with a population of 14,363 (5.2% of NC) in 2019. This region is home to a large population of European descent and to New Caledonia's largest Wallisian and Futunan community. The region's influence extends to the municipalities comprising the south-eastern mining region on the East Coast (Canala, Kouaoua and Houaïlou), thus forming a sphere of influence with strong links to Greater Noumea, with a particularly high level of day-to-day interaction.

Poindimié and the North-East coastal region. Poindimié owes its development to its status as headquarters of administrative and public services for the East Subdivision in 1969 and later for the East Region in 1988. The town extends over about five kilometres of coastline, running alongside the main road. Poindimié is the only secondary centre on the East Coast and has conserved its position of authority over the East despite losing its administrative headquarters status in 1989 when provincialization was introduced. Poindimié boasts a wide range of public services, the only hospital on the East Coast, shops and North Subdivision and North Province branch offices. Its sphere of influence extends over a diversified economic area (agriculture, tourism and services) comprising four municipalities (Ponérihouen, Poindimié, Touho and Hienghène), which form the North-East coastal region. This area of influence covers 2,601 km² with a population of 12,260 in 2019; the VKP pull factor also plays a part, providing a connecting link between New Caledonia's East and West coastal regions.

Koumac and the Far North. Koumac, considered to be the "capital of the Far North" (Gay, 2014), is home to a large population of European descent. The town boasts a range of amenities, administrative and military services, a large number of shops, a hospital complex, an industrial complex and housing for North Plant executive staff… The town's sphere of influence extends over six municipalities in the Far North (Koumac, Kaala-Gomen, Poum, Belep, Pouébo and Ouégoa), covering 2,674.93 km² (14.4%) with a population of 12,348 in 2019 (4.5% of NC). As the location of housing for executive staff, the town's influence extends, in part, to Voh, about an hour's drive from the Vavouto plant.

Wé and the Loyalty Islands. Wé, the principal town of the Loyalty Islands Province, is a one-of-a-kind secondary centre since it has no adjoining sphere of local influence despite centralizing a high level of administrative responsibility. This is attributable to the Province's administrative authority being split between three islands, to the town's distance from the Main Island, particularly from Noumea, and to remote competition from Tadine (in Maré) and Fayaoué (in Ouvéa). This situation not only weakens relations between Wé and the other islands but also acts as a barrier to the emergence of secondary centres driving local development. Given this context, Wé remains a rural centre with a discontinuous urban fabric characterized by the ubiquity of farmed fields adjoining dwellings. The Wé control zone extends over an area of 1,948.34 km² (10.4% of NC), with a total population of 18,353 in 2019 (6.7%).

However, this does not constitute an associated sphere of local influence. As a consequence, there is significant out-migration from rural areas and a daily flow of people travelling by air and sea between the islands and the Main Island, making development of the Loyalty Islands entirely dependent on outside forces. The daily air services between the islands and Noumea, and the unsatisfactory nature of relations between Wé and the other islands are both corollaries of the current status quo.

CONCLUSION

The physical and human geography of New Caledonia is characterized by two major features: antithesis and contrast. In physical terms, the Main Island is the antithesis of the Loyalty Islands, the coastline the antithesis of the inland mountain range, and the West Coast the antithesis of the East Coast. Human settlement, population densities, spatial distribution, and urbanization combine with physical factors to define territories which can be likened to subregional groupings. These specific territories constitute a poorly structured spatial organization extremely dependent on the centralizing dominance of Greater Noumea. In spatial terms, New Caledonia's asymmetry is the outcome of excessive urban concentration within Greater Noumea, creating a magnetic pole drawing in two thirds of New Caledonia's population and radiating waves throughout the entire archipelago and beyond into Oceania.

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THE NATURAL ENVIRONMENT OF NEW CALEDONIA

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I. GEOGRAPHIC OVERVIEW

The detailed geographic presentation of New Caledonia is featured in the chapter "The physical and human geography of the New Caledonian archipelago". We will therefore simply specify here, to preface our observations on the natural environment, that New Caledonia is centrally located in the Southwest Pacific, 2,000 km to the east of Australia's eastern seaboard, from which it is separated by the Coral Sea. It consists of a main island about 400 km long and about 50 km wide called "Grande Terre" (Main Island) and a chain of several, roughly aligned, reef islands constituting the Loyalty Islands archipelago. These are separated from the Main Island by an ocean basin of medium depth, the Loyalty Islands basin. These two areas of land are aligned on a south-east to north-west geographic axis, parallel to that of the Vanuatu volcanic island arc, which lies less than 300 km to the east.

The Main Island forms a dissymmetric cross-profile to each side of the central mountain range, characterized by two major peaks rising to over 1,600m above sea level: Mont Panier in the north and Mont Humboldt in the south. Mountains and cliffs fall steeply to the sea on the East Coast, exposed to the Trade Winds, while the leeward West Coast is bordered by a wide coastal plain. The Main Island is encircled by a lagoon of varying width (for example, over 20 km wide off the coast of Noumea), itself encompassed by a barrier reef pierced by several channels which connect the lagoon to the ocean. The Loyalty Islands archipelago stretches from the south-east to the north-west and comprises four main islands: Maré, Tiga, Lifou and Ouvéa, consisting largely of uplifted coral reefs resting on an underwater ridge of volcanic rock.

II. GEOLOGICAL DETERMINISM

New Caledonia's natural environment cannot be described without evoking the past since the seeds of this environment lie in the geological history of the Main Island and the Loyalty Islands. A history[1] going back 250 million years. *Gondwana*, formed by several major continental tectonic plates, began to break up, with the plates drifting away from each other. Elongated fragments broke away from the east of the Antarctic Plate and the Australian Plate and formed continental ridges separated by oceanic basins in the making. The eastern ridge, known as the Norfolk Ridge, encompassing the future countries of New Caledonia and New Zealand, drifted eastward. At the end of the Cretaceous Period, which saw the ending of the

1 Simplified geological history according to D. Cluzel *et al* (2006).

age of dinosaurs, 65 million years ago, the ridge was already over 1,000 km distant from the Australian margin. The Norfolk Ridge underwent a complex tectonic evolution spread over several stages, the sequence of which enables an understanding of New Caledonia's current natural environment.

About 50 million years ago, the Indo-Australian Plate bearing the Norfolk Ridge began to subduct under the Pacific Plate. Associated with this *subduction* process, which caused part of the future New Caledonia to be deeply buried in the upper mantle of the lithosphere, was the immediate formation of a volcanic arc east of the subduction zone. The underwater volcanoes thus formed would later form the base of the Loyalty Islands we know today. A little less than 40 million years ago, the subduction process jammed. The descending plate broke at a depth of sixty kilometres. The upper part of the plate, freed from the stresses causing it to sink, began to rise back to the surface. This is known as *obduction;* the continental core inherited from Gondwana lifted the upper mantle rocks beneath which it had sunk and brought them to the surface. New Caledonia emerged about 34 million years ago, shaped more or less as it is today but positioned is a little further to the west. Upper mantle rocks uplifted during the obduction process are found on the surface. Usually located at great depth, they form New Caledonia's famous *Peridotite Nappe*. These upper mantle rocks, brought into contact with the atmosphere, were exposed to erosion and weathering processes, revealing other rock substrates forming part of the continental core of the original ridge. The newly emerged terrestrial environment was then gradually colonized by plants and animals and would continue evolving over millennia to form the natural environment familiar to us today. Geological substrate diversity, geographical isolation and climate factors all contributed to the development of specific ecosystems, which we will now describe.

Some people have advanced the theory that New Caledonia's flora and fauna are actual remnants of Gondwana. This cannot be the case: the original environment was destroyed by its long journey – lasting over 200 million years – beneath the waters of the continental core inherited from the Gondwana supercontinent, long before the obduction process which would bring it to the surface. Nevertheless, the plants and animals found in New Caledonia often closely resemble those of Gondwana; however, these are the products of late to very late secondary recolonizations deriving from emerged lands in close vicinity.

III. THE MAJOR ECOSYSTEMS OF NEW CALEDONIA

Constrained by this long and complex sequence of geological events, New Caledonia's natural environment is now considered a world-class biodiversity hotspot, both on land and at sea. After first defining its specificity in terms of *endemism,* we will look at each of the major terrestrial ecosystems of the Main Island in turn: virgin forest, dry forest, mining scrubland, niaouli savannah and mangroves, and then look beyond the coastline to focus on the lagoon and reef formations. We will also consider the specific case of the Loyalty Islands.

A. A very high degree of endemism

On land, New Caledonia's isolation as an island nation and the chemical properties of its soils obliged the biotope to adapt and develop original, even unique, characteristics, thereby making the country one of the world's leading biodiversity hotspots. 76% of the plant species found in this tiny country (<20,000km^2) are endemic, ranking New Caledonia third in the

world endemism stakes, behind Hawaii and New Zealand. Indeed, it is home to a species that botanists believe to be the world's first flowering plant, 135 million years old: *Amborella trichopoda*[2]. Palm trees found nowhere else in the world, such as *Lavoixia macocarpa* in the *Arecaceae* family, a palm tree endemic to the Mont Panier region, are also found there. Other examples of rare endemic plants include *pycnandra accuminata seberti*, one of the most prolific hyperaccumulators of trace metals, whose blue sap can contain nickel citrate concentrations of over 20%.

While wildlife species endemism is not as high due to the greater difficulty of recolonization following the long immersion phase of the Norfolk Ridge as it moved eastward from the Australian margin, it remains arresting. Only one mammal existed prior to the advent of humans in New Caledonia: the *roussette* (a large species of fruit bat), but most birds are endemic, including the flightless Kagu, New Caledonia's national emblem, and the New Caledonian Imperial Pigeon (the *notou*), the largest existing tree-nesting pigeon. There is also high endemism in reptiles, particularly lizards and geckos, and a famous marine species, the striped jersey sea snake.

B. Terrestrial ecosystems

1. Rainforest

Also known as virgin forest, rainforest is mainly found on and around the central mountain range. It is made up of tall canopy trees, overtaking lower-growing species in search of light. With a very high degree of endemism, around 82%, rainforests cover 3,900 km², i.e. 20% of the territory. They are home to imposing trees, including tall conifers known as forest kauris *(Agathis lanceolata)*; these were heavily felled by loggers in the 19th and 20th centuries, with most of the very large specimens (over 7m in diameter) now vanished. Another remarkable endemic species is the column pine *(Araucaria)* which can grow to heights of over 50m, making their trunks a popular choice for ships' masts in the 19th century. Flourishing beneath the tall canopy trees is an understory comprising a wealth of ferns (e.g. the *Cyathea intermedia* tree fern, whose trunk can reach a height of 35m), palm trees (e.g. *Chambeyronia macrocarpa*), and terrestrial and epiphytic orchids *(Eriaxis rigida, Earina deplanchei)*, for the most part endemic.

Also home to an outstanding range of wildlife species, rainforests are acknowledged as New Caledonia's most diverse natural environment. Two of the country's emblematic species are found there: the crested kagu *(Rhynochetos jubatus)*, long-legged flightless birds – an endangered species with fewer than 2,000 individuals extant, and the red "roussette" (fruit bat) (*Pteropus ornatus*), which lives in colonies of several hundred individuals.

2. Dry forest

Dry forests comprise fairly low-growing trees, 10 to 12m high, and creepers. They are found in geographic regions with low rainfall and now only cover fairly restricted areas (from a

2 *Amborella* – Bearing Witness to the Past? *Annual Plant Reviews Online*, 2019, vol. 2, Issue 3, August 2019 https://doi.org/10.1002/9781119312994.apr0689

few hectares to tens of hectares) scattered along the West Coast of the Main Island. Dry forests represent a transitional ecosystem lying between the coastal mangroves and the central mountain chain rainforests, and cover a total surface area of 54 km². Worldwide, dry forests are a highly endangered ecosystem, close to extinction. New Caledonia's remaining patches of dry forest are estimated by botanists as representing less than 1% of their original extent. And yet, dry forest provides a biodiversity haven sheltering a rich variety of flora. More than 400 species have been identified, with endemism attaining over 50%. Spectacular species include *Oxera sulfurea* with its creamy white clusters of flowers and aromatic fruit, and *Turbina inopinata,* whose deep pink trumpet flowers bloom all year round. Some trees and shrubs are decidedly ornamental, including *Ixora margaretae,* locally known as "chili fountain". This tree's red tubular flowers clustering along tree trunk or branches do indeed resemble chilies before they open.

Wildlife species inhabiting New Caledonia's dry forests include birds, skinks and geckos, spiders, land snails and butterflies.

3. Niaouli savannah

Covering a total area of about 4,200 km², these flatlands dotted with niaouli trees are typical of the volcano-sedimentary formations characterizing the West Coast and North of the Main Island. Medium-sized shrubs and trees (4 to 15m high on average), including the iconic niaouli *(Melaleuca quinquenervia)*, also known as the paperbark tea tree, are scattered over often densely grass-covered savannah country. Niaouli bark (or "skin") is composed of several thin overlapping layers of plant cells which peel off the trunk in strips. These trees reign supreme in this low biodiversity ecosystem often considered to be a degraded form of dry forest, the result of various environmental pressures (*cf.* paragraph IV) including wildfires. This ecosystem, which is characterized by little diversity, has now become a favourite habitat for invasive species such as Rusa deer and wild boar.

4. Mining scrubland

Mining scrubland *(maquis minier)* is not only the ecosystem most characteristic of New Caledonia's Main Island, but also one of the world's most unusual ecosystems. It is a unique habitat where shrub and herbaceous cover has adapted to a soil layered over *ultramafic rocks* (peridotite and *serpentinite* rocks), poor in nutrients and organic matter but rich in minerals (nickel, magnesium) toxic to most plants at the levels present in New Caledonia's soils. Mining scrubland covers 3,700 km², i.e. 23% of New Caledonia's land surface. It is a haven of biodiversity (over 1,100 species have been listed) and has exceptional endemism (88%).

Vegetation is characterized by woody plants and shrubs with generally leathery leaves, not found in any of the forests described above but occurring at varying levels from the coastline to the peaks of the mountain range, where mantle rocks brought to the surface by obduction break the soil cover. Plants thriving in this ecosystem include, for example, prolific hyperaccumulators of trace metals such as *Pycnandra acuminata seberti,* mentioned in paragraph III.1. These plants are now being studied and tested *in situ* with a view to assessing their potential uses (detoxification of trace metal-contaminated soils and trace metal extraction in plant saps). The Araucariaceae family is also noteworthy; these plants are *gymnosperms* (Greek – meaning "naked seeds") which are now the only remaining members of a once very diverse group of plants at their most abundant in the mid Mesozoic Era before

they were superseded by the *angiosperms* (Greek - meaning "seeds in a vessel"). Eighteen endemic gymnosperm species are found in New Caledonia, including the column pine *(Araucaria columnaris)*, a totemic tree in Kanak tradition, whose vertical trunk can reach 60m in height.

Mining scrubland shelters a wide diversity of wildlife species which have adapted to their challenging habitat. Many endemic species of insects (*wētā*, spiders, moths) and reptiles (geckos) live and prosper in this remarkable ecosystem.

5. Mangrove forests

Typically found in tropical regions, mangrove forests thrive in saline soil conditions. In New Caledonia, mangroves flourish along the coastline in intertidal areas washed by the waters of the lagoon. They cover an area of 350 km² and are home to 24 of the 70 species identified worldwide.[3] Mangroves are a much more common feature of New Caledonia's West Coast (bordering 80% of the coastline) than of the East Coast (less than 15%); however the East Coast mangroves are noted for greater species diversity. Mangrove trees found in New Caledonia belong mainly to the genus *Rhizophora* (55% of total cover) and the genus *Avicennia*. Vast salt flats often form around the landward fringes of mangrove swamps. Many prawn farms have grown up on the well-established ribbon of salt flats which border the vast plains of the West Coast. Mangrove forests are extremely productive ecosystems and form the base of many food chains. They also serve as a buffer between land and sea, filtering waterborne sediments and protecting the coastline. Long deplored as mosquito breeding grounds and, in the past, used as convenient dumps and damaged or destroyed by urbanization, they are now protected and being rehabilitated.

Mangroves are also a sanctuary for wildlife, attracting a host of mollusk, crustacean, fish and bird species. Examples include mangrove oysters (*Saccostrea cucullata tuberculata*) which attach themselves to mangrove roots, and mangrove crabs (*Scylla serrata*) caught (fishing is regulated) mainly in the North Province in the Vavouto region and in the Diahot river.

6. The Loyalty Islands – a specific case

Compared to the wealth of plant species found throughout New Caledonia, the flora of the Loyalty Islands appears relatively limited, with fewer than 600 species identified for a surface area of around 2,000 km². About one third of this total number are introduced species and the remainder are native species. Unlike the Main Island, the Loyalty Islands possess almost no endemic species. This is mainly attributable to the influence of the island chain's geological history and characteristic soil properties. We should bear in mind that the islands began life as underwater volcanoes forming part of a volcanic arc associated with fossil subduction. The volcanic rocks forming the substratum of the islands are capped by reef-derived carbonate rocks (red algae and corals) which surfaced only recently. Indeed, this uplift process is ongoing in the northernmost islands of the chain but has come to a halt in the case of Maré (to the south).

3 A. Leopold et *al.*, 2015, Temporal variability of CO_2 fluxes at the sediment-air interface in mangroves (New Caledonia), *Science of the Total Environment*, 502 (2015), 617-626.

These carbonate rocks are present in the form of dolomitic limestone and clear limestone. The soils developing above the parent rock tend to be thin and often red-brown in colour *(ferralitic soils)* on the plateaus, whereas they are mainly *rendziniform soils*, appearing as black, on cliffs and perched coastlines. Like the underlying limestone bedrock, these soils are highly permeable and therefore not conducive to the development of plants, which often have to tap the water they need by growing very deep roots. The geographical isolation and recent emergence of the Loyalty Islands explain their relative lack of species diversity. For example, only around thirty vascular *cryptogams* have been found in the Loyalty Islands compared to over two hundred on the Main Island.

C. Marine ecosystems

1. The lagoon and associated reef formations

Stretching over a total surface area of nearly 23,400 km², New Caledonia's lagoon is the world's largest enclosed lagoon. It is encircled by a *barrier reef* approximately 1,600 km long. It is the longest continuous sedimentary reef structure in the world, only surpassed in total length by Australia's Great Barrier Reef. The lagoon is an authentic inland sea, 3 to 15 km wide around the Main Island and extending to a width of around 60 km between the barrier reefs separating it from the ocean at the northern and southern tips of the Main Island, where the New Caledonia Ridge sinks back below the surface. The Northern Lagoon thus formed stretches over 200 km northwards to the *Grand Passage* channel separating it from the *Atoll de la Surprise*. To the south, the Isle of Pines lies near the point where the barrier reef ends.

The lagoon reaches depths of generally less than 40m but deepens to an average of about 65m near the reef breaks. These reef breaks connect the lagoon with the open ocean beyond the barrier reef, and correspond to ancient land valleys submerged during the *Post-Wurmian transgression* (from – 11,700 years BP), which saw overall ocean levels rise by nearly 130m. The outer barrier reef face is subvertical and the ocean floor falls away rapidly (several hundred metres) at a short distance from the reef.

Measured by core drilling as 226m thick at Tenia islet[4], opposite Boulouparis on the West Coast, the barrier reef shows evidence of several alternating phases of *regression* (sea level fall during severe glacial phases resulting in a sedimentary gap in the sequence of coral formation) and marine *transgression* (sea level rise during warmer interglacial phases), resulting in coral growth resuming. Such sea level oscillations are associated with *glacio-eustatic cycles*[5] during the Quaternary Period according to the Milankovitch theory. These sea level oscillations caused the lagoon floor, as it exists today, to be alternately exposed and submerged several times; the lagoon's current plant and wildlife species were reintroduced during the above-mentioned Post-Wurmian transgression.

New Caledonia's vast lagoon, together with the associated coral reefs, amount to ¾ of the surface area covered by the lagoons and reefs of France's Overseas Territories, spread across

4 J. Coudray, 1977, Expédition française sur les récifs coralliens de la Nouvelle-Calédonie vol. 8, "*Recherches sur le Néogène et le Quaternaire marins de la Nouvelle-Calédonie*", Éditions de la fondation Singer-polignac.

5 https://www.futura-sciences.com/planete/definitions/climatologie-cycle-milankovitch-13390/

the three oceans, making France one of the world's most richly endowed countries in terms of coral ecosystems.

2. The outstanding biodiversity of the lagoon ecosystems

The exceptional natural beauty and diversity of New Caledonia's lagoon, or rather lagoons, was internationally recognized in July 2008 with their inscription as a UNESCO World Heritage Site.[6] Six marine clusters (60% of New Caledonia's lagoons) representing the main diversity of the coral reefs and associated ecosystems were listed as a serial site. In the words of the UNESCO World Heritage Committee: "these sites are of exceptional natural beauty, and contain diverse reefs of varying age from living reefs through to ancient fossil reefs, providing an important source of information on the natural history of Oceania". These sites represent an area of 15,743 km², to which can be added 12,871 km² of buffer zones; the sites are spread throughout New Caledonia and include the far north of the Main Island and the Loyalty Islands (Beautemps-Beaupré and Ouvéa Zones, the Entrecasteaux Reefs and the Great Northern Lagoon), the East Coast (North-Eastern Coastal Zone) and West Coast (Western Coastal Zone) of the Main Island, and its southern tip (Great Southern Lagoon Zone).

Very significant numbers of wildlife and plant species have been identified as inhabiting New Caledonia's lagoon; scientists have listed around 10,000 species, a figure these same scientists believe is far lower than the actual number of species to be found. In contrast to New Caledonia's very high degree of endemism amongst land species, the waters shelter few endemic species. However, the lagoon's phenomenal *species diversity*, facilitated by the wealth of available habitats, makes up for this.

New Caledonia's waters are home to a host of rare and emblematic species. For example, the sea turtles include green turtles *(Chelonia mydas)*, the most commonly encountered, and loggerhead turtles *(Caretta caretta)*, which nest in several key sites around the Chesterfield Islands plateau, on the Entrecasteaux Reefs, in the Great Southern Lagoon and on the beaches around Roche Percée at Bourail on the West Coast. There is also an estimated population of around a thousand dugongs or sea cows *(Dugong dugong)*, the only strictly herbivorous marine mammal, closely related to manatees. The indigenous Kanak people of New Caledonia consider sea turtles and dugongs to be sacred animals. They were eaten as ritual dishes at customary feasts bringing together land clans and coastal clans. Dugongs are critically endangered victims of human activities (*cf.* paragraph IV below), but conservation measures are now being implemented to save them. In addition to dugongs, the lagoon also shelters other cetaceans, including two species of dolphins - spinner dolphins *(Stenella longirostris)* and Indo-Pacific Bottlenose dolphins *(Tursiops aduncus)* – and also humpback whales *(Megaptera novaeangliae)*, which migrate from Antarctica in the southern summer to breed and give birth in New Caledonia's safe, warm waters[7].

6 https://whc.unesco.org/en/list/1115/

7 https://gouv.nc/actualites/30-08-2016/lamborella-sur-les-traces-de-la-baleine-bosse

IV. A VULNERABLE BIODIVERSITY HOTSPOT

New Caledonia is rightly considered a biodiversity hotspot, prized for the extremely high endemism of its terrestrial species and outstanding biodiversity of its lagoon and reef habitats and associated ecosystems, but the country's natural environment comprises highly vulnerable ecosystems exposed to a great many pressures. These pressures are principally linked to the anthropization of natural sites.

A. Mining-related pressures

On land, mining – New Caledonia's key economic resource – has substantially transformed the landscape. For many years since 1863, the start of New Caledonia's "gold rush", people prospected for various minerals: gold, silver, lead, cobalt and copper were mined at the Fern-Hill, Balade, Pilou and Chagrin sites, to name only the best-known mines. New Caledonia's northeastern region was at the centre of the mining frenzy but reserves were limited and, by the 1890s, interest was waning.

However, another mineral discovered in 1864 by Jules Garnier at Mont-Dore near Noumea was to become the new holy grail for miners: nickel ore. There was little mechanization of operations until World War II but thereafter nickel mining was to expand with great rapidity. This was the era of the "nickel boom", when mineral-rich peridotite terrains were stripped without any concern for the environment (tailings were thrown down slopes and into watercourses) as open-pit mines were established. The transport of solid and soluble materials increased *alluviation* in rivers and the sedimentation of fine soil particles in the lagoon.[8] Since 1970, mining and environmental regulations have been implemented and have very significantly reduced the environmental deficiencies of the past, but natural surfaces overlaying ultramafic soils are still being stripped for the establishment of new mining sites and ore processing plants. Two world-class processing plants have recently been established on the Koniambo massif in the North Province and in the Deep South of New Caledonia's Main Island. And most importantly, much remediation and restoration work remains to be done to redress the damage left behind by unregulated mining operations from the 1950s to the 1970s.

B. Urbanization of natural sites

Anthropization of the environment also takes the form of urbanizing natural sites. Urbanization mainly concerns the Greater Noumea area, where it has led to the disappearance of significant areas of mangrove forest (infilling and land reclamation) and of dry forest; only a few diminished patches of dry forest remain, including the protected areas at Tina sur Mer and Ouen Toro. Although urbanization is less pervasive outside Greater Noumea, it tends to have greater impact on coastal areas.

8 M. Allenbach *et al*, 2019, Impact de la mine au lagon. Rapport Scientifique final, Éditions du CNRT Nickel et Environnement.

C. Agricultural methods

In the past, agriculture and agroforestry have also played a significant role in the destruction of large areas of dry forest, particularly on New Caledonia's West Coast and in the Far North, and also in the destruction of rainforests on central mountain range watershed slopes. These, now regulated, activities (especially agroforestry) are having much less impact in terms of land clearing, but the relatively recent agricultural use of fertilizers and pesticides contributes to the pollution of soils and aquifers. Although the doses used are below the dangerous levels recorded in other locations (e.g. Brittany in France), these products do put pressure on the environment, and the issue is a sensitive one since a number of products known to be dangerous and banned in Europe are still in use in New Caledonia. The development and expansion of prawn farming, another profitable local economic activity, in mangrove forest localities along the West Coast, has mainly impacted the areas backing onto the mangroves, the salt flats and salt meadows. Fortunately, it has had hardly any impact on the coastline mangrove forests of Avicennia and Rhizophora trees.

D. Invasive species

The introduction of invasive species also poses significant threats to New Caledonia's vulnerable habitats.[9] There are many invasive species in New Caledonia, and we will discuss some of them below.

Plant species were sometimes introduced for their ornamental properties. Lantana *(Lantana camara)* is a good example; it forms dense thickets in the forest understory and open areas. Some species were introduced in the interests of forestry, such as several varieties of pine *(Pinus radiata, Pinus caribaea)*. The Caribbean pine is now considered an invasive species because it competes very successfully with local native species in some localities, particularly in the North Province, where an eradication program has had to be implemented to control its development. The Rusa deer *(Rusa timorensis)* represents an invasive animal species; introduced in 1870, the current population comprises about 300,000 individuals. Having no predators other than humans, Rusa deer have proliferated; they eat the leaves and bark of trees and shrubs, posing a threat to many endemic plants in local ecosystems, not to mention their habit of trampling the ground, thus contributing to soil erosion. Although the deer constitute a key source of nutrition for local communities who hunt them for food, and despite control measures (a cash bonus for deer skulls), numbers do not appear to be declining and the species continues to pose a severe threat to terrestrial habitats; moreover, the deer are expanding their territorial range.

Invasive bird species include the red-vented bulbul *(Pycnonotus cafer)* introduced in the 1990s, with current numbers rapidly increasing. These birds are aggressive towards other species and are listed as one of the 100 most invasive species on the planet; they spread the seeds of invasive plants and contribute to the degradation of endemic species. The black rat *(Rattus rattus)* is a threat to birds, particularly the severely endangered Ouvea Parakeet *(Eunymphicus uvaeensis)*.

9 https://www.oeil.nc/fr/cause/cause-3

Invasive species are also found in the lagoon, for example the venomous crown-of-thorns starfish *(Acanthaster planci)*, responsible for the wholesale destruction of corals in the Indo-Pacific tropical zone; it devours coral polyps during episodic population explosions which scientists can still not fully explain. Outbreaks of acanthaster infestations have been reported in New Caledonia; high densities of individuals have been observed, suggesting there is a real "acanthaster threat" to the country's reefs.

E. Wildfires

Wildfires pose a dramatic threat to land ecosystems. "Bushfires" are one of the major causes of natural habitat destruction in New Caledonia. Leaving soils exposed and easily erodible, they have direct and indirect impacts on land ecosystems and the lagoon, the final destination of sediments carried from watersheds denuded of ground cover by fire. Large areas are burned[10] (from 100 to 300 km² every year) during the "wildfire season" (officially 15 September to 15 December but often continuing well into January). At least 90% of wildfires are caused by people, and they usually start close to roads or houses. New Caledonia has suffered damage from fires since the first humans landed in the country and, for the most part, such fires can be linked to traditional agricultural methods. Many Melanesians use slash-and-burn methods to clear fields for yam planting and this can lead to the spread of uncontrolled fires. Much of New Caledonia lacks firefighting resources, and access to fires is difficult; as a result, such wildfires, mostly accidental, can burn for several days before they subside. The malicious setting of fires (arson) is also an aggravating factor.

V. AN OVERALL CONTEXT BECOMING PROBLEMATIC BUT A GENERALLY WELL-PRESERVED ENVIRONMENT

Global changes[11] – rising sea levels, rising surface water and air temperatures, an increase in extreme metocean events like cyclones and tropical storms, and rapid global population growth – are directly or indirectly undermining all the planet's ecosystems. The Anthropocene, the term increasingly used to describe the most recent period in Earth's history, when human activity started to have a significant impact on the planet's climate and ecosystems, could well be the period of the sixth mass extinction. The current rate of global species extinction is up to several hundred times faster than natural background extinction rates for the past 10 million years, according to the report published by IPBES (Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services) in 2019.[12]

New Caledonia will not be spared and is already being affected by this global trend but, for the time being and compared to other countries, New Caledonia's natural environment has been largely preserved and protected. The country's low population density must be considered a key factor. Average population density is 15 per km² but distribution is extremely uneven. Nearly 70% of the population lives in Greater Noumea, which represents just 9% of the country's surface area. The bush or outback (anywhere outside Noumea) is "empty"

10 https://www.oeil.nc/fr/causes/les-incendies

11 https://www.google.com/search?client=firefox-d&q=rapport+sp%C3%A9cial+du+giec+en+date+de+septembre+2019

12 https://ipbes.net/news/Media-Release-Global-Assessment-Fr

and the bush population continues to decline; this means human impact is low, helping to preserve natural habitats. The level of environmental awareness shown by authorities and the general public is also an important factor. The implementation of sustainable development regulations and the creation of marine and land nature reserves (the Merlet Wilderness Reserve, the Natural Park of the Coral Sea, the Parc de la Rivière Bleue and the Côte Oubliée nature reserves in the South Province) are the tangible signs of a commitment to make every effort to preserve the country's natural environment. The fact that New Caledonia's geographical location places it in a climate zone expected to be only moderately affected, in the short term, by the above-mentioned global changes gives it a definite advantage and should help delay, for a while, the environmental crisis which is inevitable if we do not change our behaviour, radically and globally, on every level.

GLOSSARY

Angiosperms: Plants whose seeds are enclosed in an ovary which is fertilized by means of a pollen tube and then ripens into a protective fruit.

Barrier reef: A long, narrow ridge of coral or rock parallel to and relatively near a coastline, separated from the coastline by a lagoon.

Cryptogams: A diverse group of plants or plantlike organisms (such as a fern, moss, alga, or fungus) reproducing by spores and, unlike phanerogams, not producing flowers or seeds.

Glacio-eustatic cycles: High frequency sea-level oscillations due to the uptake or release of water from glaciers and polar ice (glaciations/deglaciations).

Species diversity: Species diversity is defined as the number of different species present in a given ecosystem and the relative abundance of each of those species.

Endemism: The situation in which a species is restricted to a particular geographic region as a result of factors such as isolation.

Alluviation: Process resulting in deposits of clay, silt, sand, or gravel in rivers or estuaries where stream velocity is decreased.

Gondwana: A supercontinent formed by continental collisions about 600 million years ago. According to the theory of plate tectonics, Gondwana broke up into India, Australia, Antarctica, Africa, and South America about 150 million years ago.

Gymnosperms: A group of seed-bearing plants whose ovules are not enclosed in an ovary but exposed on open structures such as cones or modified leaves.

Obduction: Over-thrusting of continental crust by oceanic crust or mantle rocks, resulting in the formation of ophiolite complexes.

Mangroves: Trees or shrubs (various species) which grow in tidal, chiefly tropical, coastal swamps, having numerous tangled roots that grow above ground and form dense thickets.

Peridotite: Coarse-grained, dark-coloured, ultramafic igneous rocks, the dominant rocks of the upper part of Earth's mantle.

Post-Wurmian: After the Würm, the last glacial period in the Alpine region, encompassing the period c. 115,000 – c. 11,700 BP (Before Present). The Post-Wurmian (interglacial warming period) therefore began 11,700 years ago and continues today.

Marine regression: A geological process occurring when areas of submerged seafloor are exposed above the sea level. During a regression, continental sediments are deposited farther out to sea.

Ultramafic rocks: Igneous and meta-igneous rocks, also referred to as ultrabasic, with a very low silica content (less than 45%) and containing over 90% of minerals rich in iron and magnesium.

Serpentinite: Rock composed of one or more serpentine group minerals; very dark, often black and marked by various shades of green deriving from peridotite weathering. Serpentinite consists primarily of antigorite (magnesium phyllosilicate).

Ferralitic soils: Ferralitic soils are red-coloured soils very rich in iron oxides and aluminium oxides. These soils develop in tropical or equatorial rainforests with rain throughout the year.

Rendziniform soils: Shallow limestone or dolomitic soils, relatively rich in humus and with a well-defined structure.

Subduction: Subduction is the tectonic process at convergent margins by which slabs of oceanic lithosphere descend into the mantle.

Transgression: A geological process occurring when sea level rises relative to the land and the shoreline moves toward higher ground. A transgression results in successive layers of marine sediments being deposited over continental sedimentary deposits.

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PART II

THE PEOPLE

THE SETTLEMENT OF NEW CALEDONIA OVERVIEW ON A LONG-POLITICIZED ISSUE

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I. GENERAL CONTEXT

An understanding of the settlement of New Caledonia can only be reached by placing it within the historical context of the discovery, by *Homo sapiens*, of a region known as "Remote Oceania"[1] located beyond, i.e. to the east of, the Solomon Islands.

"Near Oceania", mainly comprising Australia, Tasmania and mainland New Guinea, was settled in the late Pleistocene period, several tens of thousands of years ago, by the ancestors of groups from present-day Australia and Papua, as a result of the Würm glaciation. During this phase, when sea levels were around one hundred metres lower, large conjoined masses of emerged land replaced the highly fragmented region of present-day insular Southeast Asia. Nevertheless, in order to cross small-but-deep channels, some tens of kilometres wide, makeshift boats had to be built, representing a remarkable technical achievement for Paleolithic Age peoples; however, the vast majority of population movements within these areas were made on foot.

In Remote Oceania, by contrast, the process of settlement could only take place by sea, through a mastery of highly sophisticated navigation and boatbuilding techniques. The peoples driving this far-flung expansion came from Asia, from a region which could be equated with present-day Taiwan or the South of mainland China. The first outrigger canoes are thought to have set off southwards and eastwards from there, heading first towards the Philippines and Micronesia, and then onto insular Southeast Asia and the mainland of New Guinea. These Austronesian language-speaking peoples would have spread across present-day Indonesia, the Malay Peninsula, and even distant Madagascar, and would also have come into contact with Papuan peoples who had settled at an earlier date in the Bismarck Sea area. The present Bismarck Archipelago, including the large island groups of New Britain and New Ireland, Manus and also many other islands, is considered to be the melting pot of a cultural or civilizational complex which then spread to Melanesia and Western Polynesia, exploring for the first time the large, entirely unknown, islands of the southwest Pacific.

1 Term defined by the archaeologist R. C. Green and the linguist Andrew Pawley. For considerations specific to the concept of Melanesia, see R.C. Green, 1991, "Near and Remote Oceania – Disestablishing 'Melanesia' in Culture History", in A. Pawley, *Man and a Half: Essays in Pacific Anthropology and Ethnobiology in Honour of Ralph Bulmer*. Auckland, Polynesian Society, p. 491-502.

This cultural complex is known as "Lapita", taking its name from a site in New Caledonia. Discovered in the early 20th century by Fritz Sarasin and Maurice Piroutet, this site, linked to the first settlement in New Caledonia – and close to the present urban area of Koné –, was excavated in 1952 by an American archaeological expedition led by Edward W. Gifford, Richard Shutler Jr. and Mary Elizabeth Shutler. The excavations at Lapita, undertaken in the early days of radiocarbon dating, provided evidence of the antiquity of settlements in Melanesia – dating back several millennia – and also demonstrated the cultural unity existing in the distant past when the islands were first discovered. Indeed, similar pottery sherds were also coming to light in Fiji, New Britain, and in other places in New Caledonia. The idea of a maritime cultural complex, showing great homogeneity in, at least, the production of pottery, and having fairly rapidly settled insular Oceania starting from the western Pacific, was beginning to make sense.

In fact, linguists had long been aware of the links between some Southeast Asian languages (Malay, Tagalog, Formosan) and Polynesian languages. Research into Kanak languages by André-Georges Haudricourt and his students resulted in these languages being included in the vast family of Austronesian languages, thus affirming the cultural and linguistic unity of the Oceanian peoples. Moreover, the Asian origin of many plants eaten in Oceania, including taro (*Colocasia esculenta,* together with *Cyrtosperma* sp. and *Alocasia* sp.), bananas (*Musa* sp.) and useful plants such as the candlenut tree *(Aleurites moluccana)*, supported the theory of Pacific settlement spreading from the West. In 1938, the Maori anthropologist Te Rangi Hīroa[2] (also known as Sir Peter Buck), had already described the Polynesians as the "Vikings of the Sunrise", great navigators who had always travelled eastwards, leaving behind the sunset, the world of primal night to which souls returned upon death.

Thereafter, archaeological discoveries made over time between the 1950s and early 1980s (the *Lapita Homeland Project* in particular), provided evidence confirming the antiquity of the first settlement of Melanesia and West Polynesia, and also broadly confirming the direction of settlement. Austronesian outrigger canoes had set off south-eastwards from the Bismarck Sea, fighting winds and currents to reach the Reef Islands/Santa Cruz, then on to Vanuatu, New Caledonia, Fiji, Tonga, Samoa, and Wallis and Futuna.

Although navigating against wind and currents was certainly arduous work, it meant a speedy return to their point of departure if no new island was discovered[3].

II. DIFFUSIONISM AND ALTERNATIVE THEORIES

Alongside these key scientific advances in understanding the history of human mobility, alternative views as to the prehistory of island groups have long survived in Oceania (especially in colonial societies). In Polynesia, for example, it is common, even today, to come across supporters of the view that the Pacific islands were settled by people from South America,

2 P. Buck (Te Rangi Hīroa), 1938, *Vikings of the Sunrise*, Philadelphia, J.-B. Lippincott & Co.

3 On this topic, see the (somewhat dated) overarching work of G. Irwin, published back in 1992, *The Prehistoric Exploration and Colonisation of the Pacific*, Cambridge, Cambridge University Press. For a work based on more recent data, see K.-R. Howe (ed.), 2007, *Vaka Moana, Voyages of the Ancestors: The Discovery and Settlement of the Pacific*, Honolulu, University of Hawaii Press.

despite the near absence of Amerindian DNA in genome data from Pacific populations[4], and despite the fundamental differences between the Austronesian languages and those spoken on the American continent.

Alternative views are also held in Melanesia; for example, "population replacement" theories asserting that a first settlement, of fair-skinned people skilled in "megalithism", was behind some types of ancient vestiges, such as, in New Caledonia, tumuli found on the Isle of Pines, rock carvings, standing stones and fortifications. The theory is that they would then, and relatively recently, have been replaced by the present-day Melanesians, who were ignorant of such technical skills, deemed too difficult and too complex for them. Beyond the underlying racism evident in such theories, whether Polynesia or New Caledonia-based, they all rely on the model of diffusionism, an outdated school of European thought.

Diffusionism is characterized by the assertion that some major human discoveries or outstanding achievements could only have been invented once. Such inventions were subsequently dispersed worldwide by diffusion, either through exchanges of knowledge and skills, or through population movements, i.e. migration. For example, if we believed that the pyramids of Pre-Hispanic America had their origins in ancient Egypt, or that the great volcanic rock *tiki* of the Marquesas Islands were manifestations of Andean sculptural art, we would be taking a diffusionist view. It should be noted that contemporary "cult" pseudoarchaeology, with its conspiracy theory overtones, also frequently embraces such themes.

In terms of archaeological knowledge, even if diffusionism still numbered many followers during the interwar period, the discovery of absolute dating methods in the 1950s led to diffusionism as a methodological tool being rejected as antiquated, in the same way as advances in modern medicine led to the dismissal of phrenology or the theory of the four humours. The chronological disparities between the building of the Egyptian and Mayan pyramids could be clearly demonstrated, thereby ruling out any possibility of cultural diffusion between them. In the Pacific region, diffusionism unfortunately enjoyed – and still enjoys – much favour, due to local supporters who are highly active in the dissemination of groundless archaeological arguments.

In New Caledonia, for example, the founding of the Society for Historical Studies of New Caledonia (Société d'Études Historiques de la Nouvelle-Calédonie – SEHNC) in 1969 certainly paved the way for the publishing of many scholarly works on recent colonial history, its speciality, but also meant that outdated clichés like successive population replacements continued to be promoted.

Bernard Brou, primarily, but also other authors like Léo Paléo (pseudonym) used the *Bulletin* edited by the Society to promulgate population replacement theories put forward a century ago by Marius Archambault, a post office employee; theories in respect of which pastor and ethnologist Maurice Leenhardt, in a spirit of tolerance, had allowed some doubts to remain due to lack of evidence. French Institute of Oceania geologist Jacques Avias also expressed

4 A. G., Ioannidis, J. Blanco-Portillo, K. Sandoval *et al*., 2020, "Native American Gene Flow into Polynesia predating Easter Island settlement", *Nature*, no. 583, p. 572-577.

similar views in 1949, in a famous article published in the *Journal de la Société des Océanistes*.[5] Not content with publishing articles with, all in all, limited reach, in the *Bulletin de la société d'études historiques de Nouvelle-Calédonie*, Bernard Brou was to produce two somewhat redundant works[6], the second with a very high print run, still available today since it is regularly reprinted. Published in 1977, this work makes no mention of archaeological studies then underway in the Pacific, as witnessed by the many scientific articles on the Lapita phenomenon that had already appeared. For over thirty years, from the date this book was published until his death in 2009, and despite studies carried out by Daniel Frimigacci, Jean-Christophe Galipaud and Christophe Sand and his team, Bernard Brou never once suggested any reassessment or amendment to his book, where, page after page, he pushes his unsupported "population replacement" version of events. Moreover, Brou never withdrew the book from sale, even as evidence inexorably piled up to contradict his model. Worse, the first local history manual for schools, born of the determination, set out in the Matignon Accords, to include New Caledonian history in the school syllabus for history & geography, reflects views held by Brou[7].

One may legitimately question the reason for this obsessive allegiance to an outdated and untenable model. In fact, beyond the intellectual ever-reluctant to abandon his long cherished ideas, in this particular case we should also take into account the political use of the population replacement theory in the extremely tense social climate of the period. The Kanak awakening of the 1970s, contemporaneous with the early years of the SEHNC, together with the surge in land claims, came up against the assertion of Caldoche legitimacy founded solely in the reality of colonialism. The decade of the "Events", between 1981 and 1989, would see tensions reach a climax and New Caledonia plunged into a state of virtual civil war.

The "population replacement" theory could be employed to counter the Kanak claim of "first occupant". It became a commonplace of Caldoche rhetoric, thanks to the SEH distribution network and its prestige amongst well-thought-of local social circles. Supported by albeit dated but nevertheless published scientific literature and coupled, in more or less good faith, with some significant figures in the field of science (Maurice Leenhardt and Jacques Avias), this race-based view of New Caledonian prehistory appeared to be both legitimate and pragmatic: it had the dual advantage of refuting the Kanak claim as first occupants of the land (thus negating their right to the land), and of justifying colonialism and the resulting appropriations of land (since this was merely one more replacement phase), which explains why many New Caledonians still hold onto this view.[8]

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5 J. Avias, 1949, "Contribution à la préhistoire de l'Océanie : les tumuli des plateaux de fer en Nouvelle-Calédonie", *Journal de la Société des Océanistes*, no. 5, p. 15-50.

6 See B. Brou, 1970, *Mémento d'histoire de la Nouvelle-Calédonie. Préhistoire et protohistoire de la Nouvelle-Calédonie. Antiquité et Moyen-Âge*, Noumea, self-distributed, and particularly B. Brou, 1977, *Préhistoire et société traditionnelle de la Nouvelle-Calédonie*, Noumea, Société d'études historiques de Nouvelle-Calédonie, publication no. 16.

7 Collective publication, 1992, *Histoire. Nouvelle-Calédonie – France*, Noumea, Société d'études historiques de Nouvelle-Calédonie, no. 47, particularly p. 5-8.

8 Christophe Sand has published several articles on the subject of pseudo-population replacements, explaining their continuing importance today. See for example C. Sand, J. Bole, A.-J. Ouetcho, 2003, "Les aléas de la construction ethnique multi-identitaire en Nouvelle-Calédonie", *Journal de la Société des Océanistes*, no. 117, p. 147-169.

III. CURRENT DATA

As we have seen, Austronesian seafarers belonging to the Lapita cultural complex were the first to discover the archipelago of New Caledonia. This occurred around 1050 BCE, as part of a phase of very rapid expansion towards the east, along the Melanesian Arc (South East coast of Papua New Guinea, Reef/Santa Cruz Islands, Vanuatu, New Caledonia) and to Western Polynesia (Fiji, Wallis, Futuna, Samoa, Tonga). Lapita pottery, decorated with intricate stamped geometric patterns, formed part of the material culture of the Austronesian-speaking peoples: depending on island groups and chronology, the array of pottery includes large pots with rounded bases, plates, stemmed cups and covers, all decorated with stacked horizontal friezes often featuring anthropomorphic elements. In addition to pottery, the Austronesian peoples were skilled canoe builders; their tools included stone and shell adzes, indispensable in making dug-out canoes, but not axes. An interesting point is that, although their descendants gradually transformed the cutting edges of their adzes, they continued using adzes and never invented the handled axe so widespread in populations inhabiting continental environments.

This phase of Austronesian expansion into Remote Oceania was very rapid: starting from the Bismarck Archipelago in around 1500 BCE, it had reached Western Polynesia by around 850 BCE, i.e. 4,000 km further east. Although the front line of colonization then came to a halt, perhaps because the colonizing impetus ran out of steam, perhaps also because, as the seafarers progressed further eastwards, they encountered increasingly small islands with sparser biodiversity, complex interactions and trading and travel networks had developed in the newly discovered territories. As illustration, pottery formally identified as New Caledonian has been found in Vanuatu, and obsidian from Talasea in New Britain has been found in the stratigraphic layers of sites in New Caledonia, etc. This serves to justify designation as "Lapita cultural complex", given that interactions and trading of exogenous materials are clearly identifiable, and that these probably only represent the visible part of a whole, within which perishable materials (mats, tapa bark), horticultural crops, and possibly even women were traded until, gradually, local roots grew and came to dominate such regional policies.

Recent work linking linguistics, physical anthropology, archaeology and genetics provides a clearer understanding of these early populations. It is now evident that Asian genes formed a major component of the DNA of these speakers of Austronesian languages, in clear correspondence with their sociolinguistic background.[9] However, it is also certain that, very early on, their DNA carried Papuan genetic material, testifying to their sojourns (and the resulting genetic mixing) in the Bismarck Sea basin. While the Lapita cultural complex lasted, travel to and from their new countries and their native archipelago led to the gradual reinforcement of Papuan genetic material in populations living in the Western Pacific Islands

9 See, for example, M. Lipson, P. Skoglund, M. Spriggs, F. Valentin, S. Bedford, R. Shing, H. Buckley, I. Phillip, G. Ward, S. Mallick, N. Rohland, N. Broomandkhoshbacht, O. Cheronet, M. Ferry, T. Harper, M. Michel, J. Oppenheimer, K. Sirak, K. Stewardson, K. Auckland, A. Hill, K. Maitland, S. Oppenheimer, T. Parks, K. Robson, T. Williams, D. Kennett, A. Mentzer, R. Pinhasi, D. Reich, 2018. "Population Turnover in Remote Oceania Shortly after Initial Settlement", *Current Biology*, no. 28, p. 1-9. See also C. Posth, K. Nägele, H. Colleran, F. Valentin, S. Bedford, K. Kami, R. Shing, H. Buckley, R. Kinaston, M. Walworth, G. Clark, C. Reepmeyer, J. Flexner, T. Maric, J. Moser, J. Gresky, L. Kiko, K. Robson, K. Auckland, S. Oppenheimer, A. Hill, A. Mentzer, J. Zech, F. Petchey, P. Roberts, C. Jeong, R. Gray, J. Krause, A. Powell, 2018, "Language Continuity despite Population Replacement in Remote Oceania". *Nature Ecology and Evolution*, no. 2 (4), p. 731-740.

(including as far as Fiji). This highly genetically mixed group of peoples thus remained united by their Austronesian languages and a relatively homogeneous material culture, with Lapita pottery as its most outstanding characteristic.

There can be no question, in respect of New Caledonia, of a "population replacement" as advocated by Marius Archambault and Jacques Avias and later propagated by Bernard Brou. On the contrary, the advent of populations with a "reinforced" Papuan genetic makeup was a dynamic phenomenon within the Lapita cultural complex itself: such genetically renewed populations moved about, thanks to their knowledge of distant island groups, passed on by virtue of return trips undertaken within areas of linguistic intercomprehension. There were evidently many more of these "second or third generation" arrivals in island groups near the Bismarck Sea, excepting the far eastern ends of the Lapita settlements, namely Western Polynesia (Tonga, Samoa, Wallis, Futuna). This provides sufficient grounds to explain current variations in phenotype, i.e. physical appearance, seen in so-called "Melanesian" peoples with fairly dark skin and curly hair, and "Polynesian" peoples with slightly lighter skin and fairly straight hair. In reality, these two population groups share both Asian and Papuan genetic material – although today in different ratios – which we can trace back to their common origin. Indeed, Asian cultural traits (Cordyline and paper mulberry tree cultivation) and cultural traits originating in the New Guinea mainland (taro, yam and banana cultivation, the use of obsidian) can both be observed from one end of the Pacific to the other, once again confirming the view of dual influences in the origins of Pacific Islanders.[10]

IV. AN OCEANIA OF NETWORKS

Following the Lapita cultural complex, when crafting of the iconic finely stamped pottery diminished in around 700 BCE, the island group populations would appear to have turned inwards. Development of relations over long distances as part of extensive trading networks gave way to a drive to establish roots, ownership and cultural differentiation. In archipelagos like New Caledonia and Fiji, where good quality clay is plentiful, pottery continued, while archaeological collections in Western Polynesia reveal its disappearance. A divide appears to have gradually developed between a pottery-making Melanesia and a Polynesia where the craft had been forgotten but where the intricate decorations seen in Lapita pottery were transferred to knotted and woven mats, tattoos and tapa cloth patterns.

In the healthy, malaria-free environment of New Caledonia, population probably grew significantly, with conservative estimates advancing a figure of 55,000 inhabitants in the Main Island at the beginnings of the modern era.[11] This growth in population led to the appearance of new behaviours at local level, including the mining of some stones found in the geological unit of the central mountain range (mudstone, greywacke) or in more coastal areas (chert and jasper), with these being traded as far as the surrounding islands (Loyalty Islands, Isle of Pines). Raw materials were traded from person to person, either as blocks of stone or, in the case of remote regions, small finished tools. So while there was local diversification

10 A useful source for a recent overview on the Lapita phenomenon: S. Bedford, M. Spriggs (ed.), 2019, *Debating Lapita: Distribution, Chronology, Society and Subsistence*, Canberra, Australian National University Press.

11 C. Sand, 1995, *Le temps d'avant. La préhistoire de la Nouvelle-Calédonie*, Paris, L'Harmattan, p. 112.

of pottery types, a sign that could be interpreted as a move towards differentiation and an inwards-looking culture, the trading of hard materials continued, a reflection of multiple connections between groups.[12]

Although the first millennium CE is the least well known in the history of New Caledonia, the same phenomenon can be seen in most populated island groups at the time of the Lapita cultural complex. This is the combined consequence of studies carried out by archaeologists, which have long focused on first settlement, studies led by ethnoarchaeologists or ethnologists, which centred on areas of traditional knowledge rarely extending over more than a few centuries, and finally the practical difficulty of identifying sites dating back over a thousand years, often more deeply buried than more recent sites. Accordingly, although we are generally well-informed as regards both original settlement of the islands and the centuries preceding contact with Europeans, there is very often little information about the period between these two events. In Eastern-Central Polynesia, this issue is of less importance, the islands having been settled shortly after the year one thousand. In the Western Pacific, the period extends over more than a millennium and we still have little information at our disposal.

However, in New Caledonia, the first millennium CE can, in many ways, be viewed as a melting pot foreshadowing the emergence of what is known as "the traditional Kanak cultural complex".[13] For example, serpentine (sometimes known as "semi-nephrite" or "New Caledonian jade") begins to appear in archaeological material dating from the period. Serpentine was valued both for its toughness and beautiful dark green colour. People began to use serpentine to make adzes and, over the next thousand years, it was to become the stone almost exclusively defining the traditional Kanak cultural complex, used to fashion the necklaces worn by Kanak women, the rounded blades of so-called "ceremonial" axes and, of course, the cutting edges of triangular adzes. Likewise, the first irrigated terraces for taro cultivation appear to have been laid out at the end of the first millennium CE.

The second millennium CE was, first and foremost, the period marking the emergence of the Kanak cultural complex, i.e. all the emblematic material evidence of the Kanak world which would be observed by Europeans in the 18th century, including, for example: ceremonial axes, beads and pendants used in Kanak currency, greenstone beads, differently shaped adzes and sling-stones, Nera pottery in the South and Oundjo pottery in the North of the Main Island. Earthen mounds elevating Kanak round huts, the layout shaping Kanak villages, often arranged along a central pathway, and differently sized mounds indicating rank appeared during this period, concurrently with the establishment of large-scale, well-thought-out crop growing arrangements throughout the Main Island. Secondly, in chronological terms, the last one thousand years were also marked by significant Polynesian expansionism. Improved navigation techniques and the invention of large *tongiaki*-type double-hull canoes meant

12 Fairly recent studies in the Isle of Pines, where workable stone would necessarily have been imported, have thrown light on such trading routes. See L. Lagarde, 2012, *Peuplement, dynamiques internes et relations externes dans un ensemble géographique cohérent de Mélanésie insulaire : l'exemple de l'Île des Pins en Nouvelle-Calédonie*, PhD dissertation under the direction of É. Conte, Université Paris 1 – Panthéon/Sorbonne.

13 We owe the term to Christophe Sand. See also C. Sand, J. Bolé, A.-J. Ouetcho, 2012, "L'ensemble culturel traditionnel kanak", J. Bonvallot, J.-C. Gay, E. Habert (eds.), 2013. *Atlas de la Nouvelle-Calédonie*, Marseille, IRD Éditions, p. 103-106.

that groups inhabiting the islands of Samoa and Tonga could set out to explore the rest of the Polynesian triangle. This phase of unusually rapid dispersion which saw, in the space of a few centuries, settlement of the remote islands of Polynesia (Hawaii, Rapa Nui - Easter Island, and Aotearoa - New Zealand), was not limited to exploratory voyages to the east, "towards the rising sun" in the iconic words of Te Rangi Hīroa. Voyages to the west and northwest led Polynesians to set foot in Melanesia and Micronesia. The Polynesians necessarily made less impact on these islands, inhabited for over two millennia and with sizeable populations, than on the uninhabited islands discovered as they sailed eastwards. Yet they have left a significant legacy, as evidenced by the "Polynesian outliers", small islands where embryonic Polynesian societies were established: the closest to our coasts being Aniwa and Futuna in Vanuatu, and, of course, Ouvéa, in the Loyalty Islands.[14] Elsewhere, in the larger and more densely populated islands, Polynesian seafarers were more readily offered chiefdoms or key roles in fishing/warrior clans. Consequently, in Lifou, Maré, the Isle of Pines, and also in various locations on the east coast of the Main Island and in the far north of the archipelago, recurrent elements of oral tradition and place names testify to past links with Fiji, Samoa, and especially Tonga.

Chronologically-speaking, it is not easy to establish the dates of these early Polynesian returns to South Melanesia. Some authors have linked the story of Roy Mata, a legendary Vanuatu chief who lived in the late 16th century, with that of an historical figure of Polynesian origin.[15] In New Caledonia, Polynesian chicken bones *(Gallus gallus)* identified as 15th century and found in a rock-shelter on the Isle of Pines, could date back to the introduction of the species to our region from Western Polynesia.[16]

Such external contacts with the Polynesian world renewed the gene pool, brought knowledge and skills (tattoos, weaving, fishing methods and navigation), led to the introduction of new crop varieties, and helped shape new socio-political structures. Known evidence includes *pwere toga* ("Tongan style") weaving, tattooing, the introduction of yaws disease, often called "*tôga*" – a treponematosis related to syphilis and of Polynesian origin –, together with legends explaining how new yam varieties or net-fishing methods came to be known[17]. The well-known legend of "the octopus and the rat" recounts how octopus lures used in the Loyalty Islands came to be made. Octopus lures, found from New Caledonia as far as the Marquesas Islands, appear to derive from pan-Polynesian knowledge spread to our region as a result of such voyages.

In the late 18th century, when the native population first came into contact with crews from European ships, New Caledonia's indigenous society, throughout the island group,

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14 For an overview on the Polynesian outliers, see R. Feinberg, R. Scaglion, 2012, *Polynesian Outliers: The State of the Art*, Pittsburgh, University of Pittsburgh Ethnology Monographs no. 21, notably the chapters by P.V. Kirch and M. Carson reviewing archaeological data.

15 J. Garanger, 1972, *Archéologie des Nouvelles-Hébrides. Contribution à la connaissance des îles du Centre*, Paris, Société des Océanistes, p. 128-129, and also J. Bonnemaison, 1996, "La coutume ou les formes du pouvoir politique traditonnel au Vanuatu", in C. Kaufmann, R. Boulay, K. Huffman, 1996, *Vanuatu – Océanie : art des îles de centre et de corail*, Paris, Réunion des musées nationaux, p. 224-225. The issue remains, however, the subject of much debate.

16 See also L. Lagarde, 2017, "L'île des Pins et ses relations avec la Polynésie. Données archéologiques et particularités stylistiques", *Journal de la Société des Océanistes*, no. 144-145, p. 253-268.

17 See the whole of the chapter on the Isle of Pines in the book by J. Guiart, 1963, *Structure de la chefferie en Mélanésie du Sud*, Paris, Institut d'ethnologie, p. 205-246.

possessed a shared range of material goods (ceremonial axes, jade necklaces, wooden clubs, plant fibre skirts…). That said, native society was also shaped by recurrent landings by incoming canoes: beneath a superficial unity, many clearly differentiated languages were in use, there was a local diversity of sculptural styles, social structures and myths of origin, and thus distinctive *Kanak lands*. This unity in diversity, the result of continual interaction and evolving alliances, formed beyond doubt the basis for the incredible complexity of pre-European New Caledonian society. In such a mountainous country, the central mountain range did not play the role of a natural border but of a channel of communication between the two coasts. Multilingualism, networks of identification shared from one end of the archipelago to the other, and extended marriage systems were the factors binding together a relative cultural unity.[18]

V. CONTACT WITH EUROPEANS AND ITS CONSEQUENCES

Like elsewhere in the Pacific, the first landings by Europeans and repeated stops by ships from the 1790s onwards, constituted a tipping point. New diseases introduced, mostly unintentionally, by sailors, led to cataclysmic depopulation in the Pacific, and New Caledonia was not spared. It is almost impossible to estimate local population decline due to the lack of numerous variables (foremost, a reasonable approximation of the Kanak population when Cook first landed[19]). However, comparison with other Pacific island groups where population numbers are better known would suggest, at the lowest estimate, a decline of 70 to 80% in the population of New Caledonia in the decades following initial contacts with Europeans.

Contact with Europeans also implied the transfer of skills/knowledge (weapons handling, shipbuilding, architecture) and materials (glass, metal). Imported materials instantly acquired a high value, precious status and some, such as fabric and tobacco, would become indispensable components of Kanak customary gesture rituals. At the time, as the first traffickers/beachcombers or missionaries were settling permanently in the islands (the former also laying down roots and founding nowadays respected and fully integrated clans), hybrid objects made an appearance (clubs with metal blades, belts and collars incorporating glass beads, knapped glass awls).

Oceania then witnessed a rush to evangelize native peoples and reap resources, mainly sandalwood, cetaceans and sea cucumbers. All three were avidly garnered in New Caledonia to be trafficked in operations controlled by Europeans, who chartered ships and supervised trading.[20] However, Oceanians volunteered on the ships as Europeans were seen to defect.

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18 L. Lagarde, E. Dotte-Sarout, S. Domergue, J.-M. Wadrawane, 2020, "L'archéologie", in L. Lagarde L. (ed.), 2020. *Le patrimoine de la Nouvelle-Calédonie*, Paris, HC Éditions for the Fondation Clément, p. 62-67.

19 We share the doubts expressed by C. Sand regarding the estimates, as detailed in C. Sand, 1995, made by Johann Forster, a naturalist on board Cook's second voyage, *Le temps d'avant, op. cit.,* p. 289.

20 See for example M.-J. Dubois, 1969, "L'arrivée des Blancs à Maré : tragiques contacts, 1793-1851", *Journal de la Société des Océanistes*, no. 25, p. 307-316, and of course D. Shineberg, 1967, *They Came for Sandalwood: a Study of the Sandalwood Trade in the Southwest Pacific, 1830-1865*, Melbourne University Press. See also K.R. Howe, 1977, *The Loyalty Islands: A History of Culture Contacts, 1840-1900,* University Press of Hawaii. For an approach to the colonial period, see J. Guiart, 1983, *La terre est le sang des morts. La confrontation entre Blancs et Noirs dans le Pacifique Sud français*, Paris, Anthropos.

They sailed the seas, and (re)discovered their regional environment. Kanak leaders welcomed teachers, negotiated with traffickers, and turned them away or attacked their boats: the terms of trade were sometimes unacceptable and the crew of the *Star* was massacred at the Isle of Pines in November 1842[21]. In addition to the British captain, the ship carried seven other European sailors, two men from Huahine, three from the Cook Islands, a Marquesan and a Hawaiian, plus three Polynesian teachers, Taniela and Lasalo from Samoa and Rangi from Rarotonga. Far from being the helpless victims of a process where they could only look on as their fellows foundered, the Oceanians (*a fortiori* Kanak) played a truly active role in this early form of globalization, as sailors, pastors, interpreters, guides and figures wielding power.

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21 See R. Crocombe and M. Crocombe, 1968, *The Works of Ta'unga*, Canberra, Australian National University Press, and also G. Pisier, 1969, "Premiers contacts entre l'île des Pins et l'Occident, 1840–1843", *Journal de la Société des Océanistes*, no. 25, p. 71–93. See also L. Lagarde, forthcoming article: "Violences en Mélanésie et intensification des contacts avec les Européens : l'exemple de l'île des Pins en Nouvelle-Calédonie", *in* É. Conte, S. Tcherkézoff, G. Molle (ed.), À *la croisée des vagues. Océaniens et Occidentaux. Anthropologie historique de la violence, 16e–19e siècle*s, Papeete, Maison des sciences de l'Homme du Pacifique.

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THE HISTORICAL ORIGINS OF A MULTICULTURAL SOCIETY IN OCEANIA

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Visitors to New Caledonia today cannot but be struck by the physical diversity of its population. As we have seen, contacts over the last millennium with peoples from the outside world (especially from Western Polynesia) enriched the gene pool of the Kanak people and diversified local phenotypes.

Again, more recently, French colonial rule led to numbers of people coming to New Caledonia from France, particularly under the penitentiary regime, and this population is generally seen today as the foundation of the so-called "Caldoche" community, a term which was originally pejorative but is – perhaps – in the process of being embraced by the community in question. Accordingly, only two ethnic groups are usually taken into consideration in New Caledonia, the colonized indigenous people on the one hand, and the Europeans and associated communities on the other, a vast group which includes long-established New Caledonians and Europeans who arrived later on, together with various Asian and Oceanic ethnic communities who arrived as indentured labourers and, of course, the many people of mixed-heritage who are the descendants of several human trajectories.

Of course, this concept is a simplification and we will attempt to untangle some of the chronological, geographical and cultural complexities in this chapter. Over and above what these communities have brought to the building of contemporary New Caledonia, what we are really concerned with here is a story of mobilities and diasporas.

I. COMPLEX EUROPEAN INPUTS

Europeans have settled in New Caledonia throughout the recent past of the archipelago, and the first to settle there were not French. A case in point is James Paddon, often considered to be "the first New Caledonian settler", who was British. Born in Portsmouth in 1812, he joined the British Navy and ended up trading sandalwood in the islands of South Melanesia in the 1840s. Following attempts to set up a base in the south of the New Hebrides (now Vanuatu), then on the Isle of Pines, he finally established a trading post on Nou Island (now Nouville – a Noumea suburb), a permanent station comprising houses for him and his staff, a boatyard for repairs to ships and a farm to produce food to carry on board, with employees naturally – of all origins – on site. Having purchased this island from Grand Chief Quindo, Paddon used it as a port for trading operations ranging between the Melanesian archipelagos, Australia and China. Paddon later ceded Nou Island to the French government in exchange for vast estates in Païta and brought several families of close friends or relatives across to New Caledonia. These English-speaking British subjects are known as the "Paddon settlers"

within the New Caledonian microcosm.[1] The term is useful in highlighting their British origin and the length of time they have been in the archipelago, as well as setting them apart as families who are not descended from convicts, unlike many other New Caledonians. The Paddon settlers had a fair amount of influence right from the early days of New Caledonia's colonial history and held many senior positions, also preserving close relations with the neighbouring British Dominion of Australia. Various terms and expressions borrowed directly from English remain as a legacy of this era when many members of the best colonial social circles were English-speaking; such terms still add colour to local French. For example, a *ruisseau* (stream) is known as a *creek*, a *ponton* as a *wharf*, the word *paddock* is used for an animal pen and a bi-coloured horse is called *piebald* rather than by the French word *pie*. The word *store* is often seen on shop signs, and the English expression *tata!* is a common way of saying *au revoir*.[2]

These are not the only examples of the influence of English words in local languages. In the same way as English expressions worked their way into local French, they became part of the languages spoken in the Loyalty Islands due to the influence of British Protestant missionaries: *farawa,* derived from *flour*, refers to bread *(pain)*, *waïna* to wine *(vin)*, *bi* to bee *(abeille)*. Even *hanying* which, in the Drehu language (Lifou) is used for someone you love, is derived from the colloquial English term *honey*. In the south of the Main Island, where the influence of English-speaking missionaries was very short-lived, people in tribes play old card games where the suits are known as *hat*, *calap*, *daiman* and *supedj*, from "hearts", "clubs", "diamonds" and "spades". Many more examples could be given.

In addition to the influence of English speakers, the free settlement process attracted French people from all regions of France. Free settlers were already coming to New Caledonia during the era of convict shipments (*transportés, deportés* and *relégués*) from 1864 to 1897, but there was a significant rise in free settlement at the turn of the 20th century as a result of Governor Paul Feillet's settlement promotion policy.[3] Accordingly, new settlers from every region of France landed in Noumea but, although there is much less mention of them, there were also numbers of French people who had previously settled in other territories.

A close study of personal stories often reveals "multi-colonial" family histories: for instance, people born in Algeria, Bourbon Island (now Reunion Island) and Saint-Louis in Senegal ended up in New Caledonia. In the 1950s, Father Patrick O'Reilly had drawn up biographical registers for families (mainly descended from settlers) in the French-speaking archipelagos of the South Pacific. Respectively entitled *Calédoniens*, *Hébridais* and *Tahitiens*, O'Reilly's volumes reveal an impressive similarity in surnames occurring and reoccurring in each

1 Among the "Paddon settlers" were also German-speaking families, brought to New Caledonia by Paddon's German collaborator Ferdinand Knoblauch. Although most of them also spoke English, they seem to have left no impact on the local French idiom.

2 The first person to show an interest in the subject seems, as was often the case, to have been the Catholic priest Patrick O'Reilly. See P. O'Reilly, 1953, "Le français parlé en Nouvelle-Calédonie : apports étrangers et vocables nouveaux", *Journal de la Société des Océanistes*, no. 9, p. 203-228.

3 Figures indicate that in the 1990s, one third of the so-called Caldoche population was descended from free settlers, compared with two thirds from freed convicts. All the same, since marriages between descendants of free settlers and convict settlers became accepted – although this took time – and society moved on, such figures have less and less relevance.

book.[4] A meticulous reading of the volumes really brings to light the links which have always existed between the archipelagos of the "French-speaking Pacific". For example, members of New Caledonian families could settle in French Polynesia, and a New Caledonian younger son could become a planter in the New Hebrides and establish a family there, while *demis* from Tahiti[5], who came to Noumea to study for the baccalauréat (high school diploma) in the 20th century, never left. This history of colonial mobilities in the French-speaking Pacific, of which an account remains to be written, could prove extremely helpful in reaching an understanding of the profound ties which unite French Polynesia, Vanuatu and contemporary New Caledonia. Of course, there is no equivalent of his work – because not all archipelagos boasted a Father O'Reilly – as regards the islands of the Pacific under the British influence and, evidently, no such work relating to other French colonies. Nevertheless, there is a strong likelihood that many surnames seen today as "New Caledonian" could occur well beyond the shores of our archipelago, in Reunion Island (which is commonplace and we will see why), and also in the Caribbean, in Africa or in former French Indochina.

II. A COSMOPOLITAN PENITENTIARY

The works of historian Louis-José Barbançon have highlighted the cosmopolitan nature of New Caledonia's penitentiary. In his latest book on the subject[6], Barbançon focusses on this aspect (even though the vast majority of convicts came from France) to demonstrate that New Caledonia's convict history does indeed represent a collective heritage for the communities which make up contemporary New Caledonian society. He put at over 2,000 the number of convicts transported from the Maghreb, almost all from Algeria - Muslims and speakers of Arabic.[7] As a result of being uniformly identified by the Penitentiary authorities as "Arabs", this group has become, over 120 years later, a deeply-rooted community which now prides itself on the term. Very well established in the Bourail region, especially in Nessadiou, the Arabs eventually formed communities according to shared language and spiritual beliefs and are a perfect illustration of the many paradoxes of colonization. Originally convicted for their hostility to the French presence in their own country, some having actively engaged in anti-French combat, the Algerian transportees and deportees later became settlers in their newly adopted country, awarded lands seized from the Kanak clans who were the legitimate owners of the land. Once victims, they became active players in the settlement process even though, as freed convicts, they faced miserably poor living conditions.

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4 P. O'Reilly, 1953, *Calédoniens. Répertoire biobibliographique de la Nouvelle-Calédonie*, Paris, Société des Océanistes. P. O'Reilly, 1957, *Hébridais. Répertoire biobibliographique des Nouvelles-Hébrides*, Paris, Société des Océanistes. P. O'Reilly, Raoul Teissier, 1962, *Tahitiens. Répertoire biobibliographique de la Polynésie française*, Paris, Société des Océanistes.

5 The term "demi(e)", widely-used in French Polynesia, refers to a person whose genetic heritage is partly perceived as Polynesian and partly as European, and is a term dating back to the colonial era. Regarding the way Tahitians see themselves, see the study by Bruno Saura, 2011, *Des Tahitiens, des Français. Leurs représentations réciproques aujourd'hui*, Papeete, Au vent des Îles.

6 L-J. Barbançon, 2020, *Le mémorial du bagne calédonien. Entre les chaînes et la terre*, Papeete, Au vent des îles. See also L-J. Barbançon, 2003, *L'archipel des forçats. Histoire du bagne de Nouvelle-Calédonie, 1863-1931*, Lille, Presses universitaires du Septentrion.

7 See also L-J. Barbançon, Christophe Sand, 2013, *Calédoun : histoire des Arabes et Berbères de Nouvelle-Calédonie,* Noumea, Institut d'archéologie de la Nouvelle-Calédonie et du Pacifique – Associations des Arabes et amis des Arabes de Nouvelle-Calédonie.

In addition to Arabic-speaking convicts, New Caledonia's penitentiary contained prisoners from many other places. Unfortunates from the Caribbean, Sub-Saharan Africa, Reunion Island, India (French East India Company trading posts), Tonkin, Indonesia, Oceania and, of course, Kanak were also victims of the convict labour system. Thus, France, as a colonial power extending its rule over distant territories, packed its felons and lawbreakers off to New Caledonia. An analysis of the population housed in New Caledonia's convict facilities (and consequently the population of freed convicts) reveals the extent of France's colonial empire. To this motley convict community should be added nationals from other European countries, arrested and sentenced in France then shipped to Noumea. The main foreign-born transportees were citizens from France's border countries, namely Belgium and Germany – including Alsace and Lorraine after 1870, Italy and Spain: all came to seek work in France, at that time a hub of vast industrial growth. Crushed and robbed of self-worth by the terrible might of the penal regime, having spent years and sometime decades identified by just a number, any attempt to reassert their national or regional identity in local terms was a huge struggle. It was not until attitudes to convict origins changed in the late 20th century, and it became easier to access the personal files of past convicts held in the French Overseas Archives, that some of their descendants were able to carry out researches and, for such families, the non-French origins of their ancestor finally came to represent not just a point of interest but a reason for genuine pride.

III. THE SUGAR VENTURE, A KEY LINK WITH REUNION ISLAND

During the penal regime years, in the 1860s, farming projects were also launched in New Caledonia. Sugar cane farming appeared a promising idea given that sugar cane was one of the crops traditionally grown in Oceania (in this case, traditionally farmed by Kanak), and was encouraged by Governor Guillain in 1865. The idea at that time was that convict labour resources would be enough to ensure the rapid growth of the sugar industry; however, sugar cane farming also required specialists, from plantation owners to overseers skilled in cane planting, harvesting and processing. As a result, immigration from Reunion Island, where the sugar sector had been badly hit since 1862[8] began to take shape. The idea at the time was to take advantage of rapid goldrush-driven growth in Australia to sell off New Caledonia's sugar production. Although the plants set up in Koé, Ouménie and Bacouya were all to be doomed to end in spectacular failure, they did pave the way for the establishment of new communities in New Caledonia. Wealthy settler families who acquired vast estates, Indian-born workers, known locally as "Malabars", and foremen skilled in the use of machinery, all brought to New Caledonia some of the knowledge and traditions drawn from their lives in the Indian Ocean. They introduced new plant species, planting guava and lychee trees (known locally as *letchis*, their name in Reunion Island), they added spices to local cuisine, and the Creole pharmacopoeia (ayapana, soursop and guava leaves) became commonly used and quickly merged with traditional Kanak medicinal knowledge. Their influence can also be seen in local colonial architecture: some wealthy settlers from Reunion Island, such as Thomy Celières, built rather imposing mansions in the capital, with square pavilions adorning the facade, a style which was to have an enduring influence on New Caledonia's Creole houses.

8 For a detailed study, see J. Delathière, 2009, *L'aventure sucrière en Nouvelle-Calédonie, 1865-1900*, Noumea, Société d'études historiques de la Nouvelle-Calédonie, no. 67.

IV. INDENTURED LABOURERS FROM ASIA

There was very little mechanization of mining in the late 19th century so mines were almost exclusively dependent on manual workers and required an abundant supply of cheap labour. Labourers from the New Hebrides and convict labour made up the first groups of mine workers used by the recently formed Le Nickel (SLN) mining company in the 1870s and 1880s. Their living and working conditions were appalling and, in the wake of reports on inspections carried out by the penal authorities (administration pénitentiaire – AP), these "contracts of human flesh" between the mining companies and the AP were ended in 1894.[9] However, productivity remained a priority, so the drop in numbers of convicts working as forced labour in the mines had to be offset by an influx of other workers. Their place was taken by indentured labourers from a variety of countries or colonies in Asia, the main communities involved coming from Tonkin in North Vietnam, Japan and Indonesia.[10]

Although the Tonkinese labourers, also known as Chân Dàng ("feet under contract" in Vietnamese) might be freely contracted, some of them were also convicts from Poulo Condor prison, a colonial penitentiary of sinister reputation located on an island off Saigon. Anti-colonial militants were imprisoned in Poulo Condor to serve sentences of varying length in abominable conditions. Some of them therefore left to work in New Caledonia's mines; what we were actually seeing was convicts taking the place of convicts: the system of quasi cost-free labour supply, a kind of new slavery based on the initial "contracts of human flesh", only ended because it carried on, exploiting different communities perhaps, but communities equally deprived of all human rights[11]. When they arrived in 1891 as colonial subjects, the Tonkinese were deemed to rank as "indigenous" – since the Indigenous Regime had been established in New Caledonia in 1887[12] – and not as citizens, something which would play a much greater role then any language barrier in setting them apart as a community.[13] Even so, once they had worked out their mining contracts, those who decided to settle permanently would gravitate to urban centres and gradually work their way up in trading circles, a phenomenon also seen in the neighbouring New Hebrides[14] and, in the case of the Chinese community, in French

9 Notwithstanding, the old contracts remained in force until 1899. Furthermore, while convicts were no longer obliged to work in the mines as forced labour, freed convicts could choose to become indentured mine workers. Therefore, relations between the mining industry and New Caledonia's cosmopolitan penitentiary did not really came to an end. See L-J. Barbançon, 2020, *Le mémorial du bagne Caledonian. Entre les chaînes et la terre*, Papeete, Au vent des Îles, vol. 2, p. 771-801.

10 One convoy of indentured labourers also came to New Caledonia from China in the late 19th century, but unlike the other communities mentioned in this chapter, no permanent settlement resulted.

11 The *Chéribon* brought across the first convoy of Tonkinese in 1891, carrying over 700 contracted labourers on board, including 479 convicts from Poulo Condor. See L-J. Barbançon, V. Devambez, 1992, "Les Damnés du Chéribon", *in Paroles de la Grande Terre et des Îles,* Noumea, no. 1 & 2.

12 Regarding the indigenous regime, see the recent and well researched study by I. Merle, A. Muckle, 2019, *L'indigénat. Genèses dans l'empire français. Pratiques en Nouvelle-Calédonie*, Paris, CNRS éditions.

13 The two essential works of reference on the Tonkinese labourers are the book by J. Van Mai, 1980, *Chân* Đàng. *Les Tonkinois de Nouvelle-Calédonie au temps colonial*, Noumea, Société d'études historiques de la Nouvelle-Calédonie, no. 24, and J. Van Mai, 2000, *1891-1991 : centenaire de la présence vietnamienne en Nouvelle-Calédonie*, Points d'histoire, Noumea, Centre de recherche et de développement pédagogique.

14 The status of Tonkinese contracted labourers working on large plantations in the New Hebrides has been little researched to date, but the American novelist James Michener, a former war correspondent in the Pacific during the Second World War, described it with compelling force. The tensions between workers and plantation owners reached their peak at the time of the Indochina War. J. Michener, 1951, *Return to Paradise*, New York, Random House, in particular his short story "The Good Life".

Polynesia.[15] Although a few Vietnamese words sometimes make an appearance in local French (sometimes without the speaker even being aware of the origin of a word, such as the term *toï* to mean "enough"), the Vietnamese community's cultural contributions to New Caledonian life are now seen first and foremost in terms of "cuisine": yet major 20th century New Caledonian photographers[16] and furniture designers[17] have also left a significant tangible legacy. Finally, because there was significant mobility in the Vietnamese community throughout the 20th century, with some people returning to North Vietnam after the Indochina War[18], and considerable immigration from the Saigon region during the 1970s, it is too easy to forget what they achieved by their labour, without which the growth of the mining companies – whether they endured or not – would have been impossible.

Japanese labourers also came under contract to work in local mines at the end of the 19th century, but were accorded a different status. They were nationals of a sovereign country which was at the time, in European eyes, the most modern – since the most Westernized – country in Asia. These contracted Japanese workers (about 5,500 between 1892 and 1919) came to New Caledonia alone, without wives or family; they succeeded in fitting into the local community and, unusually, found acceptance at all levels of society. Nevertheless, these citizens of the Empire of Japan and their mixed-race descendants were to be the victims of one of the 20th century's worst acts of silent injustice: during World War II, Allied military command decided that these citizens of Emperor Hirohito's Japan should be interned on suspicion of passing intelligence to the enemy. It should be noted that, with a Japanese community established in Noumea since the late 19th century, and in view of New Caledonia's immense mineral reserves, particularly iron, Japan maintained a diplomatic mission in Noumea. In point of fact, New Caledonia supplied Japan with iron ore throughout the 1930s, contributing directly to the development of Japanese industry and military strength. After the attack on Pearl Harbour which brought the United States into World War II, New Caledonia acquired immense strategic importance for both Japan and the US: Japan saw it as a means of isolating Australia and a well-placed armaments production base, the US saw it as the perfect advance base to halt Japanese expansion and begin the slow process of winning back the Southwest Pacific. The Japanese workers, many of whom had arrived in New Caledonia decades earlier, who were often elderly and had made their homes in their new country, were rounded up and imprisoned in old cells once used for convicts. They were then sent on to Australian POW camps and finally repatriated to Japan after the war, their families left with no knowledge of what had become of them. These families, torn asunder by war and decisions having no base in reason or reality, would never succeed in finding each other again. The mixed-race children, who had Japanese names but generally no knowledge of their language and culture, were the greatest victims of events during this period.[19] This is

15 See G. Coppenrath, 1967, *Les Chinois à Tahiti, de l'aversion à l'assimilation, 1865-1966*, Paris, Société des Océanistes.

16 Like Le Ngoc Lien, known as Ca Lê, and his son Noël. The latter, a photographer and postcard editor, was the author of the first photographic book on New Caledonia, mostly in black and white. N. Calé, M. Bitter, 1965, *Nouvelle-Calédonie. Île de lumière*, Noumea, Nouméa éditions.

17 Like cabinetmaker Phan Thuang Phong. It must be acknowledged, however, that both Ca Lê and Phan Thuang Phong were political deportees from Indochina, not indentured labourers.

18 This brief overview is not the place to discuss political activism, but New Caledonia's Tonkinese and Javanese communities both followed with keen interest the wars of liberation in their respective countries. Relations with the local government at the time were extremely strained, and there were frequent protests or riots in the late 1940s.

19 See also M. Tsuda, 2006, *Feu nos pères Les émigrants japonais en Nouvelle-Calédonie*, Noumea, ADCK-Tjibaou Cultural

why, although New Caledonia is now home to an extensive community of Japanese descent, they are not considered as having been in a position to contribute a significant legacy to the building of New Caledonia. Yet, when viewed in the light of New Caledonia's current quest to develop a national identity, it is precisely the diverse ethnic and cultural mix characteristic of this community which makes them so fundamentally relevant today.

Workers from the Dutch Indies (now Indonesia) were called *Javanais* in local French. The term was not meant maliciously since most of the *Orang kontrak* (men under contract) came from the island of Java, the second largest in the archipelago[20]. Their status was even more complex than that of the Japanese workers: they were colonial subjects, like the Tonkinese, but under the rule of another colonial power, the Netherlands. This explains why there had been a Dutch diplomatic mission in New Caledonia since the end of the 19th century, its main task being to oversee issues involving Javanese contract workers in collaboration with the local authorities. Convoys of Indonesians arrived in New Caledonia from 1896 to 1949, providing a labour force of around twenty thousand male and female workers (many came with their families) employed in a number of areas: they were initially scheduled to work in the mines but convict shipments came to an end and Governor Feillet's free settlement drive began almost contemporaneously with their arrival in New Caledonia in 1896.[21] The Governor also promoted the coffee industry, which required tenant farmers and coffee pickers. A great many Indonesians settled in locations all over the Main Island, the men working in coffee farming and the women making up a significant portion of the colony's ancillary staff. In fact, the "authorized occupations" for contracted workers were specified – and thus restricted – in workers' logbooks. Almost all women were classified as "domestic servant".

V. THE OCEANIANS

It would be wrong to think of the Pacific Islands as existing in a state of complete self sufficiency, cut off by the unfathomable ocean, prior to contact with the first Europeans. In fact, oral traditions and the findings of archaeological excavations all go to show that the wide ocean spaces served, particularly in the last millennium, as a series of communication channels for people and goods, creating local, regional, or even more widely spread networks. As we have seen, large double-hulled outrigger canoes from Western Polynesia and probably also from Vanuatu landed in New Caledonia as early as the 15th century. Accordingly, we could well be justified in seeing the arrival of Oceanian workers in the 19th and 20th centuries as simply the historical extension of much older relationships, and in seeing New Caledonia as almost being their home.[22]

The Protestant native teachers of the London Missionary Society (LMS) were among the first non-Kanak Oceanians to set foot in New Caledonia in the 19th century; together, of course,

Centre. On the Japanese in NC, see also Ph. Palombo, 2012, *La présence japonaise en Nouvelle-Calédonie, 1890-1960*, Sarrebruck, Éditions universitaires européennes.

20 See C. Adi, 2014, *Orang Kontrak* : les engagés originaires de Java venus sous contrat en Nouvelle-Calédonie, 1896-1955. Koné, Éditions de la province Nord de la Nouvelle-Calédonie.

21 C. Terrier, 2014, *Nouméa, Nouvelle-Calédonie, 1900. Colons, Canaques, Coolies*, Noumea, Ville de Nouméa.

22 This theme was explored by the Tāvaka Ianu'imoana exhibition. See M-S. Drouet-Manufekai (ed.), 2009, *Tāvaka Ianu'imoana, mémoires de voyages*. Noumea, ADCK – Tāvaka.

with some Oceanian sailors under contract on European ships and engaged in free trading (sandalwood, whaling). The fact that Oceanians were working as crew members under the command of (often English-speaking) European captains has sometimes been confused with the practice of blackbirding (press ganging). However, they were actually free volunteers, shaping rather than victims of their destiny.[23]

Be that as it may, the rapid development of plantations in Queensland (Australia) and the need for workers in some Pacific regions (New Caledonia's Main Island, Viti Levu island in Fiji) from the 1860s onwards meant an ever-increasing supply of labourers was required[24]. "Recruitment" vessels, a euphemism for the coercive kidnapping of people to work as slaves or poorly paid labourers, crisscrossed Melanesia and dropped off their human cargoes in Australia, Noumea and Suva: this really was blackbirding. Although the Australian sugar cane industry played a key role in destroying the lives of these Pacific islanders, known as *Kanakas* at the time, it should not be forgotten that the victims of blackbirding also ended up on New Caledonia's Main Island, working as servants or on farm estates owned by free settlers. For example, in his romanticized account of his escape (from the Noumea penitentiary), former Communard Henri Rochefort records:

> [Captain] *Hubert* [...] *had come marauding on her shore. Ratouma's three children, two boys, one aged seventeen, the other eighteen, and a thirteen-year-old girl had been included in those captured, and when she had run to beg the captain to release them, he had seized her, gagged her to silence her, and then put her with the other prisoners in the tween deck of his schooner. On landing in Noumea, she had been separated from her children, all three sold to a settler from the North of the colony, while she had finished up with Rouvion, for a sum she vaguely indicated by making a gesture with her right thumb in the palm of her left hand as if counting money.*

Despite the introduction of legislation[25] designed to authorize travelling for workers only if they were in possession of approved recruitment contracts, the illegal trafficking of Oceanians in the Pacific Ocean flourished in the 1880s and 1890s. In 1929, New Caledonian writer Jean Mariotti described it thus in his first novel, *Tout est peut-être inutile*:

> *This was done with the connivance of the Government because these Blacks were supposed to have entered into contracts freely. Moreover, their sellers had the signed contracts to hand as evidence. It was very easy to get such signatures on board ship. In return for a little rice, a little*

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23 K. Howe, 1978, *Les îles Loyauté : histoire des contacts culturels de 1840 à 1900,* Noumea, Société d'études historiques de la Nouvelle-Calédonie, no. 19. See also D. Shineberg, 1973, *Ils étaient venus chercher du santal*, Noumea, Société d'études historiques de la Nouvelle-Calédonie, no. 3.

24 P. de Deckker (ed.), 1994, *Le peuplement du Pacifique et de la Nouvelle-Calédonie au XIX^e siècle*, Paris, L'Harmattan and Université française du Pacifique.

25 One of the first Orders designed to regulate the employment of contracted workers was promulgated on 26 March 1874. It was used as a basis for subsequent legislation regulating various communities of workers, including contracted Kanak, a subject not covered in this article. The Order was adopted with the aim of ending the blackbirding of New Hebrideans, and provided for controls on recruitment conditions, a medical check-up, fixed-term contracts, basic living conditions (rations, accommodation, clothing), set working hours and terms and conditions for repatriation. Notwithstanding, contracted workers did not possess the status of free workers and their movements were monitored and restricted. Y. Bencivengo, 2012, "L'immigration japonaise en Nouvelle-Calédonie : une illustration de l'affirmation du Japon dans le Pacifique", *Journal de la Société des Océanistes*, no. 135, p. 215-228.

water. After that, the Canaques could make all the denials they liked. The proof of their free consent was right there.

In 1901, the enactment of a bill by the fledgling Australian Federation[26], part of the larger *White Australia Policy,* designed to encourage the white settlement of Australia, suddenly cut off the main market for blackbirders operating in Melanesia, and the establishment of the Franco-British Condominium in the New Hebrides (now Vanuatu) in 1906 paved the way for the introduction of standards and thus regulations controlling the contracting of workers in the New Hebrides archipelago. New Hebridean workers would continue to flock to Noumea and be dispatched to farm estates, including coffee farms, in the bush, but the position and status of such workers would henceforth be fairly similar to Javanese and Tonkinese workers[27]. While a process of long-awaited repatriations to South Pacific archipelagos began in 1906 in Australia, the fact that such repatriations were compulsory sometimes resulted in more deportations, all as unbearably painful for the victims as the kidnappings they had suffered several years or decades earlier. Some Oceanian workers had married or bought land and settled in Australia, and they were once again uprooted from their homes and new country. While New Caledonia is closer to the New Hebrides than Australia is, the great outpouring of joy by New Hebrideans who had worked out their contracts, was never forgotten. Francis Carco describes such scenes in his childhood memories:[28]

Just imagine, the blacks leaving for good when they had worked out their time with a planter or a government official. There was a sudden flurry and bustle in the streets, guttural yells, a parade of free men, barefoot and carrying suitcases with nothing in them. The colonial soldiers watched them pass with stern and alert eyes... But the other blacks, who were not leaving on this boat, waited by the kitchens until their comrades had boarded the boat before daring to come out.

The other Oceanian communities to settle in New Caledonia's Main Island were nationals from the Établissements français de l'Océanie (now French Polynesia) known simply as Tahitians, and natives from the islands of Wallis and Futuna, known most often as "Wallisians". Mass immigration of these communities to New Caledonia only occurred during the post-war period, thanks to the country's unprecedented development. The so-called "nickel boom" years witnessed a surge in population numbers and strong growth in many sectors (construction, tourism, the press and culture). However, the numbers of Tahitians flocking to New Caledonia should be set against the numbers of New Caledonians heading for Polynesia: there was a marked increase in exchanges between France's two Pacific territories, Polynesia at the time also experiencing a phase of intense development. Major New Caledonian construction projects, such as the Yaté hydroelectric dam, the sports-related infrastructure for the 1966 Pacific Games, and extensive social housing projects (low-rent residential buildings) had counterparts in the construction of the Pacific (Nuclear) Test Centre, the development and expansion of Faa'a International Airport and, as a result, the

26 This was the *Pacific Islands Labourer Act*.

27 See D. Shineberg, 2003, *La main-d'œuvre néo-hébridaise en Nouvelle-Calédonie, 1865-1930*, Noumea, Société d'études historiques de la Nouvelle-Calédonie, no. 61.

28 F. Carco, 1920, *Maman Petitdoigt*, Paris, R. Davis et Cie.

construction of multiple major hotel complexes. There were close and constant relations between Papeete and Noumea and family relationships were woven… and interwoven.[29]

The islands of Wallis and Futuna also represented a significant manpower resource. Mainly employed, like the Tahitians, on the major construction projects of the 30-year postwar boom period, islanders from Wallis and Futuna were the hands-on labour force behind business leaders and architects acclaimed today. Now long-established members of local society, the Wallisians and Futunans preserve close ties with their *fenua*, their native land. In New Caledonia, they form a community with very vibrant traditions in which the traditional Polynesian hierarchies continue to play a central role. It is often said that these communities have left little mark on New Caledonia in terms of heritage. But, while it is true that the architect generally garners the praise for major architectural achievements, what would the finished building be without the hard work of the labourers who ensure its permanence through the quality of their work?

VI. RECENT IMMIGRATION: ARRIVALS FROM FRANCE

New Caledonia's 30-year postwar boom period ended with a very intense nickel boom between 1968 and 1972, the year which saw the start of a recession following decades of economic prosperity. That same year, Prime Minister Pierre Messmer sent a letter to Jean-François Deniau, then Secretary of State for the DOM-TOM, in which Messmer stated that "in the short and medium term, the mass immigration of French citizens or people from Overseas Departments (Reunion Island) should help avert this threat [of nationalist demands] by maintaining and improving the numerical ratio between communities". Accordingly, an estimated twenty thousand new immigrants, mostly from France, settled in New Caledonia from 1969 to 1976, either before or just after Messmer issued his directive.[30] This new community, dubbed "zoreille" (a term also used in Reunion Island) did not find it easy to carve out a place in the New Caledonia of the 1970s, a time when the Kanak had begun to demand recognition of their identity, and a time when the desire for a "real" New Caledonian identity was beginning to surface; yet these new arrivals brought with them skills and expertise then lacking. Immigration was brought to a halt by the decade of civil turmoil known as the "Événements" (Events, 1981-1989), but started up again in the wake of the Matignon-Oudinot Accords, and the Noumea Accord, which offered a guarantee of constitutional and therefore economic stability. However, as regards the Noumea Accord, people who arrived in New Caledonia after 1994 cannot vote in the referendums for or against New Caledonia's independence scheduled between 2018 and December 2021, and therefore they no longer "improve", to use Pierre Messmer's term, the relative balance between advocates of remaining within France and advocates of New Caledonian independence. The position of recent French arrivals in New Caledonia is therefore probably one of the least agreeable; denied some voting rights on what is after all French soil, unsure of their status as immigrants or expatriates, they sometimes serve as scapegoats for other longer established communities.

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29 On this aspect of relations between New Caledonia and French Polynesia, see Ch. Terrier, V. Defrance (eds.), 2012, *Nouméa-Papeete, 150 ans de liens et d'échanges*, Noumea, Ville de Nouméa.

30 P-C. Pantz, 2019, "Nouméa des booms, Nouméa plurielle", *in* V. Defrance (ed.), *Nouméa des booms, 1945-1975*, Noumea, Ville de Nouméa, p. 90-129.

VII. FROM MIXED-RACE IDENTITIES TO SILENT CREOLIZATION

For Martinican poet Édouard Glissant, creolization, which is a process, should be distinguished from creolism, which is an established cultural fact, but also from the intermingling of races and cultures. Indeed, such intermingling or metissage is almost inevitable when communities from diverse backgrounds live together, even when forced to do so, in the same territory. Basically, it is a question of biological reality.[31]

Creolization is the process by which elements of different cultures blend together; it occurs when different races intermingle and is founded on mutual respect and recognition. Glissant employs the concept of a rhizome, a plant with an enmeshed root system, to expose the complexity of the creole identity and the notion of Relation. He also explains that creolization is not necessarily a good thing, but that it is the "future of the world which will be resisted by people who cling to their roots and take refuge in their nation, their genealogy, but it is the inevitable future".[32]

Can this notion of creolization be applied to New Caledonia and contemporary New Caledonian society, a society which has been built on segregation, on meting out different treatment to its component parts and, for too long, on negation of the culture of its indigenous people? There are grounds for doubt, and so the term most commonly used to describe New Caledonian society today is "multicultural mosaic".

Hence, different ethnicities would be symbolized by tesserae of different colours, set side by side but not mixing. It is precisely this model-based[33], and therefore generalizing, approach to an analysis of the situation in New Caledonia which results in our society being reduced to a juxtaposition of communities unrelated to each other. As has been shown by recent studies, metissage plays an extremely important role in New Caledonia.[34] Of course, throughout our recent history, it has been regarded with greater and lesser degrees of approval or acceptance. Accordingly, although very common during the first half-century of the French colonial presence, due to the European population being almost exclusively male, it grew less and less acceptable in the first half of the 20th century, even though, paradoxically, the literature of the time gave pride of place to mixed-race heroes Jean M'Barai (Baudoux) and Yan-le-Métis (Laubreaux).[35] The theme of an impassioned but forbidden love between a young mixed-race girl from the Isle of Pines and a young New Caledonian of European heritage, working as temporary foreman at a sawmill, served as the story line for the novel *Wara*, published in 1932[36],

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31 See F. Angleviel (ed.), 2004, *Nouvelle-Calédonie, terre de métissages*, Paris, Les Indes Savantes.

32 F. Noudelmann, 2018, Édouard Glissant – L'identité généreuse, Paris, Flammarion.

33 And based on historical research such as the quantifying of convoys of labourers, the processing of censuses, based on a demographics and accounts-based rationale.

34 Ch. Terrier, 2004, "Calédoniens ou métis ?" *in* F. Angleviel (ed.), 2004. *La Nouvelle-Calédonie, terre de métissages ?*, Paris, Les Indes savantes.

35 The character Jean M'Barai is the hero of the short story *Jean M'Baraï, le pêcheur de tripangs,* published in 1919 in Noumea *in Le Messager* newspaper. See G. Baudoux, 1972, *Les Blancs sont venus*, Noumea, Société d'études historiques de la Nouvelle-Calédonie, no. 2. See also A. Laubreaux, 1928, *Yan-le Métis*, Paris, Albin Michel. Regarding mixed-race characters and identity building in New Caledonian literature during the inter-war period, see V. Soula, 2014, *Histoire de la littérature de Nouvelle-Calédonie*, Paris, Karthala, p. 87-100.

36 A. Laubreaux, 1932, *Wara*, Paris, Albin Michel.

and in the early 1940s, Paul Bloc wrote the manuscript of his novel *Les Filles de la Néama*, where the issue of metissage is central.[37]

In his essay *Le Pays du non-dit*[38] (1991), Louis-José Barbançon sheds light on a social phenomenon he calls "mimicry" between the world labelled as Kanak and the world labelled as "Caldoche and associated" comprising the predominantly Asian communities stemming from colonial mobilities. He sees shared New Caledonian identity as emanating partly from our exceptional natural environment and from the Kanak relationship to it. Thus, it is precisely the permeability between communities alluded to above, so difficult to study and measure, which has been the root and source for what New Caledonians do today, in the same way and mostly without conscious thought. This holds true for the local accent, sense of humour, vocabulary, Kanak interjections so common in exclamations and, of course, non-verbal communication. All this intangible wealth is ultimately, and quite simply, the "Identity through relationship" so dear to Glissant, this "unstable, shifting, creative, fragile personality at the crossroads between oneself and others".

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37 The book was finally self-published in 1965.

38 This essay marks a turning point in writings on local identity. Considered by some as a pamphlet when it first appeared, even as a loosely written diatribe, one is struck *a posteriori* by the accuracy of the author's analysis and arguments. Moreover, the ethnologist Jean Guiart gave it a glowing review. J. Guiart, 1993, "Le pays du non-dit : regards sur la Nouvelle-Calédonie", *Journal de la Société des Océanistes*, no. 97, p. 238-239. See also Ch. Terrier (ed.), 1994, Être caldoche aujourd'hui, Noumea, Île de Lumière.

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A "COMMON DESTINY" DISASSOCIATED FROM A DUTY OF REMEMBRANCE, THE AMBIGUITY OF THE NOUMEA ACCORD YEARS

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Et on ne peut effacer le passé ! Il faut l'accepter, vivre avec, et, si possible le transcender.
And we cannot erase the past! We must accept it, live with it, and, if we can, rise above it.

Martine Timsit-Berthier[1]

This paper was partly presented to the Forum organized by the Pacific Islands Political Studies Association (PIPSA), "Democracy, Sovereignty and Self-Determination in the Pacific Islands", June 2019, Noumea.

The Matignon-Oudinot Accords and, ten years later, the Noumea Accord both aimed to establish a period of peace, in the wake of the civil war suffered by New Caledonia in the 1980s and 1990s, through a process of "decolonization within France" founded on the building of a "community of destiny". This concept of a "common destiny", the innovative character of which has been repeatedly emphasized, may call to mind the political proposal for a "Franco-African Community" made by de Gaulle in the 1950s, a project fraught with ambiguity and memorable for its failure to achieve the desired results.

The Noumea Accord was signed in 1998, following the assassination of Jean-Marie Tjibaou. In its preamble, the Accord acknowledges the lack of "legal relations with the indigenous population" when France took possession of New Caledonia, and the unilateral nature of past treaties; it recognizes the Kanak[2] people as the "first inhabitants", the significance, within their culture and civilization, of the tie-to-the-land in which their identity is rooted, and the gravity of the many acts of dispossession, both of land and of sovereign rights. The Accord also recognizes the extent of the wrongs they suffered in terms of human deaths, deprivation of liberty, and political rights, even though many Kanak fought for France in the First and Second World Wars.

The Noumea Accord is, moreover, quite explicit as regards the nature of the historic tie to France: a tie of "colonization", which itself forms part "of a vast historical movement whereby the countries of Europe imposed their domination on the rest of the world". The

1 "Le déni de l'histoire du passé colonial et ses conséquences", published 29 May 2011 (revised 31 August 2019), https://histoirecoloniale.net/le-déni-de-l-histoire-du-passé.html

2 We are well aware that the use of this term, which not all "Kanak" entirely identify with, is inappropriate in speaking of the past since, until the emergence of Kanak demands for independence, the term was written as "canaque" and featured as one of the insults used, for example, by Hergé's Captain Haddock. It is used here purely for convenience. The same applies to the terms most commonly used to refer to representatives of the other "communities" present in New Caledonia.

Accord makes it clear that we have a duty "of remembrance" of all the past sufferings and adversities; it seeks to achieve a process of "decolonization", described as "the way to rebuild a lasting social bond between the communities which live in New Caledonia today, allowing the Kanak people to establish new relations with France that correspond to the realities of the times", such communities "having gained a legitimate right to live there" and being indispensable to (New Caledonia's) development ("Accord de la Nouvelle-Calédonie signé à Nouméa le 5 mai 1998", Preamble, *JORF*, no. 121, 27 May 1998, p. 839 *et seq*.). The Accord states: "The past was the time of colonization. The present is the time of sharing, through rebalancing. The future will be the time of identity within a common destiny".

These considerations, which constitute the preamble to the Accord, precede a guidance document setting out six points on the establishment of a special civil status, customary law and institutions, cultural heritage, land and symbols, then, outlining the institutional issues and necessary reforms, addressing the question of powers, economic development, including social policy and, finally, detailing the terms and conditions for implementation of the Accord ("Accord de la Nouvelle-Calédonie signé à Nouméa le 05 mai 1998", Guidance Document, *op. cit.*).

This document was signed by then Prime Minister Lionel Jospin, four FLNKS representatives and four RPCR representatives, the two main rival political groups in attendance. The lengthy period covered by the Accord (20 years) was set at the request of the RPCR representative Jacques Lafleur, who hoped that "in twenty years' time, the referendum process will result in New Caledonia remaining within the French Republic"; by way of contrast, according to Rock Wamytan, then leader of the FLNKS, it was "obvious that the Noumea Accords will result in independence, in a quasi-State in association with France, otherwise the FLNKS would not have signed them".[3] At the time, Michel Levallois, former Secretary-General of New Caledonia and an expert in New Caledonian political matters, was uncertain whether the Accord would lead to "successful decolonization" or "programmed recolonization" (*Ibid.*, chapter 7).[4]

Today, on the eve of the third (and, in principle, final) self-determination referendum on New Caledonia's future, it is clear that the challenge set by the Accord has been met as regards the overwhelming majority of the provisions laid down in the Accord guidance document. New Caledonia has regained a significant portion of its powers; citing just one example amongst others, reflection and discussions on legal pluralism issues have achieved advances seen nowhere else amongst the Pacific Nations which gained independence during the 1960s to 1980s period. In economic terms:

> *The country is* [...] *an increasingly significant player in liberalized and deregulated global markets* [...]*; in line with growing mobility, the role of the non-market sector and of customary tradition has remained crucial to its human development; the powers transferred by the French government over the past two decades have transformed the places and players in political*

3 Quoted by M. Levallois, 2018, *De la Nouvelle-Calédonie à Kanaky, au cœur d'une décolonisation inachevée*, Vents D'ailleurs/Ici et ailleurs, p. 436.

4 *Ibid.,* chapter 7.

decision-making; ore processing industrialization has changed the game in terms of nickel revenue distribution; binary political polarization has given way to greater pluralism [..].[5]

Nevertheless, despite considerable efforts, there are still many imbalances in terms of training, income and access to housing.[6] Meanwhile, although an ambitious cultural policy has been set in place in recent years, many are now of the opinion that the idea of a "common destiny" or a "community of destiny" has not been translated into practice. For example, Luther Voudjo, a young Kanak lawyer, who initiated some very interesting ideas about a possible "third way"[7], namely, a vision for New Caledonian society transcending the two opposing poles of "Yes" and "No", recently wondered on social media "if the bet on intelligence had been won and where was the promised land of speech and sharing?", in line with the New Caledonia motto devised during the years of the Accord. And, undeniably, the outcomes of the first two referendums and the violent reactions which have preceded, accompanied or followed them, are clear evidence that this showdown between two opposing poles is still a live issue, and that some people are still in a position to play on fears and inflame feelings of resentment. This is ground for fearing another outbreak of violence, which could once again result in New Caledonia losing autonomy, and in bitter conflict swelling the already heavy burden of tragedy borne by New Caledonia. The very term "common destiny," so often paraded over the years of the Accord, often at the same time as national and provincial governmental authorities, and most institutional cultural bodies promoted the image of New Caledonia as a "multicultural" society, has, in recent months, featured far less often in public discourse, apart from comments as to its failure. But is this failure that of a real "multicultural" society or that of a society designated or portrayed as such, while attempting to gloss over or disavow significant ingrained divisions?

Referencing these last considerations, this article aims, firstly, to re-examine the nature of the colonial diversities of origin which gave rise to the "communities" alluded to in the Noumea Accord, and also the divisions springing from colonization which have existed or still exist within other Pacific Nations, such as Fiji, for example. Then we will touch briefly on a period in New Caledonia's history when the opportunity to lay the foundations for a "common destiny" arose but eventually came to nothing, due, in part, to political and economic strategies. We will then look at the reality of ties between communities and divisions in New Caledonian society, factors which make it easier to understand why the idea of building a common destiny met with failure. Finally, we will return to issues regarding the nature of New Caledonian society and certain denials which have gone hand in hand with the assertion that this is a "multicultural" society. This article concludes by discussing the problems of decolonization in such a context, the building of a common destiny being wrecked by failure to dismantle colonial ideologies still extant, and significant French government involvement in this process.

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5 Bouard Séverine *et alii* (ed.), 2016, *La Nouvelle-Calédonie face à son destin. Quel bilan à la veille de la consultation sur la pleine souveraineté ?*, Paris, Karthala.

6 See, in particular, various studies led by Catherine Ris and Samuel Gorohouna as part of UNC's LARJE (Laboratory for Legal and Economic Research) project, including S. Gorohouna (ed.), 2019, *Quelle économie pour la Nouvelle-Calédonie après la période référendaire ?* Presses Universitaires de la Nouvelle-Calédonie, PUNC, Noumea; M. Bunel, S. Gorohouna, Y. L'horty, P. Petit and C. Ris, "Discriminations ethniques dans l'accès au logement en Nouvelle-Calédonie", *Cahier du Larje*, no. 2016-2.

7 See, for example, the conference he headed at the Tjibaou Cultural Centre, October 11 2019,"La troisième voie en Kanaky-Nouvelle-Calédonie, entre utopie et réalité", https://www.youtube.com/watch?v=gatEcCSuqi4

I. DIVERSE POPULATION MOVEMENTS DRIVEN BY COLONIALISM

Like many other Pacific archipelagos, with the same rationale of exploiting natural resources, New Caledonia has been a destination for a very diverse range of peoples since Europeans first landed and thereafter, from the early days of colonization onwards. Very different treatment was meted out to such peoples, depending on their status, the context, the conditions attendant on their migration and, sometimes, guidelines issued by their government[8]; the most vulnerable were treated with great brutality, condemned to the same fate as the Kanak people. The same era brought dramatic deterioration in the living conditions of the Kanak people, the first inhabitants of New Caledonia: they were deprived of their sovereign rights and dispossessed of their lands, rebellions were savagely repressed and Kanak social structures were systematically undermined by blows delivered by the colonial authorities. Although referenced by academic research, a full account of this historic process of devastation is still to be written. Such blows included the implementation, from 1897 onwards, of an indigenous code which introduced forced labour, established prohibitions or restrictions on free movement, and payment of a head tax, etc.[9] This is referenced in the Noumea Accord. In terms of colonial brutality, there was nothing unusual about events in New Caledonia. Nevertheless, although this rarely attracts the local censure it deserves, such acts, taken as a whole, provide grounds for considering the colonization of New Caledonia as one of the most violent in the South Pacific.[10]

Where migratory flows are concerned, blackbirding and related enslavement practices, which saw over a thousand New Hebrideans shipped to New Caledonia in the 19th century, mainly men but also women and children[11], added to the human tide – convicts, political deportees (Paris Commune rebels, insurgents from Algeria) and other petty criminals and undesirables - transported into exile far from France. Transportation to a penal colony, viewed from a 21st century standpoint, was a shockingly misguided attempt at rehabilitation; indeed, highly

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8 As in the case of indentured Japanese labourers, whose living conditions in New Caledonia caused Japan to take serious action leading to early immigrants being repatriated. These indentured labourers were the only ones viewed as free men, not as French "subjects", as we will see. On this subject, see, *inter alia*, Y. Bencivengo, 2012, "L'immigration japonaise en Nouvelle-Calédonie : une illustration de l'affirmation du Japon dans le Pacifique", *Le journal de la Société des Océanistes*, 135, p. 215-228, and Noumea City Museum's excellent 2007 publication, *Vos papiers s'il vous plaît ! : Les différents statuts de la population calédonienne de 1853 à 1946*, Noumea, Musée de la Ville.

9 Isabelle Merle and Adrian Muckle, 2019, *L'indigénat. Genèse dans l'empire français, pratiques en Nouvelle-Calédonie*, Paris, CNRS Éditions; A. Muckle, *Specters of Violence in a Colonial Context, New Caledonia*, *1917*, University of Hawaii Press, 2012.

10 In New Caledonia, this is generally queried by people of European descent, who cite Australia as the country which meted out the most brutal treatment to indigenous peoples. This represents one of the many denials we will discuss. It is one of the most serious because open acceptance of such historic brutality would, in part, make it easier to understand why there is such a high rate of violence in New Caledonia. There can be no doubt that the prevalence of abuse, directed not just against Kanak but against all communities, including the most vulnerable, is a significant contributive factor to the violence seen today.

11 See, *inter alia*, D. Shineberg, 1999, *The People Trade: Pacific Island Laborers and New Caledonia, 1865-1930*, Pacific Islands Monograph Series, University of Hawaii Press; A. Muckle, 2008, "Neo" lands in Oceania: New Caledonia and New Zealand, *in* S. Levine and F. Angleviel (eds), *New Zealand – New Caledonia: Neighbours, Friends, Partners*, Wellington, Victoria University Press, p. 212-237; F. Angleviel, 2000, De l'engagement comme "esclavage volontaire". Le cas des Océaniens, Kanak et Asiatiques en Nouvelle-Calédonie (1853-1963), *Journal de la Société des Océanistes*, 110, p. 65-81 ; F. Cayrol, 2020, "Un archipel multiculturel. De la difficulté de construire un patrimoine commun", in L. Lagarde (ed.), *Patrimoine de la Nouvelle-Calédonie*, under the auspices of the Fondation Clément, Paris, Hervé Chopin, p. 56-61.

controversial at the time and the subject of heated criticism in France, transportation would end before the turn of the century, leaving deep scars.[12] Alongside these forced population movements, free settlers from various countries, including Britain, Germany, and France – adventurers and traders operating cattle stations or trading posts fanning out to the New Hebrides, together with administrators – established themselves in the second half of the 19th century. Some would also turn to mining as a source of wealth.

After blackbirding was outlawed, cheap labour to work on farms and, above all, in mines – Malabar workers brought in by settlers from Reunion Island, labourers from China, Japan, Dutch East Indies (mostly from the island of Java), and Tonkin – also swelled the ranks of these migrants to a remote land.[13] Their transport was primarily organized by mine owners, some of whom, as former blackbirding traders, could count on assistance from the colonial authorities and from representatives of the Catholic Church and its colonial networks.[14] Except, perhaps, for the Canala region (East Coast)rapidly destabilized by the establishment of Napoléonville, widespread distribution of rifles and recruitment of local people for the violent repression of "rebellions", this period does not appear to have given rise to major rivalry for supremacy between Kanak groups leading to the sort of instability seen in central Viti Levu in Fiji in the 19th century.[15]

At the turn of the 19th century, these immigrants were preceded or joined by new "free settlers" in the full New Caledonian sense of the term. These settlers came to New Caledonia in response to and as part of a vast French campaign to encourage colonization, the impact of which was greatest in the regions of mainland France most affected by various crises and unemployment. However, the land offered at no cost to these settlers rarely bore any relation to their dreams for a fresh start, derived from official documents (and so-called "settlement guides"). The reality was much harder and more complex than that conjured up. Some settlers, disillusioned and hit by local unemployment due to global economic depression, decided to return to France, although this was not easy.

As the ruling class in a society of Kanak and Asian communities, the colonial authorities and the settlers were wracked by fears of indigenous uprisings, of threats and abuse from freed convicts, jobless and sometimes near starvation, and were terrorized by the reputed "savagery" of peoples from Southeast Asia, who were rebelling against the abuse, bullying and deprivations of every kind heaped on them. Meanwhile, the Kanak people themselves similarly dreaded and feared what might be done to them by their "masters": the colonial authorities and their representatives, including the so-called "all-powerful" gendarmes (Muckle, 2018, *op. cit.*). People from the islands of Wallis and Futuna were later arrivals, firstly prisoners sent to serve their prison sentences in New Caledonia (thereby acquiring a

12 See, *inter alia*, Louis-José Barbançon, 2012*, Le pays du Non-Dit. Regards sur la Nouvelle-Calédonie,* Édition Humanis, [1992], 198 p., and Louis Lagarde, 2021, above, in this volume.

13 See bibliography note no. 8, *supra*.

14 See Jean-Marie Kohler, Dorothy Shineberg, 1992, "Argent, religion et pouvoir en Nouvelle-Calédonie. André Ballande et les évêques, *1885-1935*", *Journal de la Société des Océanistes*, no. 95, 1992-2, p. 151-183.

15 See Robert Nicole, 1988, *Disturbing History, resistance and early Colonial Fiji 1874–1914*, Honolulu, University of Hawaii Press; F Cayrol, 2015, "Le pays de Nasau sous l'égide du canon de Nalawa. Bouleversements coloniaux et nouvelles formes de hiérarchies au centre-est de Viti-Levu (Fidji)", *Journal de la Société des Océanistes*, no. 141, Dec., Special issue on Chiefdoms in Fiji, edited by S. Pauwels, p. 223-238.

fearsome reputation amongst locals) and later on, labourers attracted by low-skilled, large-scale development work. And there you have it, a thumbnail sketch of this "bit of France".

This antipodean colonial world was, at the time, entirely subject to and weighed down by the evolutionary ideologies which accompanied and underpinned the practices of the prevailing code of racial hierarchy which "authorizes" and "legitimizes" brutality. This was a world in which division and segregation ran rampant not only between communities of different ethnic origin but also within the community of European descent, itself torn by division and segregation based on what people knew about how you came to be in New Caledonia (convict or free settler, etc.) and your family tree (mixed-race or not). For much of the 19th century, it was first and foremost a world of men, sustained by regular "self-offerings" by female members of the Kanak community; free settlement brought its share of families who, in many cases, at least as far as the European elements were concerned, quickly consigned their Kanak ancestries to silence and "oblivion".[16] The Kanak community, on their side, took a very different approach. This led to significant racial intermingling in New Caledonia but, as is often the case, social allegiance was considered far more important than "biological" ancestry.[17]

II. AN AUTONOMY FOUNDED ON "FEARS OF THE WORST", THE AMBIGUITY OF FRANCE'S POSTWAR POLICY FOR OVERSEAS TERRITORIES

Despite Kanak soldiers fighting in World War I, the Indigenous Code was not abolished until 1946, a move not unrelated to Kanak enlisting to serve in World War II (I. Merle and A. Muckle, *op. cit.*). The Code also applied to native New Hebrideans and communities from the countries which would become Vietnam and Indonesia (Noumea City Museum, *op. cit.*). In point of fact, New Caledonia, which rapidly declared allegiance to Free France, enjoyed its first experience of autonomy during World War II. An autonomy which continued over the following years but was then confiscated by the French government in the name of financial and, above all, mining interests, and due to fears of potential independence. Fresh inflows of migrants from mainland France upset the demographic equilibrium which, on their gaining French citizenship, had begun to favour the Kanak community, and the establishment of an "assisted economy" (propped up by France) heightened inequalities with the country. There have been few detailed local accounts focussing on this period in New Caledonia's history although various studies have been carried out, mostly by local researchers. We will therefore present a brief outline[18], drawing on these studies and citing a number of significant texts.[19]

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16 A detailed account covering such "relations", the presence of European women and the "Orphelines" (female orphans) shipped in for the use of freed convicts and settlers in New Caledonia still needs to be researched and written. These are topics which no study of gender and/or equality issues in New Caledonia can overlook.

17 Although such ethnic mixing was a minor factor in terms of social allegiance *per se*, it did make a difference to a person's position in the ranks of colonial hierarchy.

18 See also articles by Louis Lagarde and Anthony Tutugoro in the same publication.

19 We should here pay tribute to the excellent work by historian Cynthia Debien Vanmai, posted on the Local Education Authority of New Caledonia website in 2010, and our main source of reference https://histoire-geo.ac-noumea.nc/spip.php?article111. Supporting documents, also used for reference, are available on the website https://histoire-geo.ac-noumea.nc/spip.php?article111. Several other historians have researched this period, including Ismet Kurtovich and Olivier Houdan; their work has not yet been published. See also the bibliography cited by Cynthia Debien Vanmai, *op. cit.*

It will be seen that these same years also played a decisive role in the fate of immigrants who had arrived as indentured labourers in the late 19th and early 20th centuries.

A. Towards an assertion of autonomy and a majority of Kanak voters

The end of World War II heralded an era during which many nations, including the Pacific nations, gained independence. The right to self-determination for all peoples, proclaimed during World War I but not applied in a fair and equitable manner, was finally enshrined in the United Nations Charter in 1945. A year earlier, before the war ended, on 30 January 1944, General de Gaulle, then President of the French Committee of National Liberation, opened the Brazzaville Conference with his famous Brazzaville address, which envisaged "without any more delay" a pathway towards the emancipation of the French colonies. 1946 was the year of "departmentalization", i.e. the political integration of France's oldest colonies by making them "départements" of France; 1946 also marked a step towards establishing the "French Union" absorbing the colonies acquired in Africa, Asia and Oceania throughout the 19th century (p. 41). There were even provisions for a common citizenship (the terms of which remained unclear) within the Union, to be grafted "onto French citizenship" (p. 41). The emancipation of France's colonies was contemplated within the context of this Union, a detailed account of which is impossible here. The political rights of these colonies and of their citizens, following significant changes in 1956 under the Defferre Outline Law, were to be clarified in a series of measures endorsed by the 1958 Constitution, which "provided for almost total political autonomy for the Overseas Territories brought together in a broad confederation, the French Community" (p. 42). For New Caledonia, these years were to represent a quite unique era.

In 1946, under the new French Constitution, New Caledonia became an Overseas Territory and, as a result, was given the opportunity of being represented by its first MP (député).[20] During the interwar period, the Kanak community, generally expected to die out, confounded expectation by expanding, although it was still outnumbered by the European community, and missionary schools instructed the first Kanak "elites". With the abolition of the Indigenous Code in 1946 and the resulting change in Kanak status - from "subjects" to "French citizens" - these elites were finally in a position to play a key role in local politics. The right to vote, first granted in 1946 to veterans, pastors, customary chiefs and school teachers, was extended in 1957 to all Kanak, who thereby constituted the majority of voters (C. Debien Vanmai, *op. cit.*, p. 2) in New Caledonia.

In the 1950s, Kanak voices first made themselves heard *via* Church-related associations, Catholic in the case of UICALO (Union des Indigènes Calédoniens Amis de la Liberté dans L'Ordre) and Protestant in the case of AICLF (Association des Indigènes Calédoniens et Loyaltiens Français). These two associations would put forward a joint list under the banner of the Union Calédonienne (UC) for the local General Council elections in 1953. The UC gained the majority of seats (15 out of 25) and, for the first time, 9 Kanak representatives took their places on the New Caledonian political scene.[21] Maurice Lenormand was

20 This was to be Roger Gervolino, C. Debien Vanmai, *op. cit.*, and S. Minvielle and F. Pascual, *supra*, in the same work.

21 Including Roch Pidjot, lesser chief of La Conception, farmer & president of UICALO; Kowi Bouillant, grand chief of the Poyès Tribe in Touho, president of the AICLF; Doui Matayo Wetta, a nurse in Ponérihouen; Mathéo

appointed their leader and also headed up the UC movement, which became a fully-fledged political party in 1956, the year the Defferre Outline Law was implemented in France's Pacific territories, giving New Caledonia its first taste of executive power in 1957 (C. Debien Vanmai, *op. cit.* p. 3).[22]

As noted by Cynthia Debien Vanmai: "this new party dominated New Caledonian politics for over 20 years. It drew together New Caledonians from all ethnic backgrounds by focussing on social policy, Kanak integration into political, economic and social life, and administrative autonomy [...]" *(Ibid.)*.

The Union Calédonienne implemented an "ambitious program" and instituted "reforms crucial for the modernization of New Caledonia's economy and society, to make the process of emancipation a reality for the country as a whole" (*Ibid*, p. 3-4). These reforms covered various areas: social assistance (family allowances, pensions for the elderly and economically vulnerable, aid for small-scale miners); healthcare (clinics, hospital services, occupational and preventive medicine, screening for various diseases, combating alcoholism, free ante- and post-natal care); agriculture (labour code, fund to buy back land for tribal reserves, bonuses for farming various crops, exemption from property tax for "small-scale farmers", a range of agricultural plans); labour laws (labour code, paid leave, labour market board, labour court); education (grants for private education, project funding, scholarships, building schools and residential schools), and infrastructure (building road systems to improve access and services for tribes, for which Kanak volunteered their labour).[23] This policy was based in part on growing demands made by trade unions at the time.

Union Calédonienne policy – under the banner of their slogan "two colours, one people" – was not approved by everyone and ran counter to the interests of some, and not just at local level. The 1950s also saw young New Caledonians, fresh to politics and espousing ideals similar to those of Lenormand, flocking to another party, the Républicains Sociaux. Concurrently, the "Independant" party, the go-to party for New Caledonia's "industrial entrepreneurs, large landowners and businessmen" (*ibid.* p. 3), headed by Henri Lafleur, father of the Lafleur of the famous handshake with Jean-Marie Tjibaou in the 1980s, was radically opposed to the UC policy. A "putsch" against the Union Calédonienne was organized on 18 June – the anniversary of General de Gaulle's famous 1940 Appeal – in 1958, a few months before de Gaulle's second Brazzaville speech laying the foundations of the French Community, and also the constitutional referendum of 28 September 1958 which inaugurated the Fifth Republic. For several weeks, government opponents searched every corner of Noumea to seize the

Aripiondi of Ponérihouen, Raphaël Bouanaoué of Bélep, Wendo Elia Tidjine, a pastor in Poum, Luther Enoka of the Tuo Tribe in Maré, Jemes Haeweng of the Dozip Tribe in Lifou and Michel Kaouma, lesser chief and leader of the Banoutr Tribe in Ouvéa (C. Debien Vanmai, *Ibid.*).

22 See C. Debien Vanmai, *op. cit.*, p. 3, as well as S. Minvielle and F. Pascual; by Antony Tutugoro, in this publication, see also the lectures by Olivier Houdan at the Tjibaou Cultural Centre: 1e partie : "Centenaire de la naissance de Maurice Lenormand, l'émancipateur, "deux couleurs un seul peuple"", 22 July 2013, and "Maurice Lenormand 40 ans de vie publique en Nouvelle-Calédonie", 18 May 2014.

23 See the table drawn up by Cécile Tidjin, from Jean Le Borgne, *Nouvelle-Calédonie 1945-1968, la confiance trahie*, Paris, L'Harmattan, 2007, p. 54-55, cited by C. Debien Vanmai, *op. cit.*, p. 19.

leader of the movement, but in vain. None of this prevented the Union Calédonienne from winning the 1959 election with 67% of votes.[24]

Only Guinea voted "No" to the new constitutional provisions of the 1958 constitutional referendum which enshrined the French Community and the Fifth Republic. Guinea became independent in October 1958. In mainland France, despite the French communists and socialists campaigning for "No", "Yes" won the day (76%)[25] and, in New Caledonia, a majority of 86% voted for "yes". In his 1958 speech in Brazzaville, de Gaulle had stressed that the idea of a community was rendered "necessary" by the establishment "of large-scale economic, political, cultural, and defence groupings". He not only made it clear that, if such was the wish of the people, any country could leave the community by voting "No" in the scheduled referendum, but also that each country could freely leave it thereafter, if it so requested. The "Yes" majority in New Caledonia thus chimed with the UC campaign[26] during which the party had made a solemn declaration renouncing independence.

It is well known that the 1958 majority vote for "yes" prevented neither the rise of freedom movements in Africa, nor the Françafrique policy headed by Jacques Foccart, co-founder with Charles Pasqua of the Service d'Action Civique (SAC), from gaining dominance on the African continent. The impact, within the same ministry, of this policy on other French Overseas Countries and, more specifically, on New Caledonia would also be worth looking into.[27]

B. Starting in the early 1950s, proposals to bring New Caledonia to heel

As we have made clear, the policy espoused by the Union Calédonienne did not only alienate some local interests; from the outset, significant tensions arose between UC leaders and France's representative in New Caledonia. All the same, a number of visiting missions designed to prepare for the future were undertaken at the time. One such mission was carried out in 1953 by the Agricultural Development Bureau (Bureau du Développement Agricole – BDPA) on behalf of the French Ministry for Overseas Territories. The ensuing report set out the mission's many findings and vaunted the benefits of an incomer settlement policy to offset the rise in the Kanak population, with the aim of asserting "in practical terms, France's

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24 As ever, the terms used were far from innocuous. The term "putsch" used by one of the protagonists in this "coup" is a reference to the successful attempt to overthrow the government. Opponents of the UC and Maurice Lenormand, many of whom had travelled down to Noumea from the "bush", roamed the city for weeks in search of Lenormand, who was in hiding and evaded the demonstrators, C. Debien Vanmai, *ibid*.

25 The PCF, the UGS (Union of the Socialist Left), the PSA (the autonomous socialist party, a split off from the SFIO), the UDSR (including François Mitterrand), the left wing of the Radical Party (including Pierre Mendès France).

26 As early as 1953, Maurice Lenormand had already acknowledged, in a speech made on 24 September, the anniversary of the annexation of New Caledonia by France: *In the name of the peoples they* [The representatives of New Caledonia: Member of Parliament, Senator and Councillor of the French Union, the General Councillors, the Mayors, the (Kanak) Grand Chiefs, all unanimous] *represent and convinced that they serve as a conduit for the wishes and the profound reflection of these peoples; Solemnly proclaim that New Caledonia and Dependencies is and will remain French by a perpetual and irrevocable avowal (expressed) by its inhabitants* [...], C. Debien Vanmai, *op. cit.*

27 See S. Mary, *Renseignement, propagande et réseaux gaullistes Outre-Mer. Jacques Foccart et les Antilles-Guyane sous la IVe République*, available at https://www.cairn.info/revue-histoire-economie-et-societe-2015-4-page-110.htm, as far as we know, no such questions appear to have been raised in the case of New Caledonia.

resolve to defend and maintain its presence in this part of the world". In a transmittal note, the president of the BDPA wrote:

> *From a political standpoint, taking into consideration the number of European (21,000), indigenous (32,000) and Asian (10,000) inhabitants, achieving a demographic balance appears essential to maintaining our presence in this territory. To this end, it would be desirable to introduce, over a period of 12 to 14 years, immigrants from France numbering between 10,000 and 12,000, equivalent to approximately 3,000 families.*[28]

A year later, in 1954, two senators were dispatched to New Caledonia. Their report, appended to the minutes of the 25 November 1954 Council of the Republic meeting, develops the same idea by proposing a measure for adoption: establishing a "Directorate for Agricultural Services, tasked with identifying, by the study of soils and other suitable measures, the best way to resolve agricultural issues with a view to the rapid growth of the territory's population". However, this measure is only the fourth put forward in this report, the major focus of which was New Caledonia's mineral resources, an area over which the territory then had jurisdiction.

In point of fact, this report is based on the premise of the necessary involvement of the French government in projects developed by Société Le Nickel (SLN), either by way of a stakeholding in the semi-public Yaté company (hydro-electric dam and power plant) or by guaranteeing any bank loans the SLN might take out to modernize its facilities. This report builds on such considerations, as well as the assumption that "the French government cannot just abandon a subsoil known as one of the richest in the French Union", that "New Caledonia will witness the expansion of its political, military and administrative importance in the South Pacific", that it is necessary "to increase New Caledonia's population by allowing young settlers to acquire property, young settlers relocated in large groups and assisted during their early years by a sizeable agricultural department which had conducted an inventory of soils".

The authors of the report caution that "should these measures not be rapidly adopted, anything could happen", adding "even though we currently fear no political upheaval, there are many ways to lose a territory; the economic way is not the least effective and the means for France to suffer real dispossession are already in place".

Accordingly, one of the measures recommended in the report is to request "[…] the Commissioner General to implement efficient controls to preserve the legitimate interests of all inhabitants of the Territory and of France" and to do so "without infringing on the fundamental rights of the Territory, introduced into New Caledonia's political system and, specifically, the Decree of 25 October 1946"; another measure is "to consider immediately setting up a semi-public company encompassing all New Caledonia's mining and ore processing operations"[29]; further measures include "starting off the program […] with the

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28 Cited *(inter alia)* by Stéphanie Graff, "Colonisation de peuplement et autochtonie : réflexions autour des questions d'autodétermination, de décolonisation et de droit de vote en Nouvelle-Calédonie", *Mouvements,* 2017, 3, No. 91, p. 24-34

29 "This Company, in which the French government would necessarily hold a majority interest, in equity or shares, should, to safeguard vested interests, turn to all currently interested parties and possibly also foreign capital […] Should insurmountable difficulties be encountered in setting up this semi-public company, there would then remain no solution other than nationalization, pure and simple" *(ibid.).*

rapid establishment of the Yaté semi-public company – with technical designs already complete – which is essential to developing energy infrastructure for the Main Island", "improving French air transport services between the various French colonies in the Pacific by equipping the Territory with two seaplanes" and, finally, "considering turning the territory into a military and administrative centre capable of servicing all France's Pacific colonies and securing French influence in this part of the world"[…].[30]

As internal tensions emerged within the Union Calédonienne during the 1960s, mainly due to some Kanak members adopting a more radical position (C. Debien Vanmai, *op. cit.*, p. 5), the policies recommended in the report were implemented and New Caledonia lost a significant degree of autonomy as a result of the Jacquinot Law and later the Billotte Laws, dubbed "villainous laws" by Henri Lafleur, with even members of his own party shocked by this re-appropriation of control. In 1969, when the Billotte Laws were adopted, all executive powers were taken back by the French government and its local representative, the French High Commissioner, despite the formal opposition of the New Caledonia Assembly. New Caledonia lost jurisdiction over education, mining sector management, investment taxation and municipalities (*Id.*, p. 6). As noted by Cynthia Debien Vanmai, there was no reaction from the extremely ill-informed population.

The late 1960s saw the emergence of the Pacific Way and the first moves towards independence in the Pacific region; the 1970s were an era of economic growth, revolutionary ideologies in France and, in New Caledonia, the nickel boom. In New Caledonia, economic development was the key priority and a whole array of economic policies were implemented, all tending towards ever-increasing dependency on France and its injections of financial aid.

C. Imposing an economy in need of constant propping up

Although New Caledonia has never been self-sufficient, budget imbalances were very minor in the 1960s, with a "negligible trade deficit"[31] being recorded up until 1969. The Union Calédonienne government even planned to introduce an income tax allowing at least part of local expenditure to be locally financed. However, this plan proved controversial. As a result, following a fact-finding mission on public investment, another report from October 1970 stated: "At a time when the (French) government is tightening its ties with overseas territories, there is no point in introducing a new local tax which could, if successful, end up demonstrating the necessity of some degree of economic autonomy"[32]. While underlining the differing and even opposing interests of the two main ethnic groups represented in the country *(id.)*, the report also noted that "there are significant savings available in New Caledonia" but asked "will it be useful and realistic to tap into them further to fund necessary amenities and infrastructure… without […] ending up creating an "economic and financial autonomy" which would run counter to the policy set out by the (French) government over

30 Report of the enquiry into New Caledonian mine production carried out by Senators Coude du Foresto and Bousch on behalf of the Industrial Production Commission. Appendix to the minutes of the Council of the Republic meeting on 25 November 1954, cited by C. Debien Vanmai, *op. cit.*, p. 22, passed on by O. Houdan.

31 J. Freyss, 1997, L'éternel recours Les impasses de l'économie assistée en Nouvelle-Calédonie, *Tiers Monde Review*, vol. 38, no. 149, January-March 1997, p. 107.

32 Note sur les circuits de financements en Nouvelle-Calédonie, rédigée le 10 février 1970 pour la préparation du rapport Gerbaux, 1997, *op. cit.*, p. 109.

the last few years, which aims to strengthen the multi-facetted ties between France and New Caledonia [?]" (*Ibid.* p. 3). In the opinion of the author of the report "there is ultimately a symbiosis between the two economies, with French financial aid buttressing the local economy which, in return, supplies France with remittances and a considerable flow of foreign currency".

A year later, in 1971, New Caledonia's Paymaster General concurred, albeit in much clearer terms: "The territory's indebtedness over the next fifteen years can only be a good thing… an excess of wealth could give rise to dangerous ways of thinking about the nature of the ties which should bind New Caledonia to France".[33]

Over the same period, and during the era of prosperity brought by the nickel boom, France transferred significant amounts of funding, pushing New Caledonia into "structural economic dependency", in other words, an economy needing a substantial degree of propping up. This policy of economic "control" was backed up by mass immigration from France, with some migrants having lived through the Algeria crisis and in fear of once again losing everything they owned. Between 35,000 and 45,000 people arrived in New Caledonia as part of this immigration movement, with around 20,000 settling permanently. It is worth noting that the existing population numbered just 100,000 people (J. Freyss, *op. cit.*, p. 108). This "importing" of Europeans to New Caledonia had all the hallmarks of previous "white" settlement initiatives. The migration initiative was recommended by Pierre Messmer and organized by the Interprofessional Committee to Promote Employment in New Caledonia (Comité Interprofessionnel de Promotion de l'Emploi en Nouvelle-Calédonie – CIPENC), which included Noumea municipal authority, French army and Société Le Nickel representatives; the method used was the placing of "calls for immigration" in the mass media of the times.[34]

But the era of prosperity did not last forever. On the other hand, "this policy had significant knock-on effects across the board: housing, public services, business and private services" (*ibid.* p. 108), and left a great many of New Caledonia's potential resources "idle and unused" (*ibid.* p. 102). As Jean Freyss commented, in an article now regarded as seminal, New Caledonia at the time had all the characteristics of a country simultaneously wealthy and underdeveloped due to its very considerable disparities (*ibid.*, p. 101-102). Despite one of the highest per capita incomes in the world, the minimum wage (SMIG) was 30% lower than in France and "[the per capita] income of tribe-dwelling Kanak 7 times lower than that of Europeans in Noumea", private local interests were "central to the business world", thereby "internalizing market forces", with public services representing the other key pillar of the economy, boasting a 25% to 35% share of GDP *(ibid.*, p. 101). Income tax was finally introduced in 1982 but could cover no more than 10% of domestic revenues. In the 1990s, the budget deficit totalled up to 40% of public expenditure, with the French government transferring annual amounts worth a quarter to a third of GDP to "balance" the budget.

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33 "Rapport de la mission des investissements publics en Nouvelle-Calédonie", J-Gerbaux, Oct. 1979; Report by the New Caledonia Paymaster General, G Zaksas.

34 *Cf.* the "Letter addressed to Xavier Deniau, the Secretary of State for Overseas Departments and Territories by Prime Minister Pierre Messmer on 17 July 1972", cited by C. Debien Vanmai, op. cit., p. 24, and "Commentary", *Ibid.*, p. 24.

A major part of transfers from France went towards paying the high salaries of public servants. As noted by Jean Freyss:

> *Since the end of the boom, France has launched many initiatives to kickstart the territory's development; agencies have been set up, a lot of money has been spent. The current situation is testimony to the failure of these attempts and ambitions, which did not suffice to alter the underlying logic of a system resolutely geared not to generating wealth but to procuring public funding.* (J. Freyss, *ibid.*)

In his posthumous book, Michel Levallois, mentioned in the introduction, illustrates in a letter he wrote at the time to his father, how he himself took some time to understand the domestic landscape, given how necessary the development policy appeared to be for New Caledonia. He underlined how he initially overlooked the circumstances of the Kanak and the disparities affecting them, and how his views changed once he had the opportunity to strike up personal relationships with some of them (*ibid*. p. 25).

Commenting on the 1990s, Jean Freyss observes that the government had come up with numerous "development" and "rebalancing" plans to tackle disparities and their potential explosiveness, but the policies adopted during the years of prosperity and crisis led to ever more glaring discrepancies in equality, at variance with accumulations of wealth which implied that "national solidarity" was a "one-way street" (J. Freyss, *op. cit.*, p. 112). The "one side against the other argument" (Kanak against non-Kanak), still broadly pervasive in New Caledonia despite the years of the Noumea Accord, has only grown stronger *(ibid.)*.

> *From setting up development aid funds (the FADIL – Development Funds for the Islands and the Interior - was established in 1976) for "Melanesian promotion", to the rebalancing policy enshrined in the 1988 Matignon Accords, the sole focus was boosting development through initiatives ranging from rural micro-projects to major operations in tourism or mining. From recovery plans to emergency programs, from investment tax exemption laws to zero tax on inputs, not to mention planning contracts, everything was tried in an attempt to foster a less-distorted economic structure, and to integrate the Kanak community into "modern society". Under pressure of recurring crises, legal accommodations were made to give Kanaks the opportunity to assume institutional responsibilities (Regions in 1985, Provinces in 1988). Progress has been made in recognizing Kanak culture and in vocational training. However, all the changes introduced since World War II have not succeeded in eliminating social dualism, even in the wake of increased aid and involvement from the French government as part of the 1988 Matignon Accords. Granted, there have been positive outcomes in economic and social terms, but imbalances have not been significantly redressed.*

According to Jean Freyss, in terms of "windfall economy", it was "an invisible service it (France) is said to specialize in" which was exported to New Caledonia: "The reach and influence of France in the Pacific region" (*ibid*. p. 113).

III. REALITIES OF LIFE IN THE "COMMUNITIES," A PART OF NEW CALEDONIAN HISTORY ALSO GIVEN LITTLE PROMINENCE

In all the years during which New Caledonia first gained then lost autonomy, virtually at the same time as it was given an economy propped up by French funding, little attention

was paid to the fate of the other communities who arrived in the late 19th and early 20th centuries, mainly from Asia. Yet life had been anything but easy for them.

Heading to New Caledonia to escape famine in their native countries, members of these communities faced living and working conditions scarcely conceivable today, so numerous were the abuses they suffered. The collective memory of these communities was passed on from one generation to the next. Disregard of the terms of their contracts, the harsh conditions of working in the mines, abuse and lack of healthcare and food combined to drive them to hold the first-ever strikes in New Caledonia; these strikes and their frequent attempts to run away met with violent repression.[35] When they succeeded in escaping, they were prevented by international conflicts from returning to their native countries and, over time, they got jobs or set up stores or craft concerns; the European community viewed all this with disapproval, particularly when New Caledonia's various economic crises caused unemployment to soar.[36] As we have argued in previous research, the rich abundance of New Caledonian swear words bears testimony to these deplorable circumstances and to the high degree of systemic colonial racism prevailing at the time.[37] No group was immune. However, for the Japanese and Tonkinese communities we have taken as examples, the problems became dramatically worse during or shortly after the Second World War.

A. Japanese descendants and the fate of Japanese possessions

Japanese people, some of whom had made a remarkably good job of fitting into the country's economic life despite their success being met with strong opposition from the European community, founded mixed-race families by joining up with wives or partners from every other community settled in New Caledonia. However, the attack on Pearl Harbour on 7 December 1941 was to have catastrophic consequences.[38] Most of the Japanese were arrested, with the exception of a few individuals and of market gardeners who were essential to life in the colony, whose population had been swelled by the influx of Americans. Those arrested were sent to three detention camps in Australia, a country which had been influential in the decision to "round them up".

In addition to the immigrants who came as labourers, the Japanese population encompassed people who arrived in New Caledonia at different times to work in commerce or in mining, the country's mines having attracted interest in Japan very early on. All of them had their

35 See works cited above, note no. 2 *et seq*.

36 The significance of the crises experienced by New Caledonia in the years before World War II and their real impacts on the whole population constitutes one of the many aspects of New Caledonia's history still awaiting serious research.

37 F. Cayrol, 2017, "Le travail de mémoire des descendants des Japonais de Nouvelle-Calédonie : notion de communauté et exemple d'historicités dans le contexte du 'Destin commun'", *in* Stéphane Minvielle (ed.), 2017, *L'école du destin commun*, Presses Universitaires de la Nouvelle-Calédonie, PUNC, p. 100-116, see also F. Cayrol, 2019, "Un archipel multiculturel, de la difficulté de construire un patrimoine commun", *op. cit.*

38 On this subject, see F. Cayrol, 2017, *op. cit.* ; D. Dalmayrac, 2013, *Les sentiers de l'espoir, Kanak et Nippo-Kanak*, Noumea, Écume du Pacifique; I. Kurtovitch, 1998, *La vie politique en Nouvelle-Calédonie : 1940-1953*, PhD history thesis, Noumea, University of the Pacific, by the same author, 2013, *Les comédies broussardes*, Noumea, Madrepores; P. Palombo, 2002, *La présence japonaise en Nouvelle-Calédonie (1890-1960). Les relations économiques entre le Japon et La Nouvelle-Calédonie à travers l'immigration et l'industrie minière*, PhD history thesis, Noumea, University of New Caledonia; M. Tsuda, 2012, *Âmes errantes. Le destin brisé des émigrants d'Okinawa en Nouvelle-Calédonie*, Noumea, Madrépores.

possessions seized, everyday items, trading goods, properties, mines. These assets were all sequestered and placed under local administration. At the end of the war, the Japanese in the detention camps were repatriated to a war-devastated Japan. Many who had lived in New Caledonia wanted to return there but any return was banned under an agreement concluded with the French Government in breach of international laws then in force, as noted by historian Ismet Kurtovich.[39] The French government acquired ownership of these assets on 11 April 1952, upon signing the peace treaty with Japan. The assets were auctioned off between 1956 and 1960, augmenting a number of local fortunes and adding to French government-owned property in New Caledonia (P. Palombo, *op. cit.*).

These assets were, without doubt, factored into French government economic policy, especially mining policy, over the same period. As a case in point, the report by the two French senators dispatched to New Caledonia, attached to the minutes of the 25 November 1954 Council of the Republic meeting and dealing with the setting up of a semi-public mining company under state control, mentions: "An initial decision to this effect could be made when the sequestered Japanese assets are sold, and setting up such a company could be envisaged straightaway to manage and operate these assets".

Drawing on the significant work done by some local historians and on research by the Association of Japanese Descendants in New Caledonia, together with interviews we conducted at the time of the 120th anniversary of the Japanese presence in New Caledonia, we have already highlighted the extent to which the fate of the Japanese was already partly sealed even prior to the attack on Pearl Harbour (Cayrol, 2017, *op. cit.*, p. 104). Ismet Kurtovich portrays this masterfully in one of his plays (2013, *op. cit.*). Those Japanese who were arrested and deported, and were not married to Japanese wives, left wives and children behind. These wives hid their own stories behind a wall of silence, faced as they were with the sad loss of a husband or partner, with the daily problems of being left to cope alone, without resources, with ambiguous feelings of guilt and sometimes shame about having "befriended the enemy", and with the heightened racism caused by war and the Japanese defeat. This lasted until their descendants, seeking to understand the infinite sadness of their grandmothers, helped to reopen this chapter of New Caledonian history, largely thanks to the outstanding work of an outside researcher, Mutsumi Tsuda, and to investigations carried out by the various associations. Given the interests at stake, no detailed comprehensive inquiry into the records relating to the prohibition on Japanese returnees and the sale of their assets has ever been published, neither have their descendants ever demanded such an inquiry (F. Cayrol, *ibid.*, P. Palombo, *op. cit.*). Neither, to our knowledge, is there a summary overview map of New Caledonia providing details of pre-war mine holdings and identifying their subsequent new owners. Some Japanese families who later settled in Australia still refuse to travel to New Caledonia, due to continuing deep resentment at being prohibited to return and being dispossessed of their property without any payment of post-war compensation.

39 I. Kurtovitch, Conference, March 7-9, Cowra, Australia.

B. "Vietnamese" descendants, xenophobia and "yellow hordes" in Noumea

The experience of the Vietnamese, or more specifically, Tonkinese community,[40] the second example we deal with here, was substantially different from that of the Japanese community[41]. The Tonkinese met with the same ill treatment, abuse and other acts of cruelty as the Japanese, but sometimes suffered more severe abuse, as did the New Hebrideans and the Javanese[42] due to the fact that, unlike the Japanese, their status as "subjects" meant that, until 1946, they were subjected to the Indigenous Code, a point previously noted. At the end of World War II, the Tonkinese wished to return to their country but were prevented by the decolonization struggles in Indochina and Tonkin. The demands made by the Tonkinese were the same as those made by the Kanak community at the time: an improvement in working conditions and fairer pay. When mine bosses failed to respond, protests took place, including hard-line strikes and protesters occupying mines. Their protests were backed by the local Communist Party. The Vietnam flag was first raised at Chagrin mine. The authorities called in the army, who were joined by civilians, and the result was several wounded and one fatality. The leaders of the protests were exiled to uninhabited islets, a type of punishment trialled in New Caledonia in the 19th century and still engraved in the memories of the Asian community. All the same, working conditions did somewhat improve; however protests became increasingly virulent, demanding repatriation and taking on an evermore pro-Viet Minh political stance.

The Proclamation of Independence (in 1945) and the start of the Viet Minh uprising in Hanoi led to celebrations being held in New Caledonia in defiance of a ban issued by the French administration. The protest leaders were repatriated in 1949 and 1950 but all repatriation was halted by the start of the French Indochina War and relations between the European and "Vietnamese" communities deteriorated even further. The protesters were at risk of starvation because shop and store keepers had been forbidden to sell them food (C. Bougerol, *op. cit.*. p. 88). As Christiane Bougerol points out, "the records for 1952 and 1953 are the most extensive", with protests at the Chagrin (above-mentioned), Ouaco and Tiébaghi mines in the north of the country, and celebrations to mark Ho Chi Minh's birthday banned *(ibid.)*. The authorities once again called for the leaders to be repatriated. Again according to Christiane Bougerol, based on witness accounts, the portrait of Ho Chi Minh was displayed in Vietnamese community meeting places and individual houses: "People remember that this photo was on show in their parents' house although they were not communist sympathizers; 'they were had no political opinions but they wanted to go home, they were Vietnamese like Ho Chi Minh, that's all'" *(ibid.* p. 88*)*. As Christiane Bougerol observes:

> *During this crisis* [...], *the Vietnamese community underwent a dramatic change. The erstwhile Chân Dàng, formerly bound by harsh contracts and generally regarded as beasts of burden, were transformed into a group with a strong identity and a high profile. They held politically committed opinions which were not only a source of concern to the authorities but were also*

40 Most of them came from northern Tonkin.

41 For this whole section, we draw on the work undertaken by Christiane Bougerol, "Chronique d'une crise coloniale et son contexte : les Vietnamiens de Nouvelle-Calédonie (1945-1964)", *Journal de la Société des Océanistes*, 110, Year 2000-1.

42 On this subject, see J.-L. Maurer, 2006, *Les Javanais du caillou : des affres de l'exil aux aléas de l'immigration. Sociologie historique de la communauté indonésienne de Nouvelle Calédonie*, with the collaboration of Marcel Magi and with work contributed by Marie-Jo Siban, Paris, Archipel Association.

provocative, even rebellious, in the light of the historical context. The colonial authorities could not put pressure on these agitators without facing demands for repatriation: something they could not and did not want to do.[43] (*ibid*. p. 89)

Although the sense of belonging and sometimes of identity played a role in these dramatic events, other kinds of interests, apart from combating Marxist ideology, were also at stake. With the abolition of the Indigenous Code, New Caledonia's Vietnamese community gained the right to freedom of movement and many entered gainful employment and/or set up small businesses, in market gardening and convenience stores, like the Japanese before them.[44] In point of fact, they may have filled vacancies and openings left by Japanese deportees banned from returning. The European community viewed Vietnamese protests and varied achievements with the same severe disapproval they had directed at the Japanese in the first half of the 20th century, and xenophobic rallies were held to protest "against the yellow hordes invading Noumea".[45]

Following the Viet Minh victory (over the French) in Dien Bien Phu and the division of Vietnam, "a third intermediary took the stage in the Vietnamese issue in New Caledonia". An anti-communist Christian priest was invited to the territory; he was to set the Vietnamese at each other's throats (C. Bougerol, p. 90). Meanwhile, further pressure was put on inter-community relations by the return of soldiers who had fought in Vietnam and the arrival of French settlers forced to flee Indochina. People still remember the harassment and intimidation suffered by the "chinetoques" (the racist term common at the time) to get them to leave (*ibid.* p. 90-91). Such harassment and intimidation took various forms, including slogans scrawled on city walls and roadways, local newspaper articles, insults and taunts – even in the classroom, attempts to cause accidents and even a bomb left at a gathering place; this was defused before exploding without causing any injuries. Diplomatic missions by the French government to both North and South Vietnam and a New Caledonian mission to Hanoi were needed before the Vietnamese in New Caledonia finally obtained the right to decide where they wanted to settle in their native country. This was in 1958, the year of de Gaulle's second Brazzaville address, cited above, and the putsch in Noumea. Over 3,000 people chose to settle in North Vietnam and barely fifty in South Vietnam, while around seven hundred decided to remain in New Caledonia. These repatriations gave rise to international complications but there was strong local pressure to rid New Caledonia of the entire Vietnamese community. A number of Vietnamese left the country; departures were then halted but finally resumed. Some Vietnamese chose to remain in the face of significant pressures, families were disrupted and torn apart (*ibid.* p. 93). Returning to New Caledonia became possible in the 1960s; family members were reunited and form today's Vietnamese "community"[46], swelled by former

43 In Vietnamese, Chân Dàng is the term for former indentured labourers; their descendants have appropriated it.

44 The vacancies and openings in New Caledonia's post-World War II economy, created by the arrest and deportation of the Japanese, and the question of whether such vacancies were indeed filled by the Vietnamese would be an interesting subject for research.

45 M. Dornoy, 1984, *Politics in New Caledonia*, Sydney, Sydney University Press, cited by C. Bougerol, *op. cit.*, p. 89.

46 Here, I would like to mention the memories of a Vietnamese man who formerly lived in New Caledonia. He kept a book and tobacco shop in the 13th arrondissement in Paris, a stone's throw from the Place d'Italie. For a time, his shop window displayed a whole series of books, journals and reports relating to Vietnam, which he wanted to sell before retiring. He was very touched when he learned that I was from New Caledonia because he too was a "child of the country". He had always planned to return to New Caledonia but never had enough money to make the journey. His daughter had studied linguistics and had become a senior lecturer at Paris Jussieu University. Like any "good

contract labourers who had initially been sent to work in the New Hebrides. On the basis of their involvement, even from afar, in Vietnam's fight for independence and their experience of a "free" Vietnam, some members of the community say they understand the Kanak desire for independence but do not express their views openly.

Many similarities can be found in the history of the "Indonesians", particularly the Javanese, in New Caledonia. They also suffered ill-treatment and abuse, rebelled and held strikes, absconded or ran away from the mines or from the estates or properties of brutal bosses, saw their families torn apart, and were bound by contracts excluding any return home (J.-L. Maurer, *op. cit.*). Women were exposed to especially dire conditions, often at the mercy of more or less abusive "bosses" or *masta* who raped them repeatedly. Their history involves issues of colonial sexual mores and exploitation as reflected in the novels of Marguerite Duras and addressed in the ground-breaking empirical investigations of Ann Laura Stoler.[47] Their journey also included achievements, particularly in educational terms, once schools were finally opened to these communities. The Indonesian community also shares, with the independence of Indonesia recognized after years of bloody conflict, the same distinctive stories of departures and families torn apart, and of returns. "Blok Calédonie", a village on the island of Sumatra where members of such families still live and speak French, having become "settlers" in their turn, bears living witness to their New Caledonian past.

IV. THE YEARS OF THE NOUMEA ACCORD: HOW TO BYPASS A COMMON DESTINY

The Union Calédonienne motto, "two colours, one people", has had a profound influence on many New Caledonians of Kanak or European descent. However, the UC slogan makes no allowance for the Asian communities and their own problems and, as far as we know, the "Vietnamese" (Asian) community in New Caledonia received no support from any party at the time of the post-war crises – apart from the Communist Party. The CP did not last long since its leader, Jeanne Tunica, fell victim to various machinations designed to drive her out of the country, including a bomb being placed in her own home and exploding while her son was present.[48] All New Caledonia's ethnic communities, and the majority of their members, including those whose history we have not outlined here, for example: the Polynesian, Wallisian and Futunan communities, have faced hardships and difficulties in the past, and every crisis, including economic crises, has triggered xenophobia strongly tinged with colonial-type racism. To be sure, despite the trail of violence left by history, individual people formed close relationships transcending boundaries and "community ghettos". Having said that, such relationships have often given way to the pressure of group solidarity in the face of political crises and anxiety about the future. We can still see this happening today when friendships formed between New Caledonian students while they are outside the country unravel after they return to New Caledonia.

New Caledonian" of European descent, I knew so little about my own country's "unofficial" history that, at the time, despite our frequent conversations, much of the wealth of information he could have given me slipped me by.

47 See Marguerite Duras' novel *Un barrage contre le Pacifique*, published in 1950, and the ground-breaking books by Ann Laura Stoler, including *Carnal Knowledge and Imperial Power: Race and the Intimate in Colonial Rule*, University of California Press, 2010.

48 New Caledonian history is peppered with bombs being set and exploding but there is little public awareness of such incidents.

A. "To forgive is not to forget", retreats and rifts within New Caledonia's cultural mosaic

As noted by Christiane Bougerol with reference to the Vietnamese community "for a long time their reclusive community life was shaped by the certainty that their stay in New Caledonia was only temporary. Furthermore, they were forced to be inward-looking by the period of intimidation and the atmosphere of fear created in the Vietnamese community by [local] extremist"s (C. Bougerol, *op. cit.*. p. 91). This inward-looking attitude was widespread amongst New Caledonia's most vulnerable communities, including the wives and partners of the Japanese men "picked up" in the wake of the Pearl Harbour attack. As demonstrated by Christiane Bougerol, "revenge" incidents were still occurring in the 1990s, whenever the course of everyday life presented an opportunity. One of the people interviewed by Christiane Bougerol spoke of an equally widespread attitude: "I may forgive but I have not forgotten" *(ibid.)*, a sentiment still widely shared by others.

In this sense, New Caledonia has fundamentally been a country of divisions since colonization began. We have already mentioned those which characterized the European settler community, still evident today. During the Nickel Boom period, the final major inflows of Europeans and the mass influx of, amongst others, government officials who played a part in the French government's move to take back control of New Caledonia, contributed a few more pieces to the local puzzle, along with fresh divisions. This mainly took the shape of "zoreilles" (recent arrivals from mainland France), who are generally resented for lacking knowledge of New Caledonia's complexity, for frequently occupying executive roles and the impression they give of landing in a country under conquest. The worst examples of this category make up a sub-category to which is applied the term "zoreille" accompanied by an insult in common use in New Caledonia. People in this category are particularly resented. Their most recognizable traits are their legendary miserliness – the maximum profits they extract due to their expatriate status while spending as little as possible in New Caledonia. The contempt shown by newcomers for longer established European residents has fuelled and continues to fuel this new division. Moreover, many New Caledonians of European descent who trace their history back to earlier settlers (the "Caldoches") got the impression that there was agreement between the newcomers and the Kanak prior to the rise in demands for independence in the 1980s. They were persuaded that so-called "leftie" zoreilles had encouraged these Kanak demands. The names given to several New Caledonian social media groups, such as "My sweet New Caledonia of yesteryear", reflect nostalgia for a colonial past characterized by ubiquitous denials of imposed domination. But have the years of the Accord transformed relations between the communities?

B. An ambitious cultural policy with no real contextual basis

The major Melanesia 2000 Festival held in Noumea in 1975 and the Kanak demands played a crucial role in other communities' quests for self-identity. Despite Jean-Marie Tjibaou's repeated assertions that Kanak independence encompassed all the other communities supporting independence, their fear of ending up in "a coffin or a boat" – the slogan associated with the Algerian crisis – was far too strong. For the first time, a clear recognition of the ethnic communities established in New Caledonia as a result of colonization emerged from the French government-led Nainville-les-Roches Round Table discussions in 1983. They would be recognized as "victims of history", and their role in New Caledonia's economic development would be further underscored by the Matignon-Oudinot Accords and later the Noumea Accord. New Caledonia's communities of Asian descent, their existence in the country at last legitimized, began and continued to engage in a variety of activities which

their associations, backed by respective consulates, brought to public attention: open days, exhibitions and commemoration ceremonies. Together with many other such associations, they received a high degree of attention under a broad-based cultural policy. While this policy initially played a role in establishing some of the "identity symbols" and "emblems" of citizenship, as set out in the provisions of the Noumea Accord, the focus was more on portraying "a New Caledonian cultural mosaic" than stimulating discussion about the challenges of building a common destiny founded on divisions and historical events in which violence too often played the primary role. Nevertheless, along with the establishment of various "rites of citizenship" formally confirming the existence of a "multicultural" society, the communities, particularly the Asian communities, put this period to good use by undertaking ground-breaking and vital historical studies, alone or with the help of outside researchers. However, these studies were mostly brushed aside, as was research work carried out over the same period by institutions such as museums, cultural centres or local historians. Even so, as shown by the Japanese community, although revisiting the past is sometimes a very painful process, it shows remarkable resilience in a context of this kind (Cayrol, 2017).

Overall, the public policy implemented has resulted in a display of per "community" identity, with each being placed beside the others, rather like a putting on a show. It was all about "parcelling up" communities (Cayrol, *op. cit.*), often without sufficient contextual, particularly historic[49], insight into the realities of New Caledonia, where society has tried to deny the very existence of divisions. As we have noted, in a somewhat earlier article, this lack of contextual and historical insight was particularly striking at commemoration events. To take just one example: the ceremony commemorating the Japanese community's 120th anniversary in New Caledonia was the occasion for a great many political speeches which made no real attempt to call the past to mind (only Pascal Vittori, then 2nd vice-president of the Southern Province, expressed recognition of past acts against the Japanese community, at the opening of the Japanese Festival at Château Hagen, in July 2012). The speech by the representative of Société Le Nickel, made in Thio cemetery beside the graves of early Japanese labourers, particularly stands out since it made absolutely no mention of (historic) working and living conditions at the mine.

One of the most preposterous examples of a depiction of New Caledonia's "unique cultural mosaic" is the *Livret d'accueil destiné aux enseignants métropolitains mis à disposition en Nouvelle-Calédonie ainsi qu'aux lauréats des concours de recrutement* (a booklet for teachers newly arrived from France), published by the Local Education Authority of New Caledonia in 2016-2017.[50] While Brigitte Girardin, the Minister for Overseas Territories, had declared in her speech at the Overseas Book Fair in October 2014: "[...] today, the French Republic aspires to undertake the indispensable work of remembrance by reinstating the, sometimes divisive, pasts of all the populations which make up our Nation"[51], this booklet represents the "Asians" as making

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49 F. Cayrol, 2017, *op. cit.*, also, on this subject, see the work by Stéphanie Graff, including: "Visibilité du destin commun, invisibilité de l'histoire : discours, célébration et construction de la citoyenneté en Nouvelle-Calédonie" *in* E. Castro and G. Le Roux (eds), 2016, *Visual Creativity and Narrative Research in and on Oceania*, Anthrovision. Vaneasa Online Journal https://journals.openedition.org/anthrovision/pdf/2004

50 F. Cayrol, 2017, p. 109-110, https://www.ac-noumea.nc/spip.php?rubrique44, consulted on 5 October 2017; this and preceding pamphlets no longer appear to be available for consultation.

51 Quoted by Sophie Duluc and Colette Zytnicki, 2005, "Penser le passé colonial français. Entre perspectives historiographiques et résurgence des mémoires", *Vingtième Siècle, Revue d'Histoire*, 2005/2, p. 59 to 69.

up a significant part of this "mosaic" but completely glosses over their history. And the history of the Kanak people gets the same treatment, with a reference to the Indigenous Code but no mention of the measures introduced thereunder. Along the same lines, it is hard to know whether to laugh or cry at some of the terms used in connection with the historical realities of colonization, especially when compared to those used in the preamble to the Noumea Accord. The Kanak rebellions (1878/1917) are represented as being due to Kanak "discontent" about "encroachment" on their lands owing to "livestock straying because of drought"; and also, best of all, as being due to unspecified "sundry reasons". As for the World War II period, the primary focus is the advent of the Americans, who gave "the monotony of life in the archipelago" a "shaking up" (F. Cayrol, *ibid.*). It is difficult to refrain from sarcasm at the use of such formulae, which reflect a history glimpsed through the wrong end of a telescope. In point of fact, the Europeans may well have found life monotonous (although not all of them!) but the Japanese, their wives or partners and children certainly had no reason to do so!

In some ways, this is entirely consistent with the "history" of New Caledonia as told to generations of children by their European settler parents: the fact that the Kanak themselves chose to become French (see G. Murphy, this volume, for Pouebo, p. X), that none lived on the West Coast (cleared of Kanak because, for a start, they had been pushed back to the central mountain range), etc. These examples all spring from colonial myths which should have been challenged and "deconstructed" with a view to laying the foundations for a genuine common destiny.[52] However, even today, despite an in-depth review of history being essential to moving forwards, the feeling is that this would likely "stir up hatred", a view openly defended by some politicians, under the pretext of making a "fresh start" and "looking to the future". Although some people, regardless of their backgrounds, may not or no longer be aware of the acts of violence perpetrated, those acts remain engraved in the memories of the people they most closely affected. Moreover, how is it possible to fear revelations, of whatever kind, when violence is acknowledged as being integral to the structure of colonial societies, sweeping up the individuals caught up in the infamous movement by the nations of Europe to which the Noumea Accord refers?

C. A "multicultural" or "composite and colonial" society?

The "multi-ethnic" concept came to the fore in the 1970s, as an alternative to the UC slogan of "two colours, one people". The "two colours, one people" vision was backed by the new political parties established at the time, the Union Nouvelle Calédonienne (UNC), founded by Jean-Pierre Aïfa (a descendant of the Algerian political deportees, a group of which we have here made little mention), which later became the Fédération pour la Nouvelle Société Calédonienne, FNSC. The "multi-ethnic" idea is linked to the emergence, in the 1970s, of another political party, led by Jacques Lafleur, the Rassemblement pour la Nouvelle-

52 In the same article (Cayrol, 2017), we also examined the ambiguous aspects of the term "community" so often used at the time, despite it being first used (although not defined) in surveys carried out in the context of population census campaigns: the fact that this notion of community encompassed "varying forms and varying levels of social density, varying degrees of social allegiance and affiliation" reflected the term's fundamental ambiguity. Above all, we analysed its relationship to the history, past and collective memory of New Caledonian society and we showed how non-French-speaking historians of the Pacific Region had paved the way to replacing the concept of a "history" of these islands with specific historical narratives which must be approached through a variety of methods, such narratives depending to a great degree on "which side of the tracks you are standing", F. Cayrol, 2017, see, in particular, the paper by G. Dening, "History "in" the Pacific", *The Contemporary Pacific*, 1989, 1, p. 134-139.

Calédonie (RPC) which became the "foremost New Caledonian party". The RPC "set out a highly inclusive program based on a respect for New Caledonian individuality, rooted in multi-ethnicity" (C. Debien Vanmai, *op. cit.*, p. 8). This program portrayed New Caledonia as "a harmoniously balanced multi-racial community, a real little nation within the nation of France" ("Manifeste du RPC", p. 26, cited by C. Debien Vanmai, *op. cit.*). Over the years of the Noumea Accord, and in line with Kanak demands for recognition of their identity and the role such demands play in the Accord, this concept of multi-ethnicity evolved into "multiculturalism". A concept which paved the way for the inclusion of communities whose role had also been recognized in the Accord. Accordingly, most official speeches referred to New Caledonian society as a "multicultural" society into which, in the same way as any other community, the Kanak community would merge. Parcelling communities out and putting them all on the same footing is a move in this direction and thereby somewhat misrepresents the purport of the Noumea Accord as regards the prominence accorded to New Caledonia's first people.

In the above-mentioned earlier article, we argued that, in the sociological sense of the term, there was not "one" New Caledonian society but groups with specific values which were bound together by artificial, primarily administrative, means. (F. Cayrol, 2017). At a symposium on the Institutional Future of New Caledonia, Patrice Godin argued that New Caledonian society bore a much greater resemblance to "plural" or "composite" societies, as described by sociologists and anthropologists, including Radcliffe Brown.[53] Riven by inequality and characterized by European dominance, such societies are shaped by colonization and marked by disparity.

> *Composite or plural societies are profoundly inegalitarian. Not only are the gaps between the richest and the poorest generally much wider than in democratic and industrial societies of the same period, but social class stratification and the delineation of communities broadly overlap or dovetail. At the bottom of the ladder are the indigenous cultural communities, the colonized peoples, at the top, populations deriving from the colonizing country, which, it should be stressed, are themselves the victims of very pronounced inequality, ranging from humble rural farmers to public officials, from labourers to company directors or shopkeepers, etc. Not everyone enjoys similar circumstances and privileges.* (P. Godin, 2018, p. 117)

However, these very specific societies are indeed mosaics, to borrow a term used above:

> *A plural or composite society is a mosaic, a mix of "peoples"; however, as a primary distinctive feature, each group "retains its own religion, its specific culture and language, its own ideas and values, and its ways of being and doing". Each group also has its own spaces, both in towns where neighbourhoods are often identified according to the largest cultural community living there, and outside towns – known, in New Caledonia, as the Bush – where each cultural community possesses specific settlements, quite distinct from those of others. For, in this context, mix does not signify amalgam, incorporation or fusion but rather coexistence, cohabitation. The different segments of society live side by side, linked by no real organic*

53 P. Godin and Jone Passa, 2018, *La Nouvelle-Calédonie est-elle une société multiculturelle ? in* Jean-Marc Boyer *and al., L'avenir institutionnel de la Nouvelle-Calédonie, Actes du colloque des 17 et 18 novembre 2017*, Noumea, Presses Universitaires de la Nouvelle-Calédonie, PUNC, p. 113-124.

bond (Radcliffe Brown 1952, op. cit., p. 201-202) other than the political bond embodied by the colonial or national State.

[...] *the members of the various socio-cultural segments meet regularly, particularly in the context of economic activity.* [...] *Individuals from different communities cross paths peacefully in shops and in every commercial locality where goods and property are bought and sold. They also come together in public institutions, transport services and companies where they work. Any reference to commerce, including in pluralist societies, is really a reference to urbanization, the movement of people, wages and money, etc. But the key point is that all this does not make a society, is not driven by collective allegiance to the same social project, to the same set of shared values and standards. Society is diverse in its composition as well as in its self-portrayal.* (*id.* p. 117)

D. Blind spots in the Noumea Accord

For all these reasons, one cannot fail to recognize that the cultural policy designed to help achieve the building of the common destiny over the years of the Accord has actually set in place a representation of the common destiny strictly along the lines of such composite societies.[54] New Caledonian historian Louis-José Barbançon observed, in a recently re-issued book, that New Caledonia was first and foremost the "Pays du non-dit" (Land of the Unspoken), the title he gave his book. But the "land of the unspoken" is primarily, as we have already mentioned, the "land of denial"[55], this being true of any society structured by colonialism, and denial adjusts particularly well to recently introduced terms like "multicultural", "multi-ethnic", "cultural mosaic" and "Creole society".[56]

In his aforementioned article, Patrice Godin underlines the dual constraints imposed both on Kanak communities and also on communities of European descent by a number of "blind spots" in the Noumea Accord. Regarding European communities:

[...] *while promising them they will retain their rights as French citizens, the Accord asks them not only to shoulder almost the entire burden of colonization – of which they were not the instigators – but also to negotiate with Kanak nationalist representatives to identify a solution to the colonial dispute whereas they can envisage no solution which would not radically disrupt their way of life and social standing.* (P. Godin, *op. cit.*, p. 121)

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54 Time is too short for us to explore one of the particularly interesting points made by Véronique Dimier in her article on the hybrid architecture of the French Union and its two main construction models, one of which could clarify the concept of community as employed in the Noumea Accord, a concept which defines diversity and rootedness as key factors in national cohesion (V. Dimier, *op. cit.*, p. 43-45).

55 We referred earlier to the "accepted" versions of history passed on to settlers' children, versions entirely rooted in denial, fuelled of course by ignorance of actual history, as are the accusations of "guilty" heaped on some "zoreilles" in relation to Kanak demands, and many other "instances of denial" thrown up by the referendums: doubts about the identity of the earliest Lapita populations, alleged to have been colonized themselves by the Kanak peoples, an assertion contradicted by all archaeological evidence; the moveable nature of the marker, sometimes set far too early on as far as the end of colonial New Caledonia is concerned, etc. The recognition of history, memory of historical facts and excessive "victimisation" are sometimes confused, making some people bear the double burden of past violence or adversity and of failing to acknowledge (sometimes due to guilt) such past violence or adversity. A comprehensive study of the history of these colonial myths has yet to be undertaken.

56 Such terms should not, of course, be dismissed insofar as they convey the hope of people "living together" in harmony, and a sense of today's racially mixed reality, but at present they still too easily muddy the waters and pave the way for denial and political manipulation.

As we stressed in our introduction, the preamble to the Noumea Accord, every word of which was carefully weighed, makes reference to a duty of remembrance. In fact, although the second part of the Accord, the guidance document, goes on to provide details on such a lot of points and on the conditions for their implementation, there is nothing about fostering and achieving this duty to remember the past. Was it thought that economic assimilation would be enough? That returning jurisdiction in educational matters to New Caledonia would mean a duty to remember was obsolete? Is it linked to France's marked defensiveness about facing up to its colonial past and the repercussions thereof, as highlighted by Benjamin Stora and many other historians?[57]

Whatever the reason, this omission is a sticking point in the Accord. In other words, the issue of a necessary "ideological" decolonization should have been raised; this would form the base on which a common destiny or a community of destiny could have been built, certainly not the other way round. Along with or despite all the problems inherent in building something of this kind. The acknowledgement, in Point 2 of the preamble to the Accord, of the fact that "the colonization of New Caledonia formed part of a vast historical movement whereby the countries of Europe imposed their domination on the rest of the world" could most certainly have served as a basis for providing for and fostering this duty of remembrance.

In March 2020, Emmanuel Macron entrusted historian Benjamin Stora with a mission to ensure "remembrance of the colonization of and the war in Algeria". A good illustration of the problematic issues of coming to terms with the past, even in France itself. That New Caledonia has not been made the focus of a similar mission is to be regretted, given the current situation: the third referendum is a few months away, New Caledonia has recently become even more heavily indebted to the French government, its place in Asia-Pacific trade and relations has been reaffirmed, and its lagoon and protected areas are poised to play a vital role in the future, including an economic role. The failure by the Noumea Accord to address the duty of remembrance may prove to have grave consequences.[58] A crucial opportunity was lost which could have helped build a "common destiny" on an "enlightened" basis, mindful of historic relational foundations formed over one and a half centuries of colonial cohabitation

57 See F. Cayrol, 2017, *op. cit.,* p.; B. Stora and A. Jenni, 2016, *Les mémoires dangereuses, de l'Algérie coloniale à la France d'aujourd'hui*, Paris, Albin Michel.

58 It should however be noted that, today, some people are using associative or individual initiatives to "move the boundaries" of this denial. A young Kanak student recently posted a query on social media as to whether "the old guard of the Accords […] was […] ready to take responsibility for the nation-state to come on the basis of a now mixed-race Kanak country?" Meanwhile, at the ceremony to mark the return of the remains of Grand Chief Ataï, killed during the 1878 rebellion, whose skull temporarily "went missing" in the Musée de l'Homme in Paris, the president of the Association de la Fondation des Pionniers (New Caledonians of European descent) remarked that "this moment […] could be an example […]: Set forgiveness free and acknowledge each other, so we can build our future". Over the last few years, "Cousinades" (reuniting members of a family descended from shared forebears) have become increasingly popular amongst "European" New Caledonians keen to trace their family trees and one of them recently gathered together the members of the European and Kanak branches of her family, all descendants of the same woman, for a reunion in a tribal village celebrating the anniversary of the signing of the Noumea Accord. For some, this underlined the significance of "becoming part of the clan", while the head of the tribe, Maxime Nekiriai, said he "[…] would like to see no-one hiding behind anything in New Caledonia today". Other such initiatives are ongoing. It is, of course, too early to say whether initiatives like this could play a role in the event of marked political dissent and tension, but they do bear witness to the reconciliations which could have been achieved over all these past years by a genuine "common destiny" policy, and which could have been underpinned by associated major research projects, all undertaken within the context of the Noumea Accord.

in the same country and the transformations inevitably wrought in the lives of everyone concerned. With the aim, as Martine Timsit-Berthier put it, of "rising above history."

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PART III

HISTORY, TRAUMAS

THE CENTURY OF COLONIALISM IN NEW CALEDONIA

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For around a century, the archipelago of New Caledonia was a French colony. The period is usually defined as beginning with annexation by France on 24th September 1853 and ending with the entry into force of the Constitution of the Fourth French Republic on 27 October 1946, which abolished the status of "colony" and created that of Overseas Territory, a status given to New Caledonia. However, the chronology of the colonial period, from the first French annexation attempt in 1844, the appeal for assertion of French sovereignty made by Marist missionaries to politicians four years later, and the actual establishment of the colony in 1860, up to the very delayed implementation of Kanak voting rights in 1957, cannot be set in stone.

I. WHY COLONIZATION?

Several factors combined to set the stage for the settlement of New Caledonia by the French. The most decisive were the desire to assert a French colonial presence in the Pacific Ocean which would rival the British presence, the defence of commercial and religious interests, and the quest for a new penal servitude location for transported convicts.

In 1836, Navy Captain Dupetit-Thouars was dispatched to the Pacific by King Louis-Philippe to protect the security and freedom of religion and trade of French Catholic subjects in the region.[1] He gradually transformed his expeditions into the establishment of a protectorate in Tahiti and an "annexation" in the Marquesas Islands, concluded in 1843. It was then that Captain Laferrière received the order to escort, from Papeete, five Marist missionaries tasked with evangelizing the peoples of New Caledonia. He landed at Balade, accompanied by the priests and under orders to seize possession of the territory. Between the 1st and 10th of January 1844, Laferrière succeeded in getting several chiefs on the North-East coast of the Main Island to sign an acknowledgement of French sovereignty, the contents of the document not being made clear to the Kanak present. A flag was left with Guillaume Douarre, who led the mission and assumed the title of "bishop". Due to diplomatic tensions arising from Franco-British rivalry in Tahiti, these "authentic instruments" marking the first moves in France's colonial designs on New Caledonia, escaped notice.

Following the destruction of the mission house by Kanak chiefdoms in 1847, Douarre returned to France to "convince Guizot of the case for annexation: if France failed to take

1 I. Merle and A. Muckle, 2019, *L'indigénat. Genèses dans l'Empire français, pratiques en Nouvelle-Calédonie*, CNRS Éditions, Paris, p. 73-103.

possession of this land, it risked becoming Protestant".[2] A social dimension was added to strategic, religious and business interests (we should note that whalers had been in the Loyalty Islands since 1793, and sandalwood traders in the Isle of Pines since 1841). Since the 1820s, the existence of convict prisons in French ports had been a much debated issue. Louis-Napoléon Bonaparte argued for the concept of transportation based on the Australian convict transportation model which, in his view, had proved successful. The idea was as much about removing "incorrigible" prisoners to a distance, as offering the 17,000 convicts imprisoned in Brest, Rochefort and Toulon a chance of rehabilitation once they had served their sentences. In late 1851, French Guyana was designated by a parliamentary committee as a "place of exile, by a majority of eight votes to six votes in favour of the island of New Caledonia".[3] So two years prior to official annexation, New Caledonia was already being considered as a penal colony location.

II. ARRIVAL OF THE FRENCH, A DIVERSIFIED CHRONOLOGY

The return of the Marist missionaries to Pouébo in 1852, following assurances received from the Puma chiefdom, resulted in the Order given by the Minister for the Colonies on 23rd April 1853 for the formal annexation of New Caledonia. The ceremony took place near Balade on the 24th September next, in the presence of Admiral Febvrier-Despointes and his staff, the missionaries, and key chiefs from Balade and Pouébo. The assertion of French sovereignty was unilateral since no Kanak signed the document.

Of course, a ceremony and a twenty-one gun salute off the coast of Balade did not make the archipelago French. It marked the start of a real race for possession designed to forestall France's British rivals, poised to take possession themselves. In the Main Island, between September 1853 and August 1854, the date when Port-de-France (Noumea since 1866) was founded, the two first Commanders of New Caledonia, Febvrier-Despointes and Tardy de Montravel, persuaded a number of chiefs to sign an "acknowledgement of sovereignty" declaration. The strategy, typical of colonization processes, involved signing treaties with each chief while remaining evasive about the degree of autonomy granted to the Kanak. Subsequent witness accounts would reveal that a number of documents were signed at gunpoint. The exploration and "subjection" of the entire Main Island was to prove a long and laborious process for the colonial authorities. Indeed, when land boundaries were set out in 1877, surveyors would observe that the chiefdoms of Sarraméa, Pocquereux and Oua Tom had had no previous contact with the French authorities[4].

In the Isle of Pines, on 29 September 1853, Febvrier-Despointes persuaded Chief Vendegou to place the island under French protection. Vendegou agreed in exchange for an annual income and a promise "that there would not be too many newcomers". French colonization really began with the 1872 deportation of Paris Commune prisoners and the land-related consequences thereof.

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2 D. Barbe, 2008, *Histoire du Pacifique des origines à nos jours*, Paris, Perrin, p. 292.

3 M. Pierre, 2018, *Le temps des bagnes, 1748–1853*, Paris, Tempus (Éditions), p. 94-95.

4 Archives de la Nouvelle-Calédonie, 44 W/16: Government Secretariat Proceedings of the Governing Board of the colony, 19 December 1877

In the Loyalty Islands, assertion of French dominion only began in 1864, with the arrival of troops sent by order of Governor Guillain to ensure the submission of Kanak Protestants. Each of the Loyalty islands had developed its own culture (Iaii was spoken in Ouvéa, Drehu in Lifou and Nengone in Maré), and repeated back-and-forth migration and contact with neighbouring island groups had led to a significant degree of racial and cultural intermingling. Colonization was initially spiritual and British, with Samoan pastors settling in Maré in 1841, and a pastoral school then being established in Lifou. The subsequent installation of Catholic missionaries caused divisions between chiefdoms, and the three islands were torn by conflict. This climate of unease gave Guillain justification for a determined move to "annex" the Loyalty Islands, starting with the Battle of Xépénéhé (1864). In the following year, the French also seized Maré, where Chief Naisseline had just proclaimed himself "king" with British support, and thereafter Ouvéa. This chronicle of events foreshadowed the subsequent colonial history of the island group: it varied across islands and did not form one single narrative but three different narratives.[5]

III. ADMINISTERING, POPULATING AND EXPLOITING THE COLONY

Initially attached to France's Establishments in Oceania and administered from Tahiti, New Caledonia was first supervised by eight "Commanders". Du Bouzet (1855-1856) followed Febvrier-Despointes and Tardy de Montravel, mentioned above, and signed the first decree relating to land. This established the system of land grants in favour of European settlers, setting aside a tenth of the lands for the Kanak population and paving the way for the appropriations of land which began the following year.[6] In 1860, New Caledonia became an official colony, autonomous and administered by a Governor with very broad powers. Twenty-one Governors and twenty-five interim Governors held the post up until 1946.

These Governors all had extensive powers and were assisted by a Privy Council (dubbed "Government of the Colony" in 1874 and then "General Council" in 1885), which had a solely advisory role and approved the budget. A pared down administrative staff was primarily based in Noumea. A judicial system modelled on France was established to uphold decisions taken by Governors, with a *tribunal correctionnel* introduced in 1856, a *cour criminelle* in 1859 and local ("bush") magistrates from 1880. This judicial system did not encompass the Loyalty Islands and the Isle of Pines. Political recognition was limited: non-existent for the Kanak population and restricted to municipal elections in the case of free settlers. New Caledonia was not represented in the French National Assembly, and was administered and represented by its Governors, their privy council, the directors of major companies, the penitentiary authorities and the military. In fact, a military presence often signalled the first effective establishment of French government authority in the bush, such authority being principally represented by thirty-four police (gendarmerie) brigades and stations scattered throughout the archipelago. The police were in charge of the Department of Indigenous Affairs which, in 1898, became the sole official intermediary for New Caledonia's indigenous peoples.

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5 Indeed even more, because each of the three Loyalty Islands maintained a different relationship to the colonial power, likewise in the case of the Belep islands, while the Main Island witnessed multiple internal disruptions.

6 A. Saussol, 1979, *L'héritage : essai sur le problème foncier mélanésien en Nouvelle-Calédonie*, Paris, Musée de l'Homme and J. Dauphine, 1989, *Les spoliations foncières en Nouvelle-Calédonie, 1853–1913*, Paris, L'Harmattan.

Gendarme officers kept an eye on the High Chiefs, to whom were delegated the powers of customary justice and policing.

Governor Charles Guillain (1862–1870) inherited the task of establishing the penitentiary, founded by imperial decree on 2 September 1863 as an alternative to the deadly climate of French Guyana.[7] In anticipation of the land required to accommodate this new institution, he sanctioned the appropriation by order of all necessary land, required the Kanak to supply labourers for construction sites, and also provided for the ousting of rebellious chiefs and the appointment of men deemed more favourable to France. The first shipload of convicts landed at Port-de-France the following year, a major milestone in the history of New Caledonia. Between then and the end of transportation in 1897, 28,500 men and 900 women would serve their sentences in New Caledonia. The majority were the "*transportés*" (22,000 – 74%), found guilty of serious crimes (murder, sex crimes, counterfeiting). The second group, the "*deportés*" (4,400 – 15%), were political prisoners, mainly Communards, either shipped to the Isle of Pines from 1872 in the case of 3,200 prisoners, or imprisoned on the Ducos peninsula, facing Noumea, in the case of the 900 "leaders", such as Louise Michel. The deportees were not subjected to forced labour but were assigned to clearing plots of land.[8] The large numbers of deported prisoners on the Isle of Pines led to the native Kunié people being ousted from their land. However, thanks to negotiations headed by Kandjio Vendegou, wife of the High Chief, the Kunié people succeeded in retaining over half of the island and escaped the forced exile they were threatened with. The Communards set up political news sheets and carried out many acts of insult and derision aimed at prison guards and police. Jules Grévy granted them an amnesty, and they returned to France after ten years of exile, with the exception of around forty families and also 230 prisoners buried on the Isle of Pines. A hundred Kabyle insurgents, held at the "Arab camp", were also deported following the Mokrani uprising against French colonial power (1871). Once they had served their sentences, most joined the freed Algerian convicts who had been granted land concessions in the Bourail area. Around 2,000 men thus formed the "Caledoun" community comprising often impoverished Muslim farmers and stockbreeders.[9]

The third category were the "*relégués*" (3,300 – 11%), a category created in 1885 and abolished in 1897. These were petty criminals and thieves, repeat offenders deemed by the French courts to be "incorrigible". The use of penal servitude to punish people living in misery gave rise to heated debate in France, explaining why transportation of *relégués* was short-lived; they were mainly sent to the Isle of Pines or to the penitentiary logging camp at Prony in the south of the Main Island.

The *transportés* convicts provided the colony with a profitable source of labour. They were used to clear and clean the site of the capital Noumea, to construct buildings, and to develop the road and rail systems. The rapid expansion of mining led to the introduction of "contracts of human flesh" which, from the 1890s, supplied companies with up to 2,000 convicts to labour in conditions of near-slavery.

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7 L.-J. Barbançon, 2003, *L'archipel des forçats. Histoire du bagne de Nouvelle-Calédonie, 1853-1931*, Lille, Presses universitaires du Septentrion.

8 H. Duparc, 2003, *De Paris à Nouméa. Histoire des déportés de la Commune en Nouvelle-Calédonie*, Brussels, Ophrys.

9 L.-J. Barbançon and C. Sand, 2013, *Caledoun. Histoire des Arabes et des Berbères de Nouvelle-Calédonie*, Archeologia Pasifika, no. 1.

Where convicts were serving a sentence of less than eight years, they were obliged to work the same length of time in the colony before they could return to France; convicts serving sentences of over eight years were never allowed to leave New Caledonia. This policy reflected a determination to keep convicts at a distance, to promote rehabilitation as per the Australian model, and also to populate the new colony. A future as freed settlers was the goal for convicts who survived the penitentiary, were capable of building a life, had not tried to escape and were not too old to start a family. The colonial authorities granted land appropriated from the Kanak to a few thousand freed men, and the French government sent out more than 500 women freed from prison in France to provide them with wives. Turning New Caledonia into a penal colony caused upheavals in terms of land, with 110,000 hectares needed to accommodate eleven prisons, plus 2,700 land concessions, spread over all the islands making up the archipelago (except Ouvéa).

There was therefore a need to "free up space". In 1867 and 1868, Guillain signed two orders destined to play a significant role in Kanak history: the first created tribes, the second reservations. The tribes, whose chiefs were appointed and paid by the authorities, merged or divided the old chiefdoms, while also displacing them or restricting their land footprint. The reservations placed boundaries around Kanak lands, under the pretext of protecting them from encroachments by free settlers, but basically to relegate indigenous communities to ever-diminishing areas of land, sometimes somewhat barren and cut off from the sea. The following decades were marked by forced displacements, hunger, acculturation, the loss of landmarks, increased surveillance, the ending of contacts between chiefdoms and, inevitably, a declining birthrate.[10] The process of confining Kanak in reservations took shape after the orders issued by Governor La Richerie (1871), then intensified under the leadership of Pritzbuer in 1877, engendering the major rebellion led by Chief Ataï. In 1887, Louis Nouët promulgated the Indigenous Code (native regulations), a set of prohibitions applying specifically to the Kanak and aimed at ensuring even more marked separation between natives and Europeans. The Code remained in force until 1946 and was instrumental in creating a segregated society. Governor Paul Feillet (1894-1902) pushed ahead with the policy of confining the Kanak to reservations. Appointed in 1894, he implemented a policy aimed at attracting free settlers to the colony and, with this in view, managed to get convict shipments stopped (1897). Furthermore, he issued various orders penalizing the Kanak peoples: compulsory forced labour in the Loyalty Islands, introduction of the head tax on male Kanak, acceleration of land appropriations resulting in the Kanak losing two-thirds of their land, and the "great confinement" of native peoples to approximately 8% of the land in the Main Island, no travel being allowed within the Main Island or between any of New Caledonia's islands without a permit granted by the Department for Indigenous Affairs. Requisitions, perks, colonization grants and public works contracts proliferated, and labour resources were commandeered from Kanak tribes, multiplying the forms of forced and compulsory labour.

At the same time, Feillet was attempting to boost the numbers of free settlers. There was a fairly low initial influx of settlers: some English-speaking settlers arrived in the 1840s, including James Paddon who settled on Nou Island; others came in search of gold or to farm the coconut groves in the northeast of the Main Island, while settlers from Reunion Island and Indian labourers grew sugar crops. The 1870s saw the arrival of refugees from Alsace

10 Barbe, *op. cit*, p. 407.

and Lorraine, following the German annexation of their regions, and Breton families who had been falsely promised plots of fertile land. Exploiting a propaganda strategy which had proved effective in France, aimed at promoting the development of "Southern Hemisphere France", Feillet succeeded in attracting around 1,500 settlers to New Caledonia between 1894 and 1903.[11] Settlers were promised fifteen to twenty-five hectares of fertile land, primarily for coffee farming. But the newcomers' lack of capital and agricultural expertise meant that half of them failed to make a living; they either set up as traders back in Noumea or returned to France. Notwithstanding, in 1912 about 700 "Feillet settlers" were still living on the lands granted to them. A final, not very successful, attempt in the 1920s led to settlers arriving from the North of France (the "Northerners") to develop cotton growing. The economic exploitation of New Caledonia was initially agricultural in aim: coffee (1,600 hectares and 130 plantations in 1895), coconut, rubber, rice and cotton plantations, together with intensive stockbreeding to meet penitentiary authority demands – all were commonly seen features of the new Main Island agricultural and pastoral landscape. However, save for a few who achieved prosperity based on extensive land holdings (the *stockmen* or stock farmers), most attempts met with failure due to a lack of solid market opportunities.

The diverse nature of New Caledonia's colonial history resurfaced in 1899 when the Loyalty Islands were designated as "strict nature reserves", protected from all land appropriation. A few government employees, traders and missionaries, and also gendarmerie stations and "residents", styled as representatives of the Governor, formed a small European community on the islands. The Loyalty Islands were used as a source of labour and, between 1880 and 1920, Loyalty Islanders made up a third of labourers recruited to work in mines or for European settlers on the Main Island[12]. In terms of overall demographics, in 1860, the Kanak formed 96% of the population, dropping to 60% in 1911. The Isle of Pines took the biggest demographic hit from colonization, witnessing a 50% decline in population between 1887 and 1921, while estimates put the fall in population at 40% in the Main Island and 12% in the Loyalty Islands[13]. In 1886, 41,000 Kanak shared the archipelago with 19,000 Europeans (9,000 free settlers, 7,500 convicts serving their sentences, and 2,500 freed convicts). The category of "indentured labourers" included 1,825 people, half from local tribes and half from the New Hebrides (Vanuatu).[14]

Indentured labourers, usually hired under five-year contracts, were to form a population numbering up to 14,000 individuals in 1930, some of whom settled permanently in New Caledonia. The first workforce from outside New Caledonia was made up, from 1867, of labourers from the New Hebrides, who were sometimes press-ganged during organized raids along the coasts by Australian or French sailors (*blackbirding,* made an offence in 1882).[15] New Hebrideans made up from a third to one half of indentured labourers, and were employed as servants and nannies, or by the *Société française des Nouvelles-Hébrides* to work the mines.

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11 C. Terrier, 2014, *Nouméa, Nouvelle-Calédonie. Colons, canaques, coolies*, Nouméa, Noumea City Museum, p. 47-70.

12 Merle and Muckle, *op. cit*., p. 292.

13 The bacterial shock, in the form of successive epidemics of plague up until 1912 and the scourge of leprosy, should not be forgotten. Numbers of leper colonies were established on all the islands.

14 Merle and Muckle, *op. cit*., p. 129 and Terrier, *op. cit*., p. 92.

15 D. Shineberg, 2004, *La main-d'œuvre néo-hébridaise en Nouvelle-Calédonie (1865-1930)*, Nouméa, Société d'Études Historiques de la Nouvelle-Calédonie.

Indeed, from the 1870s onwards, the archipelago became a land of mineral resources. Prospecting campaigns were successful and the discovery of nickel in 1873 led to a first smelting plant being opened and the founding of Société Le Nickel (SLN) by John Higginson in 1880. The SLN was based in Thio and, right from the start, became one of the world's leading nickel producers. Mineral fever seized the Main Island, resulting in the rapid growth of copper, cobalt and chromium mining.[16] Thanks to New Caledonia's mineral-rich soils, a whole "mining community" sprang up. In 1891, a first shipment of Asian labourers, consisting of 768 Tonkinese convicts from Poulo-Condor prison, landed in Thio and added to the labour mix. The following year, around 600 Japanese mine workers, hired under voluntary contracts, joined the workforce; Annamite and Japanese workers (estimated at around 20,000) followed from 1903 onwards. In addition to these four main groups, the labour mix included other workers: people from China, Wallis, Tahiti, Reunion Island, the Caribbean and India (who, according to evidence, were already involved in the 1870s) came to work New Caledonia's mines, sometimes also working as servants, farm labourers or clerks in Noumea.[17] They were often poorly paid and overworked, and most left New Caledonia when their contracts ended. The influx of foreign workers dried up in the 1940s and 1950s, as decolonization gradually progressed throughout the world. Mining operations rapidly disrupted New Caledonian society, in the same way as mining and the requirements of mining companies transformed the country's landscapes (SLN launched construction of the Yaté dam in the early years of the 20th century).

Free settlers, members of the colonial or penitentiary authorities, convicts, freed convicts, Kanak restricted to reservations or employed in the mines, indentured labourers: given the modest size of the territory, there was an undeniably vast mix of communities within the archipelago from the 1860s onwards.

IV. KANAK RESISTANCE

Many of New Caledonia's population categories were affected by violence under the colonial regime. Indentured labourers were sometimes kidnapped at gunpoint and subjected to extremely harsh living conditions; only a minority of freed convicts succeeded in making a living from their land grants; there were immeasurably more free settlers facing disappointment and shattered hopes, almost totally unprepared for conditions of life in the colony, than there were owners of extensive lands or mines, merchants and shipowners who profited from the colonial system and amassed substantial fortunes.[18]The Kanak, marginalized on their own lands and in their own country, were the hardest hit by the impact of colonization. However, some qualification is required since Christianization, a slower and less flamboyant process than clerical literature would have us believe, put down deep roots in

16 Y. Bencivengo, 2014, *Nickel. La naissance de l'industrie calédonienne*, Tours, Presses universitaires François Rabelais.

17 A great many works focussing on indentured labourers have been published, although an overarching study remains to be done: C. Adi, 2014, *Orang kontrak : les engagés ordinaires de Java venus sous contrat en Nouvelle-Calédonie*, Koné, Éditions de la Province Nord; P. Palombo, 2012, *La présence japonaise en Nouvelle-Calédonie (1890–1960)*, Sarrebrück, Éditions universitaires européennes; K. Speedy, 2007, *Colons, créoles et coolies. L'immigration réunionnaise en Nouvelle-Calédonie et le tayo de Saint-Louis*, Paris, L'Harmattan.

18 A. Saussol, 1994, "Mythes et réalités d'une ambition coloniale : le front pionnier calédonien au temps des éleveurs (1855-1895)" *in* P. De Dekker (ed.*), Le peuplement du Pacifique et de la Nouvelle-Calédonie au XIX*e *siècle*, Paris, L'Harmattan.

the archipelago. Descriptions by missionaries reveal that acculturation was far from absolute; Christianity was somehow taking on a Kanak flavour, and Kanak customary traditions were being influenced by Christianity. Moreover, we should avoid using the term "acquiescence" in respect of colonization because to use the term would imply an ability to read people's minds; the fact that a Kanak police force was tasked with catching escaped convicts, that many indigenous defendants appeared before French judicial tribunals, that many Loyalty Islanders worked as indentured labourers, that there were marriages between Europeans of modest means and Kanak women, and the native adoption of intensive stockbreeding methods, are all factors demonstrating the complexity of colonial society.[19] These points of contact all militate against a "binary" approach: settlers against the colonized.

These aspects should not, however, be used to camouflage the fact that, in New Caledonia as in all colonized regions, the indigenous population did not submit meekly to domination by newcomers. The two major anti-colonial rebellions in the archipelago, led by Chief Ataï in 1878 and Chief Noël in 1917, are well known. But they somewhat obscure the reality on the ground: the steady continuation over seventy five years of Kanak resistance to colonization in the form of insurrections, rebellions and acts of insubordination, in greater or lesser degree. It would be wrong to view New Caledonia as existing in a climate of relative peace apart from the two above-mentioned "explosions". Based on historical records and territorial archives, there were around a hundred acts of insurgency, from the attack on a sandalwood trader at Balade in 1842 to the 1917 rebellion.[20] That is a substantial number and it points to similarities between the situation in New Caledonia and the situation in France's other pioneer settler-oriented French colony, Algeria, where the French actually took from 1830 to 1880 to achieve definitive conquest.

Proposing a timeline divided into several periods should give a clearer picture of these acts of Kanak resistance. The first period covers the bulk of such events, from 1842 to 1878. 67 rebellions can be identified over the course of these decades. The first ten, up to the massacre of English and French settlers seeking veins of gold in the Houaïlou region in 1856, can be defined as acts rejecting the physical presence of Europeans.[21] Crews were attacked (the *Martha* at Maré, 1842) and missionaries were repelled (Yaté, 1850). We can add, from 1856 and attacks against Port-de-France, the active defence of lands which Europeans were attempting to seize. Following the massacre of thirteen settlers in Mont-Dore, the violence reached new heights with the first French military campaign of reprisal targeting the territories of Dumbéa and Port Laguerre. The "hut burning" policy was launched and continued until 1917, leading to repeated population displacements which were instrumental in increasing disruption of the Kanak social fabric. These reciprocal acts of war marked the beginning of the conquest of New Caledonia by force, and of action by natives to defend their land. Most instances of anti-colonial insurgency (57) occurred between this episode and the rebellion

19 A. Muckle and B. Trepied, 2015, "Au bétail: stockmen kanak, frontière pastorale et rapports de pouvoirs coloniaux en Nouvelle-Calédonie, 1870-1998", *Mwà Veé : revue culturelle kanak*, no. 87, p. 66-95.

20 The exact figure is 96, including 87 in the Main Island, 7 in the Loyalty Islands and 2 in the Isle of Pines. The above-mentioned works by Saussol, Dauphine, Merle and Muckle are key sources of information which may be supplemented by examining court records or reading the study by the Association pour la Fondation d'un Institut Kanak d'Histoire Moderne, 1984, *Contribution à l'histoire du pays kanak*, Nouméa, Éditions IKS. This research is ongoing so numbers will be amended, and a follow-up field study investigating memories of these events is also scheduled.

21 M. Naepels, 2013, *Conjurer la guerre. Violence et pouvoir à Houaïlou (Nouvelle-Calédonie)*, Paris, EHESS Éditions.

led by Ataï, twenty years later. Many more examples can be given: the dispatch of 175 soldiers to the Hienghène region in 1859, when some English citizens fought on the Kanak side; the assassination of English sailors and coasters (1865); the murder of settlers in Thio (1861); the revolt against evangelization in Ouvéa (1861); repression in Yaté due to refusals to allow appropriation of land for a Fourierite community (1863); the major Wagap rebellion (1862–1869); the battle of Pwänaacè near Koné (1869)... In 1868, the trial of twenty-five Kanak from Pouébo for the massacre of a settler family, the first instance of this judicial process, denoted the criminalization of anti-colonial acts. Ten of the accused were sentenced to death and guillotined in front of the members of their chiefdom, gathered together to witness the execution.

Abusive behaviour by the penitentiary authorities, who continually encroached on the territories of chiefdoms, led to the 1878 rebellion, fronted by chief Ataï from Komalé near La Foa. The official tracing of Kanak land boundaries during the previous year sometimes resulted in the confiscation of up to half the land in this region. More generally, the demeaning attitude adopted by the French authorities caused tensions to rise. The requisition of labour, delays in paying Kanak workers, bad faith shown by the authorities and settlers concerning Kanak claims, continual encroachment of livestock on Kanak land, total disrespect for Kanak customs and taboo places, reduction of military forces in the region, and the habitual stance adopted by colonial dignitaries of taking action without any consideration for the Kanak, are just a few examples of this attitude.[22] Confronted with this, and the total failure of their peaceful representations, the chiefs of tribes in the centre of the Main Island came together to plan an attack on Noumea.

The assassination of the family of former convict Chêne on 19 June 1878 was the trigger for the rebellion. Ten chiefs were imprisoned in retaliation, Ataï and his allies decided to attack the main vanguard of agricultural colonization gaining ground in the centre of the island. On 25 and 26 June, attacks on gendarmerie stations, properties belonging to settlers and stockbreeding farms led to the deaths of 40 Europeans. Six months of guerrilla warfare followed; a climate of "great fear" reigned in Noumea, where the 130 Kanak living in the city were locked in the penitentiary. The French authorities established "motley" regiments comprising deported Algerians and former Communards, volunteers and garrison troops. Chief Ataï was killed on 1st September and beheaded, his head then being subjected to a strange and symbolic journey.[23] The insurrection continued until the start of 1879; the arrival of military reinforcements from Indochina finally stamped out the last rebel strongholds. The toll was very heavy: 1,000–2,000 Kanak and 200 Europeans killed, 1,500 people displaced or deported. At the end of it all, the centre of the Main Island was given over to European land concessions.

A climate of mutual fear, generated by the ferocity of both rebellion and reprisals, enveloped the colony. The next twenty years witnessed the second period of Kanak rebellions, characterized by far fewer incidents: only seven acts of insurgency took place between 1880 and 1896, but significant tribal "wars" occurred in Maré and resulted in Catholic Maré islanders being

22 Saussol, 1979, *op. cit.*, remains the most comprehensive study of this rebellion.

23 C. Patin, 2019, *Ataï, un chef kanak au musée. Histoires d'un héritage colonial*, Paris, Musée de l'Homme.

exiled to the Isle of Pines, leaving a legacy of deeply painful memories.[24] In 1891, in the Belep Islands, resistance grew in protest at the forced displacement of 1,500 inhabitants to make way for a leprosarium; all protest was in vain.

The final phase in this timeline of resistance is the period of "intensive confinement" from 1894 onwards, during which Governor Feillet speeded up land appropriations with the aim of revitalizing free settlement. Rebellions flared up again, with twenty-two acts of insurgency occurring from 1896 to 1917, motivated by refusals to allow land appropriation (Ina, Tiéti and Poindimié, 1896), the imposition of head tax (Poya, Wagap and Voh, 1898, 1913), and also confinement and the SLN presence (Touho, 1900). In 1916, a significant number of Kanak "took to the hills" to avoid military recruitment. This new wave of insurgency ended with the 1917 rebellion, discussed in the next section.

V. TWO WORLD WARS: THE EMERGENCE OF A "SHARED PAST"

Three key events marked the history of New Caledonia during the two world wars: enlistment to serve in the Bataillon Mixte du Pacifique (BMP, founded in June 1916), the 1917 Kanak revolt and the US military presence.

Mobilization was ordered on 5 August 1914. Four ships carrying troops to the Somme, Verdun, the Chemin des Dames and Thessaloniki sailed between April 1915 and November 1917. They carried around 2,100 men.[25] 393 Kanak and 193 European skirmishers met their deaths at the front.[26] French acknowledgement of the Kanak fallen was late in coming: citizenship was only granted to veterans in 1931, together with the right to own private property, while the names of the fallen were only added to the Noumea memorial in 1999…

In New Caledonia, the period was marked by the 1917 uprising.[27] Despite the German bombing of Papeete in 1914, few enlisted to fight in the conflict: 5% of Kanak and 8% of Europeans eligible for enlistment actually decided to sign up, despite a number of advantages promised by France: elimination of head tax, arranged employment, citizenship, private ownership of a plot of land… The context was, however, one of heightened tension. Shortages increased, the Indigenous Regime was made more repressive, and French pressure when a new recruitment campaign was launched in early 1917, provided the triggers for the revolt. Hostilities began in February, following a severe cyclone, with hostility between Kanak tribes opposed to enlistment and tribes who were not opposed to it. In late April, following the failure of conciliation attempts, the revolt began in earnest, lasting eight months and spreading over several valleys in the North of the Main Island. The fighting involved 400 soldiers, 400 Kanak auxiliaries enlisted on the French side, confronting 300 "rebel" warriors. Guerrilla warfare tactics, the scorched earth strategy, a number of sporadic skirmishes, famine and

24 To such an extent that there is still no public access to documents in the New Caledonia archives dealing with the "Maré troubles" which lasted 14 years (49 W-1).

25 Including 1,105 Kanak skirmishers: S. Boubin-Boyer (ed.), 2008, *Révoltes, conflits et guerres mondiales en Nouvelle-Calédonie et dans sa région*, Paris, L'Harmattan.

26 A mortality rate of 23%, lower than that for all serving French and colonial troops, estimated at 27%.

27 A. Muckle, 2018, *Violences réelles et violences imaginées dans un contexte colonial. Nouvelle-Calédonie, 1917*, Nouméa, Presses Universitaires de la Nouvelle-Calédonie, PUNC.

conflict-related diseases led to around 300 deaths. Many farms and villages were torched and population displacements redrew the geography of the Northern tribes. The capture of Chief Noël, beheaded on 18 January 1918, more or less put an end to the fighting. A trial was then held, resulting in the execution of two rebels and the sentencing of fifty others to forced labour or imprisonment.

The 1920s and 1930s were marked by the economic crisis which progressively affected the archipelago and led to a slowdown in economic activity and a decrease in exports, particularly mining exports, while inflation followed on the shortages experienced during the 1914-1918 period. Cheap convict labour vanished when the penitentiary was closed down in 1924. Moreover, the demographic crisis affecting the Kanak population ended with population numbers stabilizing at around 27,000 in the 1921 census.[28] The end of the decline in birthrates can be linked to the end of land appropriations, the last of which occurred in Maré in 1914. However, the interwar period was also marred by the affair concerning the recruitment of 111 Kanak by the French Federation of Former Colonials to go and play the role of cannibals in the Bois de Boulogne's Jardin d'Acclimatation during the International Colonial Exhibition. The scandal was brought to light as a result of complaints voiced by those most closely involved, and also by Pastor Leenhardt and former government officials stationed in New Caledonia. The affair highlighted the gulf between the relationships linking communities in the archipelago and the racist representations of indigenous peoples served up to the French to justify colonialism with the famous "Obligation to Civilize" axiom.[29]

In September 1940, New Caledonia declared allegiance to General de Gaulle, who appointed Governor Henri Sautot as his representative. A battalion comprising Kanak, European, Ni-Vanuatu and Wallisian soldiers joined the Free French Forces.[30] These one thousand volunteers underwent training in Australia and went on to fight in campaigns in North Africa (Bir Hakeim, El Alamein), Italy and France. The arrival of an American naval fleet carrying 18,000 soldiers in Noumea's harbour on 12 March 1942 was also to have a significant impact on the archipelago's inhabitants. It marked the beginning of four years of US military presence which would leave a lasting impression in the collective memory of New Caledonians. The US troops reshaped part of the landscape in the Main Island: they built sixteen airports including La Tontouta (now an international airport), two seaplane bases and 2,000 km of roads, and they established the Headquarters of the South Pacific Command in Noumea. In total, over a million troops were stationed in New Caledonia, joined by Australians and New Zealanders. As a base for field training and medical and recreational facilities, New Caledonia experienced an economic revival over the US period, with the army requiring necessary supplies and leisure amenities and offering paid jobs. 102 marriages between New Caledonians and Americans were celebrated over the period. Meanwhile, 1,340 Japanese were arrested, deprived of their property and deported to the Tatura internment camp in Australia. They would never be permitted to return.

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28 Terrier, *op. cit.,* p. 159. We should note that the Kanak population of New Caledonia was estimated at 85,000 before colonisation, representing a sharp decline in population, assessable at close to 75% in less than a century. Colonial discourse in the early twentieth century was insistent that the indigenous peoples would shortly and inevitably disappear, based on the Aboriginal peoples model.

29 J. Dauphine, 1998, *Canaques de la Nouvelle-Calédonie à Paris en 1931. De la case au zoo*, Paris, L'Harmattan.

30 See Barbe, *op. cit.*, p. 510-515.

Roger Gervolino was one of the leading figures of the period. Grandson of a convict originally from Naples, Gervolino was a committed trade unionist and one of the prime movers in New Caledonia's declaration of allegiance to de Gaulle. He took part in the military campaigns and, in 1945, became New Caledonia's first Deputé, a position he still held when the new Constitution was adopted in October 1946, putting an end to New Caledonia's colonial status and formally making it a part of the French Republic.[31]

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31 For information about the political positions adopted by New Caledonia's representatives, and debates on changes in status, particularly the status to be given to Kanak, see Merle and Muckle, *op. cit.,* p. 380-408.

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NEW CALEDONIA FROM 1946 TO 1998: A STORY OF UNCOMPLETED DECOLONIZATION

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World War II profoundly transformed New Caledonia. After the fall of France in 1940, New Caledonia refused to submit to the Vichy regime and experienced a period of relative autonomy, with a Free France government in exile and with few resources. Some 600 New Caledonian volunteer recruits from every background set off to join the fight to restore the honour of the "Motherland". The landing of American troops in 1942 shook up the country's economy and made the Kanak aware that a social order different from that imposed by colonization was a possibility. In 1946, while the Provisional Government of the French Republic was struggling to endow France with new institutions and the last Americans had left the colony, links with France needed to be rebuilt, taking into account a new context marked by the emergence of two super powers, the United States and the USSR, who both proclaimed their anti-imperialism. The winds of decolonization were starting to blow, particularly in Asia, where India gained independence in 1947 and where the Indochina war began in 1946.

In the second half of the 20th century, the colony, under French sovereignty since 1853, underwent an institutional, political, demographic, economic, social and cultural transformation. In 1946, following the Lamine Guèye Law[1] (which granted indigenous subjects French citizenship) and the entry into force of the Constitution of the Fourth Republic (which created the French Union comprising France's Overseas departments, Overseas territories and associated States), the colonial era came to an end. France was intent on forging new relationships with its former colonies. For many of them, under the pressure of nationalist demands, this phase marked the beginning of movements leading to independence; this was not the case in New Caledonia. Nevertheless, 1946 also denoted the start of a decolonization process in New Caledonia, which has since resulted in varying forms of emancipation. Since the end of World War II, how has New Caledonia increasingly pondered and queried its own identity and its relationship with France? In 1946, accession to the status of Overseas territory was the presage of major changes, underscored by concerns and questions about autonomy. In the 1960s, Gaullist government policy played an undeniable role in the emergence of demands for independence. As a consequence, since the mid-1970s, the issue of decolonization has seen New Caledonian society caught up in violent

1 https://mjp.univ-perp.fr/france/loi1946-940.htm, consulted in July 2020.

political conflicts, a bloody civil war and a desire for self-determination which still leaves its future in the balance, outside or by the side of France.

I. FROM COLONY TO OVERSEAS TERRITORY: REDEFINING THE COLONIAL FRAMEWORK

In New Caledonia, in 1946, there were no structured nationalist movements demanding independence, but associations defending the interests of the new citizens, formerly native subjects, were emerging and taking shape. Until the late 1960s, there were few people likely to argue against the "Territory" (as New Caledonia was designated from 1946 to 1998) remaining within the French Republican fold. In contrast, the autonomy issue played a major role in the years following the eventful period of New Caledonia's allegiance to Free France and the US military presence. New Caledonia also entered a 30-year postwar boom period, which saw the development of the mining industry and monetary stability following establishment of the Pacific Franc in 1945.

A. Towards equal rights for all

In 1946, as part of plans to restructure its colonial project, France granted New Caledonia the status of Overseas territory (Territoire d'Outre-Mer – TOM). This development was accompanied by a shift away from the most visible and discriminatory aspects of the colonial period: abolition of the "*indigénat*" regime, head tax and labour tax. The Kanak, hitherto "indigenous subjects" of France were finally granted citizenship. However, it was not until 1957 that all Kanak gained voting rights. Since the Kanak were not citizens with civil status but citizens under special law (precursor of the current customary status), they were ruled by customary provisions as regards individual rights (birth, marriage, parentage, adoption, succession…) and ties to the land. The issue of "indigenous civil status" therefore slowed down registrations on electoral rolls. Most settlers, who feared becoming a minority in the electorate, were pleased that the Kanak were gaining voting rights only gradually. In 1945, barely a thousand Kanak were entered on the electoral rolls, representing the indigenous elites (grand and lesser chiefs, veterans, clergy…). Five years later, the Law of 23 May 1951 on the election of members of the French parliament (députés) in the Overseas territories increased the number of Kanak voters (about 60% of registered Kanak, i.e. 8,930 on the electoral rolls). A 1957 Decree finally granted voting rights to all eligible Kanak: 18,964 were then registered on the electoral rolls, i.e. almost 58% of the electorate. Workers under contract settling permanently in New Caledonia also received, provided they were French, full citizenship and voting rights. Indeed, their contracts ceased to exist in 1948. However, as many Asian countries were gaining their independence, numerous people decided to return to Indonesia or Vietnam, sometimes, as regards Vietnamese returnees, in the turbulent climate of the period between the end of the Indochina War and the mid-1960s.

In addition to voting rights, the Kanak were granted freedom of movement and residence and the right to work. 1947 saw the establishment of regional commissions which, in the Kanak reservations, carried out the duties performed by the municipal commissions (precursors of the municipalities) in the European centres. These new rights were also accompanied by more rapid growth of the Kanak population, which had fallen to its lowest level in the early 1920s but totalled in excess of 40,000 people by the late 1950s. The population of New Caledonia, which had stagnated at between 50 and 60,000 between 1887 and 1951, numbered

68,480 in 1956. For all that, this new situation did not spell the end of all colonial period injustices: no lands were restituted, access to education and health care was far from easy, and infrastructure in tribal areas was often rudimentary. The Kanak people remained culturally, economically and socially marginalized. Dismantling the most visible manifestations of colonial rule could therefore not be equated with decolonization, particularly as the issue of the legitimacy of France's annexation of New Caledonia in 1853, the centenary of which was celebrated with apparent unanimity in 1953, still remained a taboo subject.

B. The development of New Caledonian politics: the "time before" the loyalist/separatist split

In political terms, the Governor, as representative of the French Republic, retained significant powers. Prior to 1945, New Caledonian politics were at an embryonic stage, apparent only in the form of elections to the general council, established in 1885. The council was elected by popular vote and its role included passing budgets and tax measures. The first Kanak sat on the council in 1953.

The development of local politics first began when New Caledonia was granted the right to elect a "député" who would sit in the National Assembly (in Paris) from 1945 onwards. For the first time, political issues affecting the territory could be taken all the way to Paris within the parliamentary system of national representation. The first New Caledonian to have a seat in the Palais Bourbon was Roger Gervolino, grandson of a "*transporté*" convict, ardent supporter of Free France in 1940 and a veteran of the Bataillon du Pacifique regiment. He was elected with 52% of votes for the "Democratic and Socialist Resistance" group against the Gaullist Michel Vergès and the Communist Florindo Paladini. He was re-elected in June 1946 with 62% of the vote, beating the Gaullist Pierre Mariotti, and again in November 1946, beating the socialist Antoine Griscelli and the Gaullist Raymond Lèques. In 1951, his political career came to an abrupt end following his defeat by Maurice Lenormand. Henri Lafleur (father of Jacques Lafleur) was the first New Caledonian elected to the Council of the Republic (the upper house of Parliament under the Fourth Republic), where he retained his seat from 1947 to 1955 before giving way to Armand Ohlen. He was obliged to wait until 1959 for re-election to public office as a member of the Senate, the upper house of Parliament under the Fifth Republic. He sat under the umbrella of the Union des Républicains et Indépendants movement who supported General de Gaulle. Until the early 1950s, New Caledonia's political parties were therefore, basically, spin-offs of their French counterparts.

After 1946, local political forces also became better structured and organized. The Gaullists carried forward the 1940 spirit of allegiance to Free France but, in actual fact, a real partisan mosaic was taking shape. The Communists, lionized by their record as members of the Resistance in France from 1941 onwards, promoted the establishment of the New Caledonian Communist Party in 1946, represented by Jeanne Tunica y Casas and Florindo Paladini. Adopting an anti-imperialist and anti-capitalist position, they welcomed Kanak members from the outset, and were committed to helping them throw off the yoke of colonial rule. The Christian missions were worried about communism, with its atheist views, infiltrating the tribes so, in retaliation, they encouraged the burgeoning of Kanak Christian political movements.

The first Kanak organization was the UICALO (Union des indigènes calédoniens amis de la liberté dans l'ordre). Only Kanak (at the time, the word "Melanesians" was used) could

join. On 25 May 1946, customary chiefs disseminated a manifesto of demands, influenced by the Catholic authorities (Bishop of the Archdiocese of Noumea Edouard Bresson, Marist Father François Luneau, founder of the Canala seminary). Almost a year later, on 18 March 1947, the UICALO was officially established as an association and held its first meeting in Païta, resulting in the election of Rock Pidjot as President and Michel Kauma as Vice President. The UICALO primarily proclaimed itself as a driving force to get demands heard and improve the lives of the Kanak people: expanding education (including religion-based instruction) and improving access to health care, preserving the reservations and their status, removing colonial taxes (head tax, labour tax), granting Kanak a status different from civil status, setting up democratic entities within the tribes (elected councils and grand councils), establishing an indigenous advisory assembly. The position they took focussed on the complete abolition of the most unjust stigmas imposed by colonization, whilst preserving the structures, in particular the tribal structures, introduced by colonization.

Meanwhile, in a climate of fierce competition between the missions, dating from the mid-19th century, in their efforts to attract Kanak adherents, the Protestants gave their support to establishing the Association des indigènes calédoniens et loyaltiens français (AICLF), founded on 10 January 1947. To start with, the AICLF was headed by two pastors from Do Neva, Pierre Benignus and Raymond Charlemagne, and supported by customary chiefs, including Doui Matayo Wetta (Ponérihouen) and Kowi Bouillant (Touho). Like the UICALO, it only accepted Kanak members and promoted specific demands designed to improve the lot of Kanak communities, namely: ensure their unity in freedom and peace, facilitate the development of tribes and social justice, foster integrating and keeping Kanak within the French national community, and the granting of voting rights to all literate Kanak. The priority was ensuring the economic and social development of the Kanak people within their tribes. Doui Matayo Wetta became the AICLF's secretary general and Raymond Charlemagne its leader. In 1951, the UICALO and the AICLF supported Maurice Lenormand's bid for election as "*député*" (in the National Assembly); in 1953, they formed an electoral alliance, the Union Calédonienne (UC), with a view to elections for the General Council. Six members of the AICLF and three members of the UICALO were elected that same year. From the start, there were tensions between different political persuasions within the AICLF, especially between Pastor Charlemagne, at Do Neva, and Pastor Lacheret, with tensions repeatedly sowing confusion about the demands advanced by the association, until a split occurred in 1957–1958. Pastor Charlemagne founded the Federation of Protestant Free Education and the Evangelical Free Church of New Caledonia. Meanwhile, Pastor Lacheret's loyal supporters founded the Evangelical Church School Alliance (ASEE) and the Evangelical Church in New Caledonia and the Loyalty Islands. Although there was also dissension within the UICALO, it turned the AICLF's troubles to advantage by increasing its influence within the UC.

By relying on the support he received from both Kanak Christian associations, Maurice Lenormand rose to become New Caledonia's key political figure in the 1950s. Lenormand was a European, born in Mâcon in France. He settled in New Caledonia after completing his military service and, in 1936, married a Kanak wife, granddaughter of grand chief Boula of Lifou. After the war, he purchased a pharmacy in Noumea and a plantation in the New Hebrides. He began his political career in 1951 by presenting himself as a candidate for election as *député* in the National Assembly. Although he was perceived as the "pro-Kanak candidate" because he laid emphasis on the need for improving Kanak living and social conditions, his electoral base was in fact much broader. He also appealed to a range of communities,

especially people with European roots (workers and employees, small property owners…). He was well ahead of Roger Gervolino and won the election, taking his seat as a *député* (until 1964). He triumphed again in 1953 when he was elected to the General Council, of which he became Vice President. Under Lenormand's influence, political life in New Caledonian began to take on greater independence by focussing increasing attention on local concerns. The UC became organized. Building on its electoral successes in 1953 (14 seats, including 9 Kanak elected representatives out of a total of 25 General Council seats), in 1955 (Armand Ohlen elected to the Council of the Republic) and 1956 (Lenormand re-elected), the UC became a political party with the motto "Two Colours, One People". The party's founding congress was held on Armand Ohlen's property in the Vallée des Colons (Noumea) in May 1956. Rock Pidjot became President, Doui Matayo Wetta Vice President and Maurice Lenormand Commissioner General. At the time, the party's political line was greater independence *vis-à-vis* France, without calling into question French political oversight.

C. The 1956 Defferre outline law: towards greater autonomy for New Caledonia

In 1957, eleven years after the status of Overseas territory, granted to New Caledonia, was introduced, it underwent significant change as a result of the Defferre outline law. The outline law was passed in June 1956 at the initiative of French Overseas Minister Gaston Defferre and the Ivorian Houphouet Boigny under Guy Mollet's Socialist-led government. It was called an outline law because it allowed the French government to issue decrees in matters usually ruled by the legislative. Its main purpose was to "give the Overseas territories responsibility for the democratic management of their own affairs", a step in the direction of increased autonomy. The aim was also to encourage the social advancement of members of the indigenous community (in 1962, Boniface Unu was the first Kanak student to obtain the Baccalaureat diploma). In New Caledonia, the outline law was instrumental in fully introducing universal suffrage. Furthermore, the "two college" system was thrown out. This was introduced in 1952, at the request of European voters, in the electoral district of the East Coast with the aim of reducing the electoral clout of Kanak voters. The General Council was replaced by a Territorial Assembly (the term used until 1985) comprising 30 members elected by direct universal suffrage. The Assembly was empowered to pass resolutions in all its fields of jurisdiction and wielded legislative power in the Overseas territory. The Territorial Assembly was elected for 5 years by proportional representation based on lists drawn up for each electoral district. Moreover, this Assembly appointed a Governing Council (comprising a Vice President and ministers) chaired by the Governor (designated "Head of the Territory"). As the custodian of executive power in New Caledonia, the Council was actually supervised by its Vice President, who headed a government comprising 6 to 8 ministers, and had authority over the administrative departments. Although bitter and repeated strikes provided a platform for forceful demands, the 1950s were a period of strong economic and social development, the advent of a form of "modernity": construction of the Yaté hydroelectric dam (from 1955 to 1959), growth in nickel production, paved roads, major electrification and water supply projects, construction of schools, improved facilities at Noumea's port and Tontouta airport, establishment of the Caisse d'Allocations Familiales – Accidents du Travail (Family Allowances – Workplace Accidents Fund – CAFAT, 1958) and the Office de Commercialisation et d'Entreposage Frigorifique (Marketing and Refrigerated Warehousing Board) which regulated agricultural markets (1963), etc. Major projects were financed by the French government, in particular through the Fonds d'Investissement pour le Développement Économique et Social (FIDES) d'Outre-Mer (Investment Fund for Overseas Economic and Social Development) set up in 1946. A plentiful workforce came

in from outside New Caledonia to meet economic needs (from France, the Caribbean, European settlers from Algeria after 1962, Wallis and Futuna, Tahiti, etc.). By 1963, the population of New Caledonia had risen to 86, 519.

The establishment of new institutions under the outline law confirmed the domination of the UC. At the elections held on 6 October 1957, the party took 18 of the 30 seats. Armand Ohlen was elected President of the Assembly and Maurice Lenormand was elected Vice President of the government, which comprised 8 members. The following year, due to the repercussions of events in France and Algeria leading to General de Gaulle being returned to power, the Governor suspended the Governing Council and called new elections in December 1958. The UC was again triumphant, securing 18 seats compared to 11 for the Rassemblement calédonien (RASCAL), dominated by Henri Lafleur's Gaullists. The Governing Council was reduced to just 6 members (including 4 UC members) and Maurice Lenormand remained Vice President. The UC's "reign" over local politics, beginning in the 1950s, continued until the early 1970s and enabled Kanak, for the first time, to attain key political roles at local level.

II. 1958-1969: AUTONOMY CALLED INTO QUESTION AND EMERGING DEMANDS FOR INDEPENDENCE

When the Fifth Republic came into being, New Caledonia remained firmly anchored in the Republic and demonstrated its attachment to France. However, the 1960s were a turbulent decade due to the autonomy acquired under the outline law being replaced by the Gaullist government's robust re-appropriation of all matters relating to New Caledonia.

A. 1958: the time for a first move towards self-determination?

After presenting the constitution of the Fifth Republic to the people of France on 4 September 1958, de Gaulle submitted it to popular approval in a referendum held on 28 September. This referendum also concerned France's Overseas territories, where it had implications far beyond approval or rejection of the new constitution. Implicitly, Overseas citizens were being asked whether they wished to remain within France or accede to independence. In fact, within the context of decolonization, General de Gaulle wanted each territory to freely express its desire to remain within the French Republic. In 1958, even though self-determination was an issue not yet on the table, French citizens living in New Caledonia were being required to choose. It should be noted that there were no restrictions on voting rights before the 1980s. In the referendum of 28 September 1958, there was a 77% turnout, with 98% of votes approving the new constitution, and therefore in favour of New Caledonia remaining within France. The Territorial Assembly had to choose between three alternatives: becoming an Overseas department, remaining an Overseas territory (TOM), or moving towards becoming an independent state within the French Community. It decided to retain the TOM status governed by the provisions of the outline law of 1956, i.e. having considerable autonomy. Even today, political parties and many non-separatist supporters believe that the decisions taken in 1958 represented an early form of New Caledonian self-determination, a claim disputed by the separatists. In fact, from the separatist standpoint, the 1958 referendum cannot be considered as a vote for self-determination because the French government had not previously acknowledged its past wrongs, nor the right of the Kanak people (extended or not to other peoples) to self-determination.

B. A divisive status of autonomy

The status of autonomy granted to New Caledonia in 1957 was extremely fragile because it was far from unanimously accepted on the ground. The UC's opponents accused the party of aiming for ever greater autonomy, likely in the long term to jeopardize remaining within the French Republic. An article published in 1960 by Maurice Lenormand, entitled "The New Caledonian People Exist", fuelled the distrust of his detractors:

> *The fundamental position, the doctrine of the Union calédonienne party is founded on proven sociological facts. It is based on scientific findings: modern New Caledonia is inhabited by a people, the New Caledonian people, a people in the making, the shaping of which, already begun, is reaching completion. Sociologically, the social group, the human community, formed by the New Caledonians, whatever their colour or status, has its own characteristics and can be defined. It is defined as a people coming together who are on their way to their definitive constitution.* [...] *A nation is characterized by the following criteria: it is a human society which has a common territory, a common language, a common history. But it does not have its own political institutions, like a nation, or a nationality, or its own economy (it has a dependent economy), or its own legal institutions, nor does it have, like a tribe does, shared beliefs, shared customs, a shared origin... Therefore, we can conclude, scientifically, that New Caledonia in 1960 is inhabited by people from different ethnic fragments.*[...] *These two groups* [Melanesian and European], *thrown together by increasingly close and vital relations, now share a common territory, a civilization, a language and a hundred year history of direct contacts, in our words, a common history. Therefore the New Caledonian people exist, they are a people being formed through the aggregation and fusion of two ethnic groups, with the tribal and national characteristics that differentiate them tending to fade and gradually disappear... The New Caledonian people may be a young people but other nations before them, and in the recent past, have been formed in the same conditions, and to take only the best known examples, the most indisputable, we will cite the Mexican people.*

On 18 June 1958, the day commemorating the Appeal of General de Gaulle, opponents of the UC, who had got together a significant number of people from the bush, held a demonstration. They denounced Lenormand's authoritarian management and demanded a reform of the local status and the dismissal of some French government officials recruited by the Governing Council. With French government aid, they wished to curtail the autonomy granted to New Caledonia. A watch committee chaired by Noumea mayor Roger Laroque sent a message to the French President to alert the French authorities to what was happening in New Caledonia. Lenormand's supporters complained loudly about a power grab. Despite the turmoil, between 1958 and 1963, New Caledonia continued to be governed according to the status of the outline law. In 1959, due to the fact that he held several offices concurrently, Maurice Lenormand gave up his position as Vice President of the Governing Council to Michel Kauma, a Kanak from Ouvéa. Kauma, at odds with the UC since 1960, was replaced by Rock Pidjot from 1962 to 1964, following the UC victory in the 1962 local elections. In the late 1950s, the vigorous opposition between the majority UC party and the conservatives who were quick to support de Gaulle, paved the way for the Gaullist government to step in and take back control of New Caledonia in line with a centralized and centralizing vision of power.

C. Decline in autonomy from 1963 onwards

On 21 December 1963, the Jacquinot law (Louis Jacquinot, Minister of Overseas Departments and Territories – Pompidou government), introduced a reform in New Caledonia's status ("Jacquinot Status"). Autonomy was significantly reduced. The Territorial Assembly now had 35 members, still elected by universal suffrage based on proportional representation for a period of five years. The Governing Council now included only 5 "government advisers" (who were no longer known as ministers). They lost much of their authority and were no longer appointed by the Assembly by majority vote but by a proportional voting system. They could be suspended from office, either individually or collectively, by the Governor. Moreover, the Governing Council now only had a consultative role (and not an executive role). The role of Vice President was abolished. The French government became a central player again, personified by the Governor, who was more than ever the "Head of the Territory". For example, in 1965, public secondary education came under the jurisdiction of the French government. Centralization of power by France expanded further in the late 1960s. The three "Billotte laws" (Pierre Billotte, Minister of Overseas Departments and Territories from 1966 to 1968 - Pompidou government) were enacted on 3 January 1969 and applied to mining regulations, the tax regime of some investments, and the establishment and organization of municipalities in New Caledonia, encroaching on areas under the jurisdiction of the Territory. In 1968, the Territorial Assembly, in which the UC held a majority of votes, was asked for a decision on the project; the result was 29 votes against and 6 abstentions. In Paris, the National Assembly took no account of the New Caledonian position and, in December 1968, passed the "Billotte laws", dubbed the "villainous laws" by opponents in Noumea.

In terms of mining regulations, the French government was now in charge, putting an end to a local statute which had, until then, regulated prospecting, mining operations and the sale of minerals. Nickel, cobalt and chromium became strategic commodities under the control of the French government. This was the "nickel boom" era, a period of great economic prosperity due to nickel exports. Nickel production was at the time dominated by Société Le Nickel (SLN). 7.7 million tonnes of nickel were mined in 1971, and mining-related prosperity rubbed off onto other sectors (construction, services...). Kanak, more and more of whom were living in Noumea, easily found work at the Doniambo plant. Many became waged employees, even though labour resources continued to flow in from outside New Caledonia. From a municipal perspective, prior to the "Billotte laws", only Noumea had municipality status. Elsewhere, there were only municipal commissions and regional commissions, merged in 1961. In 1969, New Caledonia had acquired 31 ipso jure municipalities subject to French government supervision (there are now 33: Poum was separated from Koumac in 1977 and Kouaoua from Canala in 1995). The law also established administrative subdivisions (south, east, west, Loyalty Islands) headed by French government officials known as Subdivision Chiefs and tasked with supervising the municipalities. One effect of this law was to increase municipal powers at the expense of the Territorial Assembly dominated by the UC. The municipalities possessed resources, allocated, in particular, by the FIP (Fonds Intercommunal de Péréquation – Inter-Municipal Equalization Fund) funded by Territory-wide tax revenues. Finally, as regards the tax regime on investments, the law gave the French government sole responsibility for granting tax benefits to companies investing in New Caledonia. Once again, this meant that competencies previously exercised at local level were transferred to France. Thus, the "Billotte laws" pushed French government centralization to the extreme, to the fury of the UC which, since its establishment, had set itself up as the defender of increased autonomy.

III. FROM THE LATE 1960S, TIES TO FRANCE CALLED INTO QUESTION...

The changes imposed by the Gaullist government led to political divisions being redefined and to new demands being advanced. The UC became more and more critical of France, while some Kanak adopted the position of rejecting the French presence. The erosion of autonomy contributed in part to the rise of the separatist movement which gradually developed from the late 1960s, as the first generations of Kanak students returned to New Caledonia.

A. The development of the separatist movement (1969-1981)

In the 1960s, the issue of autonomy fuelled growing tensions within the UC and led to discord. In 1971, the Mouvement libéral calédonien (MLC) was founded by Caldoche[2] UC members who supported a limited form of autonomy (Armand Ohlen and Jean Lèques). In contrast, the Union de la jeunesse calédonienne (UJC), led by Jean-Paul Caillard and Jean-Pierre Deteix, and the Union multiraciale de Nouvelle-Calédonie (UMNC), led by Yann Céléné Uregei, demanded very substantial autonomy before going over to the separatist movement. The ever-growing discord and disagreements within the UC contributed to the weak performance of New Caledonia's first party at the Territorial Elections in 1972. It won just 12 seats out of 35, putting the party into opposition for the first time as from 1974. But the time for political alternation had not yet come since fragmentation across the political spectrum meant that no clear majority in the Territorial Assembly was identifiable. Above all, some Kanak were now set on independence and openly challenged France's sovereignty over New Caledonia. Some were young people who, having returned after university studies in France, decided to combat a state of affairs which continued to keep the Kanak marginalized. Others were attracted by demands for independence because New Caledonia was experiencing an economic and social crisis following the end of the 1968 to 1972 nickel boom years. This period of prosperity and full employment, which delayed the "Kanak awakening", was replaced by fears of a much less rosy future. Kanak workers, often low-skilled and less favoured by employers than workers from Wallis and Futuna, were hit hard.

In July 1969, Nidoïsh Naisseline became a founder member of the Foulards rouges (Red Bandannas) movement. Son of grand chief Guahma (Maré) who was known for his commitment to Gaullist ideas, Naisseline left his home in 1962 to study law and sociology in France. He took part in the protests of May 1968 and his ideological position veered towards the extreme left. Back in New Caledonia, his dedicated involvement in the Foulards rouges landed him in prison three times (1969, 1972 and 1978) following demonstrations upholding the Kanak people's demand to live in a society fully recognizing their identity. In 1971, Elie Poigoune, another young Kanak, founded the "1878 Group", a reference to the rebellion led by Ataï, which also demanded independence. It was in this tense political climate that Jean-Marie Tjibaou, a former priest from Tiendanite (Hienghène), thought up the Melanesia 2000 festival designed to give visibility to marginalized Kanak cultural traditions. From 3 to 7 September 1975, in Noumea, 50,000 visitors attended shows of songs and dances, arts and crafts exhibitions, demonstrations highlighting agricultural produce and expertise and, as the high point, two performances of the play-pageant Kanaké. This festival, central to Jean-Marie Tjibaou's future path in life, was one of the springboards for Kanak demands

2 Name given to New Caledonian descendants of European settlers.

for recognition of their identity and culture, seen as part and parcel of their demands for political independence. It helped assert that the Kanak were a people whose identity and sovereignty had been negated by colonization. Based on this reasoning, Kanak independence was the only means of ending the colonial era that began in 1853.

The early stages of the struggle for independence led, in 1975, to the founding of the first pro-independence political party, the Palika (Kanak Liberation Party), a merging of the Foulards rouges and the 1878 Group. Strongly influenced by Marxism and far-leftist ideology, the party demanded freedom through revolutionary combat and propounded the establishment of a State based on a collectivist economic model. The founding congress of the movement was held in 1976 in Poindimié. Also in 1975, Uregeï's UMNC came out for independence and became the Front uni de libération kanak (United Front for Kanak Liberation – FULK). In June 1975, at La Conception, forty pro-independence activists demanded accession to sovereignty for the Kanak people. From that point on, New Caledonian politics was plunged into a state of bi-partisan division, never previously encountered and still relevant today: pro-independence (separatists) or pro-remaining within France (loyalists). The UC could not avoid involvement in this new political landscape. The authority of Lenormand, who was attempting to win back his position as leader in the wake of legal debacles and a period of ineligibility in the mid-1960s, was in dispute. Within party ranks, a new generation of Kanak political leaders was emerging, figure-headed by personalities like Jean-Marie Tjibaou and Éloi Machoro. At the Bourail Congress in 1977, the party split in two. A minority refusing to challenge French sovereignty (Jean-Pierre Aïfa then left the UC) and a majority in favour of Kanak independence, comprising Rock Pidjot, President of the UC, Jean-Marie Tjibaou, who became Vice President of the party, Pierre Declercq, who took the role of Secretary General, and even Maurice Lenormand, who joined the independence side. With the aim of winning the local elections in 1979, Tjibaou suggested forming a Front indépendantiste (Separatist Front - FI) bringing together all the parties and movements supporting independence. The FI picked up a third of the votes and gained 14 seats out of 36.

The loyalist side were also mobilizing. The RPC (Rassemblement pour la Calédonie dans la République – Movement for New Caledonia in the Republic, known as the RPCR from 1978 on) was founded, in the wake of the 1977 municipal elections, by Jacques Lafleur, elected as a député in 1978 and son of former senator Henri Lafleur. The RPC embraced several movements intent on keeping New Caledonia within France, both Gaullists and former UC members like Jean Lèques. In terms of French national politics, the RPC was close to Jacques Chirac's RPR. In 1979, the RPCR became New Caledonia's leading party, boasting 40% of the vote and 15 elected representatives out of 36 in the Territorial Assembly. To ensure a majority lead, the RPCR joined with the FNSC (Jean-Pierre Aïfa's Fédération pour une Nouvelle Société Calédonienne) established in 1979 as a pro-autonomy and loyalist party. That party emerged from the 1979 elections as New Caledonia's third largest political force with nearly 18% of votes and 7 elected representatives.

Faced with the growing influence of pro-independence demands, the French government judged that a strategy of encouraging the arrival of communities from outside New Caledonia in an effort to marginalize the Kanak population demographically and therefore electorally, was the only way to forestall independence. This colonialist or neo-colonialist position was summed up in the letter sent by Pierre Messmer, Prime Minister to Georges Pompidou, on 19 July 1972, to his Secretary of State for Overseas Territories, Xavier Deniau:

> *New Caledonia, a settler colony, although inevitably multiracial in character, is probably the last non-independent tropical territory in the world which a developed country can use as an*

emigration destination for its nationals. We must therefore seize this final chance to create another French-speaking country. The only threat to the French presence in New Caledonia, apart from a World War, comes from nationalist demands by indigenous peoples supported by a few possible allies in other ethnic communities from the South Pacific. In the short and medium term, the mass immigration of French citizens or people from Overseas departments (Reunion Island) should help avert this threat by maintaining and improving the numerical ratio between communities. In the long term, nationalist demands by indigenous peoples will only be forestalled if communities who are not from the South Pacific region represent a majority of the overall population. [...] *The success of this undertaking, imperative in maintaining French positions East of Suez, depends, amongst other factors, on our ability to finally achieve success, after so many historic failures, in an Overseas settlement initiative.*

The mining boom appeared to bear out the Prime Minister's views since, in the late 1960s, around 15,000 people arrived from abroad to work in New Caledonia. New Caledonia then had a population in excess of 100,000, rising to 133,000 in 1976. Another measure taken by the French government concerned the 1976 amendment of New Caledonia's status by the Secretary of State for Overseas Departments and Territories, Olivier Stirn. The "Stirn status" established internal autonomy in an attempt to crush demands for independence. Administrative authority was placed under the dual supervision of the Governor and a Governing Council elected by the members of the Territorial Assembly by proportional representation then, from 1979, by majority vote. Moreover, timid efforts to promote Kanak social advancement and land restitution were set in place under the Dijoud Plan (1978). This failed to put a stop to separatist demands, especially since the 1970s witnessed the accession to independence of neighbouring countries (Fiji in 1970, Papua New Guinea in 1975, the Solomon Islands in 1978, Vanuatu in 1980...). Why would the winds of freedom blowing across the South Pacific not also blow on New Caledonia? Furthermore, during Valéry Giscard d'Estaing's term as President, some French territories gained their independence (the Comoros in 1974 and Djibouti in 1977).

B. 1981-1989: the time of violence

The climate of tension created by demands for Kanak independence turned the next decade into a period marred by chaos, tragedy, conflict and violence. The designation "events", a reference to the "events" occurring in Algeria from 1954 onwards, and the term most used at the time, played down the critical situation and is still widely used today. Separatists prefer the phrase "war of independence" or "anti-colonial liberation", or even "Kanak revolution". Historians, including New Caledonian historians, favour the designation of civil war, which is now accepted by almost everyone. Between 1981 and 1989, New Caledonia was at the mercy of hostilities and tensions which repeatedly degenerated into clashes of varying degrees of violence; this explains the continued presence on the ground of a significant number of security forces and military personnel, the introduction of a curfew to reduce excesses by both sides. Phases of moderation or resumption of calm gave way to fresh eruptions of violence. The stand-off involved three key players: the separatists (who were not all Kanak), the loyalists (who were not all descendants of European settlers) and the French government (whose stance and interventions fluctuated over the period and in line with political alternations in Paris). Overall, the civil war resulted in the deaths of around 70 people and very nearly 1,200 refugees belonging to all ethnic communities driven from their lands. Roadblocks, theft, looting, arson and other acts of violence were a daily occurrence in the lives of the people of New Caledonia until 1988, the year when the Matignon-Oudinot

Accords were signed. The following year, the assassinations of Jean-Marie Tjibaou and Yeiwené Yeiwéné marked the end of this decade of violence.

1981-1984: tensions mount

In 1981, the presidential election campaign in France caused a split in the separatist camp. The Palika rejected the rapprochement between the FI and the French Socialist Party (and its candidate François Mitterrand), favouring instead a strategy of abstention in French national elections. Within the Palika, Nidoïsh Naisseline and his close colleagues were less radical; they left the Palika to found the Libération kanak socialiste (Socialist Kanak Liberation - LKS) party. Meanwhile, the Palika left the FI. The election of François Mitterrand on 10 May 1981 added fresh fuel to the tensions between separatists and loyalists. The loyalists suspected him of having plans for New Caledonia's independence, while the left-leaning separatists saw him as a natural ally. Convinced of finding support at the highest levels of French government, they ramped up their demands and land occupations. It was in this uneasy climate that, on 19 September 1981, UC general secretary Pierre Declercq was assassinated (a murder still unsolved today). The separatists viewed this as a political assassination; it marked the start of the civil war.

The spreading tensions were felt at the highest political levels. In 1982, the RPCR-FNSC alliance shattered, opening the way for Jean-Marie Tjibaou to become Vice President of the Governing Council, namely the head of New Caledonia's "executive authority". In 1983, following the attack on the Touho gendarmerie and the deaths of two riot police officers in La Foa, Georges Lemoine, Secretary of State for Overseas Territories, convened New Caledonia's leading political figures for discussions in Nainville-les-Roches, near Paris, from 8 to 12 July. A final declaration laid the foundations for a possible settlement of the colonial dispute: the will to abolish colonialism, the recognition of Kanak culture, the legitimacy of the Kanak people who are acknowledged as possessing an "innate and active right to independence", the right to self-determination. Jean-Marie Tjibaou, for his part, recognized the "victims of history" (a term designating various non-Kanak communities who arrived in New Caledonia during the colonial period) and their right to share self-determination and independence with the Kanak people. This declaration therefore involved other communities in the New Caledonia nation-building project and encouraged some of them (Chân Dăng, Orang Kontrak, descendants of Japanese workers, etc.) to capitalize on their history to legitimize their commitment to New Caledonia. The fight was therefore no longer a quest exclusively for Kanak independence. The FNSC and the FI both gave their agreement to the declaration, but the RPCR expressed reservations. The separatist desire to restrict the electorate qualifying to vote on self-determination was one of the reasons why, *in fine,* the RPCR rejected this declaration. On 10 December 1983, militant loyalist Jean-Marie Sangarne was assassinated in Hienghène.

The political gridlock brought about by the breakdown of talks led to increasingly fierce confrontations from 1984 onwards. Against the unanimous advice of local politicians and the Territorial Assembly, the French government attempted to enforce a new status (known as the "Lemoine status") in September 1984, with the aim of paving the way to a vote on self-determination. Autonomy was right back at the top of the agenda: executive power was entrusted to a government composed of ministers appointed by the President of the government, who was himself elected by the Territorial Assembly. The government was accountable to this Assembly and had broad powers. Six customary lands were created and

associated with the performance of responsibilities. Loyalists and separatists both rejected this status which, for some, went too far and, for others, delayed accession to independence. Each camp adopted a more radical stance. At its Congress on 24 September 1984, the FI confirmed its reincarnation as a new party: the Front de libération kanak et socialiste (Kanak and Socialist Liberation Front - FLNKS), comprising the UC, the Palika, the FULK, the Union progressiste en Mélanésie (UPM), the New Caledonian Socialist Party (PSC), and the USTKE, a separatist trade union established in 1982 by Louis Kotra Uregeï. The Palika thus returned to the union of separatists as the LKS left it. The FLNKS decided to begin the fight by announcing an active boycott of the local elections scheduled for 18 November 1984. At the party's first congress held at La Conception Tribe on 1st December 1984, it set up a provisional Government of Kanaky headed by Jean-Marie Tjibaou and officially unveiled the flag of Kanaky. On the day the local elections took place, the separatists' opposition to the ballot was symbolized by UC General Secretary Éloi Machoro's decision to smash the ballot box in the municipality of Canala. Despite a low turnout (57%), the RPCR emerged as decisive victors, gaining 34 elected representatives out of a total of 42. Dick Ukeiwé, RPCR, became President of the government and appointed 9 ministers (including 4 Kanak). In September 1985, the Round New Caledonia cycling race, very popular amongst the European population, was held up on the East Coast by independence supporters. Some separatist activists went off to Libya, giving the French government and the loyalists cause for concern.

1984-1987: the phase of rebellion and an impossible dialogue

Following the elections, there was an increase in violent incidents. On 5 December 1984, 10 Kanak, including two of Jean-Marie Tjibaou's brothers, were killed in an ambush on the road to Hienghène. The murderers were tried and acquitted by the Noumea Court of Assizes in October 1987. Although Jean-Marie Tjibaou reacted to the killings by calling for calm, violence was unleashed on both sides. On 11 January 1985, Yves Tual, a young 17 year old Caldoche was killed on his parents' property near Thio, leading to anti-separatist riots in Noumea (the Maurice Lenormand pharmacy was stormed). The next day, Éloi Machoro and Marcel Nonnaro were killed in La Foa by the GIGN (counter-terrorism unit) during an assault on a Caldoche property occupied by separatists, who were at the time headed for the West Coast at the head of thirty armed militants. A climate of fear set in, intensified by the formation of separatist and loyalist militias (including Wallisians and Futunans recruited by Jacques Lafleur). Faced with such aberrations, the French government chose to declare a state of emergency and a curfew lasting until June 30, giving the High Commissioner, Edgar Pisani, extraordinary powers to deal with the situation. François Mitterrand and his interior minister Pierre Joxe made a surprise 12-hour visit to New Caledonia on 17 January 1985. The French President was welcomed to Noumea by a mass loyalist demonstration; however, he left without making any major announcement. In New Caledonia, Pisani favoured the holding of a vote on self-determination to guide New Caledonia towards independence in association (with France), a plan opposed by both loyalists and separatists. The "Pisani" or "Fabius-Pisani Status" promulgated on 23 August 1985, established 4 new regions (North, Centre, South, Islands) with broadened powers and a council elected by proportional representation. Put together, these 4 councils formed the Territorial Congress, which replaced the Territorial Assembly. The High Commissioner reassumed his prerogative powers, assisted by a council comprising the President of the Congress and the four regional Presidents. The regional customary advisory councils made up the Customary Territorial Council. Elections were held without loss of time, on 29 September 1985. The separatist parties gained majorities in three out of four regions

(Tjibaou in the North, Léopold Jorédié in the Centre and Yeiwéné Yeiwéné in the Loyalty Islands), but the RPCR held sway in the Congress, given that 45% of the seats were held by South region representatives.

With calm more or less restored, the first cohabitation between François Mitterrand (PS, President) and Jacques Chirac (RPR, Prime Minister) saw the appointment of a new Minister for Overseas Territories, Bernard Pons, more inclined to listen to loyalists close to the RPR party. He got down to drafting a new status (the "Pons I Status" of 17 July 1986), which reduced the powers of the regions and scheduled a referendum on self-determination which introduced, for the first time since 1946, a restriction on electoral rights (at least three years of residence in New Caledonia). With the Pacific Islands Forum backing its fight for independence, the FLNKS meanwhile got New Caledonia inscribed on the UN list of Non-Self-Governing Territories in 1986, and refused to participate in the vote on self-determination because it wanted voting rights to be restricted to the Kanak people. On 13 September 1987, voters were asked to vote either for accession to independence or for remaining within the French Republic. Turnout was 59% and 98.3% of voters said "Yes" to remaining within France. The FLNKS refused to be bound by this result and Jean-Marie Tjibaou submitted a Constitution of Kanaky draft plan to the United Nations. Concurrently, the Noumea Court of Assize acquitted the murderers of ten Kanak from Hienghène; Tjibaou reacted by declaring "the hunting season for Kanak is open". The separatists also protested against elections in the Territory's regions being held at the same time as the first round of voting in the presidential election. In point of fact, on 22 January 1988, the "Pons II Status" placed greater focus on autonomy but proposed a new regional partition unfavourable to the separatists. The armed struggle for independence appeared once again to be on the agenda. In February 1988, at Tiéti (Poindimié), ten gendarmes were taken hostage and later released. Meanwhile, the RPCR demanded the dissolution of the separatist front. In response, the FLNKS once again called for the presidential elections and regional elections scheduled for 24 April to be actively boycotted.

1988: the tragedy of Ouvéa

In the battle between Mitterrand and Chirac, New Caledonia became a French political issue, something highlighted by the events in Ouvéa on 22 April 1988, the date when separatists attacked the Fayaoué gendarmerie. Four gendarmes were killed and twenty-seven were taken hostage. The next day, the FLNKS demanded cancellation of the regional elections, the appointment of a mediator and the withdrawal of police forces from the island. On April 24, the elections were nevertheless held as normal: due to the boycott, the local vote put the RPCR in a controlling position in all four regions, and almost 75% of the national election vote went to Jacques Chirac. Preparations for the second round of the presidential election went forward while the Ouvéa hostages remained in captivity. On 25 April, eleven were released; on 5 May, the French military launched an assault on the Gossanah cave (Operation Victor). The rest of the hostages was freed in circumstances which remain extremely unclear to this day, but probably involved summary executions. During the massacre, two soldiers and nineteen separatists (including Alphonse Dianou, leader of the hostage-takers) lost their lives. On 8 May, Mitterrand won the presidential election (but only gained 10% of the vote in New Caledonia against Jacques Chirac) and began his second term by appointing the socialist Michel Rocard as Prime Minister. In the legislative elections held in June 1988, both RPCR députés were re-elected and the party held on to its majority in the Territorial Congress.

C. Since 1988, the time of the Accords

Michel Rocard asked prefect Christian Blanc to lead a reconciliation mission aimed at restoring peace in New Caledonia, and talks were scheduled at the Hotel Matignon. The talks led to the historic handshake between the leaders of the FLNKS and the RPCR on 15 June 1988, the prelude to the Matignon Accords, signed on 26 June by the separatists, the loyalists and the French government. They were supplemented on 20 August by the Oudinot Accord (named after the headquarters of the Ministry of Overseas Territories). Jean-Marie Tjibaou described the agreements as a "bet on intelligence". They provided for the granting to New Caledonia of a ten-year transitional status within the French Republic. At the end of this period, a self-determination referendum in 1998 would serve as the basis for consideration of a future within or outside France. For a year, the French government took over direct administration of New Caledonia to ensure calm was restored. An amnesty was granted for all acts committed during the period known as the "Events", including the hostage-taking in Ouvéa. The Accords also provided for the Territory to be divided into three provinces (South, North and Loyalty Islands) with each having broad powers, the implementation of a policy known as geographic rebalancing (favouring the North and the Loyalty Islands) and social/cultural rebalancing (the "400 cadres", 400 managers, training scheme)[3], and also substantial investments (Koné-Tiwaka coast-to-coast road). An apportionment formula ensured that the less developed North and Loyalty Islands Provinces received higher budgetary allocations than the more developed South Province. A clause, which was kept secret, made provision for the sale of the Société minière du Sud Pacifique (SMSP), owned by Jacques Lafleur, to North Province separatists (1990). The main risk was that the Accords only represented a truce because neither side gave up on their goal: the FLNKS (backed since 1988 by the Melanesian Fer de lance campaign group for New Caledonian independence) wanted a sovereign Kanaky, while the RPCR wanted New Caledonia to remain within France. When Lafleur and Tjibaou returned to Noumea, they had a hard time convincing their supporters of the merits of the agreement. The only immediate breakthrough was the return of civil peace to allow people to vote freely for self-determination in 1998, the electorate being restricted to "people concerned in the future of New Caledonia" (Kanak, "victims of history" and French citizens in residence since before 1988). The fact that this provision contravened the principle of equal rights for all French citizens was the reason why a French national referendum was held on 6 November 1988 to ratify the Matignon-Oudinot Accords. Despite a high rate of abstention (60%), 80% of French citizens (but only 57% of New Caledonian voters) approved the project. A majority of South Province residents voted "No" while, within the FLNKS, the FULK rejected the Accords. The following year, while on a visit to Ouvéa on 4 May 1989 to attend the end-of-mourning ceremony for the separatists killed on 5 May 1988 at Gossanah, Jean-Marie Tjibaou and Yeiwéné Yeiwéné were assassinated by Djubelly Wea, an extremist opposed to the Matignon Accords, who was himself then shot by one of Tjibaou's bodyguards.

On 12 July 1989, following a year under direct administration by the French government, the "Rocard Status" came into effect, with three new provinces led respectively by Jacques

3 Appendix 2 of the Matignon-Oudinot Accords provides that "in order to rebalance the sharing of positions of responsibility, a major management training scheme, particularly for Melanesian managers, must be implemented as soon as possible". The "400 cadres" scheme was launched in 1989.

Lafleur (South), Léopold Jorédié (North) and Richard Kaloi (Loyalty Islands), and a Territorial Congress where 27 out of 54 seats were held by the RPCR. Kanak loyalist Simon Loueckhote became President of the Congress. These political balances (two out of three provinces held by the separatists) were confirmed in the second provincial elections in 1995, but Nidoïsh Naisseline of the LKS carried off the Loyalty Islands Province; the RPCR was left without an absolute majority in the Congress. A Customary Advisory Council was set up, together with the ADCK (Agence de développement de la culture kanak – Agency for the Development of Kanak Culture) which is based at the Tjibaou Cultural Centre, inaugurated on 4 May 1998. Between 1989 and 1995, the ADRAF (Agence de Développement Rural et d'Aménagement Foncier – Rural and Land Development Agency) returned 82,000 hectares to the Kanak people, increasing the land area under their control by 36%. Over this period, the French government transferred very substantial funds to New Caledonia – funds considered by some as furthering the process of emancipation, while others saw them as a sweetener to damp down demands for independence.

Very soon, the issue of exiting the transitional period aroused misgivings. As early as 1991, Jacques Lafleur proposed adopting a consensual solution to avoid holding the self-determination referendum. He advanced several arguments: sparing the separatists a defeat in 1998, avoiding reawakening memories of the "Events". In 1993, the UC appeared to have taken the idea on board and were talking about "negotiated independence". However, many obstacles stood in the way, including the "*préalable minier*" (mining pre-requisite) condition laid down by the separatists. The Bercy Accord (February 1998) finally resolved the *préalable minier* condition by providing for the construction of the North Plant, on the basis of the SLN and SMSP exchanging the Koniambo massif (allocated to the SMSP) and the Poum massif (allocated to the SLN). Despite starting talks from very different positions, an agreement was finally signed on 5 May 1998 in Noumea by Lionel Jospin (Prime Minister), a loyalist delegation led by Jacques Lafleur (RPCR), and a separatist delegation led by Roch Wamytan (FLNKS). The Noumea Accord once again gave New Caledonia a transitional status within the French Republic. The Accord recognized the specific legitimacy of the Kanak people, called for the building of a common destiny and introduced a New Caledonian citizenship based on a restricted electorate and granting priority access to local employment. The Customary Senate replaced the Customary Advisory Council. The Accord was submitted to the people of New Caledonia for approval by referendum; only French citizens settled in New Caledonia prior to 1988 were entitled to vote in the referendum, which served as a replacement for the vote on self-determination. Turnout on 8 November 1998 reached 74%, with almost 72% of voters in favour of the Noumea Accord. For a period lasting 20 years, New Caledonia ceased to be an Overseas Territory and became a *sui generis* (of its own kind) Collectivity of the French Republic, a federated-type entity composed of the union of its composing provinces. Sovereignty over the territory of New Caledonia was shared by France and New Caledonia. The 3 provinces have broad powers and are elected for 5 years via a one-round list-proportional representation system by an electorate composed of the citizens of New Caledonia. The Congress, also elected for 5 years, is composed of provincial elected representatives. It passes "Country Laws" applicable in New Caledonia (legislative power). Executive power is vested in the government of New Caledonia, which is elected by the Congress and operates on a collegiate basis. During the term of the Noumea Accord, the French government gradually and irreversibly transfers powers to New Caledonia, contributing financial aid to enable the exercise of such powers. The rebalancing policy remains in application.

CONCLUSION

More than 60 years after New Caledonia exchanged the status of colony for that of an Overseas territory, the decolonization of New Caledonia remains incomplete and the 1998 Noumea Accord marks only the beginning of a new stage, the outcome of which, even on the eve of the third 2021 referendum on accession to full sovereignty, no-one is in a position to predict. Since 1946, the decolonization process has experienced many setbacks and reversals, until the emergence of Kanak nationalism moved the goalposts and gave clarity, at least outwardly, to the debate. The Matignon-Oudinot and Noumea Accords set an irreversible process in motion, a process entrenched in the constitution of the Fifth Republic since 1998, but which continues to divide the people of New Caledonia into two camps: those for whom independence is the only possible outcome, and those who believe that the country's future can only be decided by a majority vote, thereby leaving the door open to remaining within France. Since 1988, New Caledonia has been left hanging, particularly from the political and institutional standpoint, although this has not prevented the country from pursuing its own economic development and social transformation. But, as long as its institutional future remains unclear, how can the society of common destiny called for in the Noumea Accord be built? Indeed, it would not be unreasonable to see the Accords both as a tool and as a brake when it comes to building social cohesion – the concept of "living together" – on new decolonized foundations. Since 1988, New Caledonia has been at peace, but this peace remains fragile, troubled at regular intervals by conflicts and tensions which inevitably reawaken memories of the dark years of civil war. The Kanak people may enjoy improved social status but the eagerly awaited rebalancing of society remains incomplete and has failed to banish socio-spatial/geographical inequalities. The multi-community society proposed by the Noumea Accord is still working out how to balance the concepts of the "pivotal role" of the Kanak, a proclaimed multiculturalism and the temptation to look inwards. So New Caledonia continues, for an as yet undetermined period, on a path of unrealized decolonization, endlessly calling into question the country's ties to France without being in a position to make a clean or even covert break, due to the fact that, since the 1980s, there has been no electoral majority in favour of independence.

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THE DEMAND FOR INDEPENDENCE IN NEW CALEDONIA: AN HISTORICAL AND SOCIAL APPROACH

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This article summarizes the significant phases of the demand for independence in New Caledonia. It sets out a step-by-step review of the sequences contributing to a basic, non-exhaustive and structured understanding of the different stages of this demand, to trace the outlines thereof. The question, appertaining to this development, to be posed at this point, is this: how has the demand for independence in New Caledonia evolved in response to changing political and cultural contexts? The period under study therefore begins when the Indigenous Regime was ended in 1946, when the native population officially became citizens of France, and extends to the emergence of a Kanak people (I). Moving on, the focus is an appreciation of the major factors leading the native population to demand their independence, from the 1960s up to the Ouvéa episode in 1988 (II). The article finally outlines the strategy adopted during the period when Accords were concluded with the French government with a view to achieving the ultimate goal: New Caledonia's accession to full sovereignty (III).

I. THE BIRTH OF A DEMAND FOR INDEPENDENCE IN NEW CALEDONIA: THE ACHIEVEMENT OF ACCESSION TO CITIZENSHIP BY THE INDIGENOUS POPULATION (1946-1975)

The pre-requisite of gaining citizenship status (1) gave the indigenous population access to the levers of power prior to taking their first steps towards emancipation (2).

A. From subject status to French citizen status (1946-1957)

1. Release from the Indigenous Regime (1946)

7 September 1946 was a landmark day for New Caledonia's indigenous population. After almost 60 years spent as subjects under French law, living alongside French citizens, they finally saw the Indigenous Regime come to an end. This Regime, employed throughout France's overseas territories, was legally governed by the Indigenous Code[1] introducing a number of obligations and restrictions applying to indigenous peoples, including forced labour involving payment of head tax and restrictions on free movement within the archipelago. The French government vindicated the head tax as a contribution to the

1 See the book by I. Merle and A. Muckle, *L'indigénat. Genèses dans l'empire français. Pratiques en Nouvelle-Calédonie*, Paris, CNRS Éditions, 2019.

maintenance and protection of infrastructure systems established by the colonial authorities. Notwithstanding, the Indigenous Regime, also imposed on Tonkinese labourers[2] who came to New Caledonia to work in the nickel mines, was notorious for its severity.

Opening the way to French citizenship took time. Following lengthy political negotiations, an electoral college comprising 1,042[3] indigenous representatives became conversant with the right to vote in 1946, the year heralding the inclusion of the indigenous population in the representative democratic process. They were then known as "canaque", at the time a pejorative term.

2. Initial overtures by partisan factions (1946-1957)

At the time, given the international climate prevailing in the 1940s, the Communist Party was fairly well established in New Caledonia and was quick to reach out to this new electorate of potential voters. Meetings were organized and leaflets distributed in native reserves to raise awareness about living conditions and the need for Kanak to assume control of the areas they lived in. Ideas spread quickly and appealed to this prospective electorate. A look at how the New Caledonian Communist Party framed their rhetoric at the time helps in understanding the message put across:

> *If it is really true* [...], *that in the midst of war, at the conference of Governors held in Brazzaville, the provisional government of the French Republic decided, as soon as hostilities ceased, to grant citizenship and every freedom to the indigenous peoples of its colonies, it is unacceptable to go on making people take exams to enable those taking advantage of indigenous peoples to hold us back in acquiring the freedoms to which we are fully entitled. There are people living in Brittany, Corsica, etc. who are French citizens and can vote even though they cannot read or speak French. In New Caledonia, all indigenous people read and speak French. So all indigenous people must have the right to vote without taking an examination.*[4]

The churches, who had been teaching the indigenous people (denied access to public schools) since the start of colonization in New Caledonia, were quick to grasp the dangers of the "communist threat" within the Kanak reserves. They threw themselves into a real "witch-hunt" with overtones of McCarthyism throughout the territory.[5] For maximum anti-communist efficacy, the churches established two key structures to assimilate this new electorate. The Catholic Church founded the Union des Indigènes Calédoniens et des Amis de la Liberté dans l'Ordre (U.I.C.A.L.O) and the Protestant Church set up the Association des Indigènes Calédoniens et Loyaltiens Français (A.I.C.L.F). Employing a variety of strategies, both organizations were

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2 See A. Pitoiset and C. Wéry, 2009, *Mystère Dang*, Paris, Éditions Le Rayon Vert.

3 In I. Kurtovitch, 1997, "Sortir de l'indigénat : cinquantième anniversaire de l'abolition de l'indigénat en Nouvelle-Calédonie", with an introduction by Jean Guiart, *Journal de la Société des Océanistes,* no. 105, p.134.

4 *Ibid,* p.133., Precise references by the author himself: Centre des Archives d'Outre-Mer, série affaires politiques, carton 389. "Cahier des revendications indigènes n° 2 au grand Parti communiste français sous couvert du Parti Communiste Calédonien", dated Noumea 3 June 1946, signed by "secretary" Népounya Némia and "General Secretary" Mme Jeanne Tunica y Casas. The statement was forwarded on 17 July to Marius Moutet by the Communist MP Gabriel Citerne.

5 See the piece by I. Kurtovitch, 1997, *Aux origines du FLNKS, l'U.I.C.A.LO. et l'A.I.C.L.F. (1946-1953)*, Papeete, Éditions Île de Lumière.

successful in capturing the indigenous electorate and averting the communist "threat". This was due to the program, adopted by both organizations, focussing on improving so-called second-generation rights[6] in the Kanak reserves. Their political project basically involved promoting improved economic and social conditions in the areas set aside for indigenous people. Measures relating, for example, to health and hygiene issues and sports activities in the native reserves reflected the key concerns of these two faith-based organizations.

In 1953, the two organizations decided to merge under the umbrella of the "Union Calédonienne" electoral list for the New Caledonia General Council elections. The list, headed by Maurice Lenormand, gained the majority of seats and, for the first time, made the indigenous community players in the representative democracy stakes. The UC party motto "Two Colours, One People"[7] struck a significant chord. An excerpt from a speech given by Evanor de Greslan at a Party Congress held in Tiaoué[8] in 1963, cited by the historian Olivier Houdan, is particularly enlightening regarding the rationale for these Europeans' interest in the indigenous community:

> *To be New Caledonian, we ethnic New Caledonians have no need for denial, instead we need to repudiate: we need to cease conducting ourselves as descendants of colonialism. We must renounce the old habits of the colonial period, disavow the advantages and privileges assumed by the colonizer, we must refuse to let ourselves embody the final vestiges of colonialism in New Caledonia.*[9]

A new era was coming to New Caledonia.

B. From the major reforms in favour of autonomy to the demand for independence (1957-1975)

1. From the wave of change represented by the Defferre outline law...

In the end, 1956, rather than 1946, was the year which heralded a new era in New Caledonia. Until then, the 1,042 indigenous individuals entitled to vote, representing an electorate comprising dignitaries, private school teachers, catechists, Protestant pastors, lesser chiefs, grand chiefs, and their descendants, made up only 10% of the indigenous population of voting age[10]. In 1956, all indigenous individuals of voting age[11] gained the right to vote. This meant the electoral balance was upended since the European electorate was now outnumbered by the indigenous electorate. Universal suffrage was introduced in New Caledonia under

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6 French constitutional law evokes first generation human rights, which are physical and intellectual rights. The right to vote is one of them. They chronologically precede second-generation rights - socio-economic rights associated with the post WWII period. Third generation rights are more closely allied with the principle of solidarity and, in France, are associated with the second half of the twentieth century and the start of the twenty-first century. Thus, as far as New Caledonia is concerned, there are first generation rights which only came into effect in the mid twentieth century. The so-called second generation rights deriving from the preamble to the 1946 Constitution would also be gradually implemented throughout all regions of New Caledonia.

7 Union Calédonienne (official website), contribution by historian Olivier Houdan under the heading "1er Congrès de l'Union Calédonienne".

8 In the municipality of Koné.

9 *Idem.*

10 I. Kurtovitch, *Ibid*, p.134.

11 The Electoral College is now open to women.

a decree dated 22 July 1957 and entered into effect for the first time on 6 October 1957 for the territorial assembly elections. As noted by Ismet Kurtovich: "The number of Melanesian voters – 13,725 – was on a par with the number of European voters – 13,824".[12] It was therefore the Defferre outline law which had a game-changing influence on future elections in New Caledonia. The Union Calédonienne party played a decisive role from the time it was officially founded in 1956.[13] Comprising both European and Kanak party members, the UC advocated reform through a commitment to greater autonomy for New Caledonia. In fact, at that time, the desire for independence had not yet made itself felt, as evidenced, for example, by the fact that 98.12% of New Caledonia's entire electorate voted in favour of the 1958 Constitution of the Fifth French Republic. Voting against the Constitution, like Guinea in West Africa did, was then a way of gaining unequivocal independence. Since the Union Calédonienne chose to eschew this path and to promote autonomy, the party thus put its weight behind reforms and improving the living conditions of indigenous communities.

2. … to the Kanak awakening

The late 1960s witnessed the emergence of a new phenomenon. The first indigenous students to gain their *baccalauréat* (high school diploma) set off to pursue university studies in France and rubbed shoulders with people with decidedly left-wing convictions. They read and studied books dealing with socialist, extreme left-wing and anti-colonial ideas. When they returned[14] to New Caledonia for good or during university vacations, they began discussing ideas with young people from varying backgrounds with a view to transposing the knowledge and insights gained in France onto the realities of their native country. An anecdote is often cited as the catalyst ushering in a new chapter in New Caledonia's history. It is worth giving a brief account of the incident. Fote Trolue, a student who was to become the first Kanak judge, went to a restaurant in the Baie des Citrons[15] with a relative. They sat at a table and waited for ages but were never served. As a result, on 23 August 1969[16], they decided to draw up a pamphlet in French, Drehu[17] and Nengone[18] which they handed out to people in their respective social networks, openly denouncing the discrimination they had suffered. To ban distribution of the pamphlet and have its protagonists imprisoned, the administrative authorities dredged up a 19th decree prohibiting the use of indigenous languages. On 2 September 1969 and the following days, Nidoïsh Naisseline is arrested as well as Fote Trolue and other protagonists of the distribution of the pamphlet which causes important riots in the city of Nouméa. At an evening event held in the Customary Senate to celebrate the 50th anniversary of the distribution of this iconic pamphlet, New Caledonian historian Louis-José Barbançon declared

12 *Ibid,* p.135.

13 In O. Houdan, "Le congrès constitutif du Mouvement d'Union Calédonienne", *Union Calédonienne* [official website], "Le 1er congrès UC", September 2006, online: http://unioncaledonienne.com/?page_id=1035 (consulted in August 2020).

14 See D. Chappell, 2013, *The Kanak Awakening; The Rise of Nationalism in New Caledonia*, Honolulu, Pacific Islands Monograph Series, p. 289.

15 W. Kotra, 2016, *Nidoïsh Naisseline. De cœur à cœur*, Papeete, Éditions Au vent des Îles, p. 119-120.

16 D. Chappell, 2017, *Le Réveil Kanak. La montée du nationalisme en Nouvelle-Calédonie*, Presses Universitaires de la Nouvelle-Calédonie, PUNC, et Éd. Madrépores, p.113.

17 Language spoken in the islands of Lifou and Tiga.

18 Language spoken in the islands of Maré and Tiga.

"after 2 September 1969, nothing will be ever be the same!".[19] The spontaneous genesis of the Foulards Rouge movement signalled what is commonly referred to as the Kanak awakening.[20] Young activists held demonstrations in and around Noumea to denounce the living conditions of indigenous communities. Moreover, these indigenous communities now freely proclaimed their identity as "Kanak". There is some ambiguity as to the origins of the term "Kanak": it may derive from a Hawaiian word meaning "man" and it may also be traced back to one of the founding ancestral myths of the clans living in the north of the Main Island - the myth of the first man, Teâ Kanaké, so often evoked thereafter by Jean-Marie Tjibaou. One thing is certain, these young activists were unequivocally rebelling against and reversing the stigma of an initially pejorative appellation. It is true that the term "canaque", which had been used to designate the indigenous community, carried negative and colonial overtones.[21] The way forward therefore necessarily involved gradually turning an insulting term into a mark of indigenous self-affirmation. The idea of replacing the letter "c" with a "k" also served as a means of asserting an essential difference, in much the same way as the "Pacific Way" movement envisioned and advocated by Fijian Prime Minister Ratu Sir Kamisese Mara[22], who saw the Pacific peoples as bringing a different approach and world view to the international scene.

Various groups formed to carry the protest movement to every corner of the territory: Groupe 78 in the Main Island and the Atsai group in Ouvéa, the Ciciqadri group in Lifou and the Wayagi group in Maré. Initially, these groups were not really organized and instead focussed on working on the ground to raise awareness amongst Kanak communities and gaining their support for the challenge to a form of local "apartheid" representing a relic of the Indigenous Regime. The indigenous community needed to open their eyes to the conditions they were living in, and then take action to get things to change at once. A lengthy series of activist arrests followed each protest initiative. At a press conference in Noumea in January 1975, the Groupe 78 came out officially for independence. A few months later, on 9 September 1975, Yann Céléné Uregei of the Union Multiraciale (UM) followed in the footsteps of the young activists and made a speech for independence in the Territorial Assembly. Some key phrases should be included here:

> *Mr. President,*
>
> *Never again will the French Government be able to say that no-one is demanding independence in New Caledonia. Eleven Melanesian elected representatives, including the New Caledonia MP, and five groups of young Canaques have approved in a joint press statement the commitment to independence officially proclaimed by the Union Multiraciale.* [...]
>
> *We have rejected assimilation by proclaiming Canaque Independence, which can alone ensure true recognition of the Canaque people's existence and their own cultural identity.* [...]
>
> *The Canaque people can only grow and prosper on the ruins of colonialism.*

19 Personal notes.

20 Term borrowed from the name of the journal run by these young people.

21 For example, the "Canaques" were exhibited in the (infamous) human zoo at the famous Paris Universal Exhibition until 1931.

22 See Ratu Sir K. Mara, 1997, *The Pacific Way: A Memoir*, Honolulu, University of Hawaii Press.

The demand for independence was now being pushed by some political groups with "Kanak affiliations". The influence of Frantz Fanon can be clearly seen in the language used in the speech.[23] After being colonized, the necessary corollary for the indigenous people was now self-decolonization, a phase necessarily characterized by the demand for independence.

II. THE HEIGHT OF THE DEMAND FOR INDEPENDENCE IN NEW CALEDONIA: A STRATEGY FOR EACH BARGAINING CHIP (1975-1988)

The first aspect to be considered as a basis for this demand is the official establishment of a Kanak people who are necessarily rooted in their land and enduring values (1). This means they can then come together to form a national liberation movement and tailor their strategies to respond to multiple, complex factors (2).

A. The assertion of an established Kanak people: identity and property related demands (1975-1984)

1. The advent of the demand for independence (1975-1979): assertion of identity and claims to land

From the Kanak point of view, claims to land and assertion of identity are inherently bound together. It should be kept clearly in mind that, in New Caledonia's Main Island, prior to and during the Indigenous Regime, the administrative authorities implemented a cantonment policy allowing them to seize land in the "public domain" so they could grant productive land to settlers encouraged to build a life in New Caledonia, or to some categories of "convicts" who had served their sentences. Under this cantonment policy, customary lands belonging to indigenous communities were reduced to 7% of New Caledonia's overall surface area by 1904.[24]

Accordingly, in the 1970s, young people involved in these various movements began claiming land confiscated from clans under the cantonment policy or during forced exiles imposed in the wake of various rebellions.[25] This is how Jean-Marie Tjibaou defined the relationship between a clan and the land to which the clan belongs:

> *The significance of territory for a particular tribe cannot be overemphasized. Indeed,* [...] *the Melanesian people see their natural space as not simply Mother Earth or land steeped in the clan's past history. It is one of the building blocks creating society as a whole. Land seizures and redistributions have not only displaced tribes but have fundamentally torn them apart. A clan which loses its territory loses its personality. It loses its ancestral mound, its sacred places, its*

23 Frantz Fanon wrote his famous book *The Wretched of the Earth* in 1961. Written at the height of the Algerian war for independence, Frantz Fanon's classic text has inspired many key players on New Caledonia's pro-independence political stage. See in this regard, for example, E. Banaré, 2017,"Une pratique Kanak de Fanon. Nidoïsh Naisseline et les Foulards rouges", *Francosphères*, vol. 6, n°2, p.141–162.

24 Interview with Michel Naepels, October 2018, "La Nouvelle-Calédonie : Une colonisation pas comme les autres", L'Histoire, *www.lhistoire.fr*, online: https://www.lhistoire.fr/la-nouvelle-cal%C3%A9donie-%C2%AB-une-colonisation-pas-comme-les-autres-%C2%BB (consulted in June 2020).

25 The most noteworthy rebellions took place in 1878 and 1917.

geographical and also sociological reference points. The clan's whole universe is overturned, the network of relationships with brothers, with the associated protocol is plunged into overall confusion.[26]

So land claims were basically driven by the profound need to reconnect with the clan's ancestral "mound" (central to clan identity). The French government paid heed to these claims and in 1978, under the "Land Reform" also known as the "Dijoud Plan"[27] set about reforming land distribution in New Caledonia. The strategy was to buy back land from the descendants of settlers in order to hand it back to the various clans declaring their claims to the land. This approach was extensively used and is still implemented via the Agence de Développement Rural et des Affaires Foncières (Rural and Land Development Agency).

In 1975, a major event contributed to giving official status to the claim to Kanak identity by virtue of the "constant reformulation"[28] concept advocated by Jean-Marie Tjibaou, a former priest who had renounced his priesthood. As a sociology graduate, he believed that, at this stage of demands by indigenous peoples, the best strategy *a priori* would be to make identity issues the base for activism before *a posteriori* moving gradually towards open demands for independence. As long as there was no official recognition of the Kanak people by the other occupants of the archipelago, their demands could and would not be heard. This was the spirit which inspired the Melanesia 2000 Festival, a celebration of Kanak cultural traditions open to the general public, held in Noumea on the current site of the Tjibaou Cultural Centre, later named after the festival's figurehead. Although, at the time, not all activist groups[29] approved of the Festival being held, it went ahead and lasted five days[30], bringing together a total of 2,000 key players in Kanak affairs, and attracting nearly 50,000 visitors. Jean-Marie Tjibaou saw holding the Festival as of paramount importance; he defined it as expressing the resilience of the Kanak people: "People have to see that we have a cultural tradition and we have to show it off, if we do not show it off, people will think we do not exist"[31]. This was the first time that ancestral Kanak customs, traditional dances and songs had been performed and staged for an audience made up of the general public. Reversing the stigma[32] was now official and the Kanak people were out in the open.

At the same time, following their awareness-raising efforts in the field, the Foulards Rouges group of Loyalty Island activists and the Groupe 78 of Main Island activists, decided to up their demands and arranged to meet up in the Amoa Valley[33] on 27 May 1976. The meeting resulted in the founding of the Parti de Libération Kanak (Kanak Liberation Party - Palika), which, from its inception, adopted a position of independence of New Caledonia.

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26 J-M. Tjibaou, 1996, *Présence Kanak*, Paris, Odile Jacob, p.69. Extract from the *Journal de la Société des Océanistes*, no. 53, vol. 32, december 1976, p.281-292.

27 In reference to Paul Dijoud, Secretary of State to the Minister of Territorial Development and Planning, responsible for planning and development from 29 March 1977 to 8 June 1977.

28 Concept borrowed from Leon Trotsky, author of the book on political theory "The Permanent Revolution".

29 The "Groupe 78" in particular distributed pamphlets aimed at dissuading the public from visiting or taking part in the Festival.

30 Specifically from 3 to 7 September 1975.

31 G. Dagneau, *Tjibaou. La parole assassinée*, Aaa Productions, 1998, documentary 52 min.

32 See E. Goffman, 1963, *Stigma: Notes on the Management of Spoiled Identity*, Touchstone.

33 In the municipality of Poindimié to the north-east of the Main Island.

1977 was a particularly intensive year in terms of New Caledonian politics, with a significant shuffling of the cards in the political "game". A new generation of young Union Calédonienne politicians, including Jean-Marie Tjibaou, Eloi Machoro, and Yeiwéné Yeiwéné, were no longer prepared to go along with the party's reformist agenda. At an important UC party congress held in Azareu[34] on 21-22 May 1977[35], a few months after the Palika was founded, they succeeded, via an internal vote, in getting the party to adopt the new position they endorsed: pro-independence. The activists attending the congress voted for this new party commitment to New Caledonia's independence. Autonomy was henceforth merely "a first step towards independence".[36] A pro-independence Union Calédonienne had made its entrance. This policy shift was opposed by Europeans and activists like Jean Pierre Aifa and Jean Lèques, who left the party to set up their own political alliances. In 1977, Jean Pierre Aifa and other activists founded the Union de Nouvelle-Calédonie which, in 1979, became the well-known Fédération pour une Nouvelle Société Calédonienne (FNSC), merging several political groups. The cards having been reshuffled, Jacques Lafleur, together with other anti-independence activists, founded the Rassemblement pour la Calédonie (RPC) in 1977, to represent the loyalist cause. In 1978, the RPC became the prominent Rassemblement pour la Calédonie dans la République or RPCR, a party deeply opposed to New Caledonian independence.

In 1979, with a view to securing a strong electoral base, particularly given that the ballot admitted no scattered voting, the five existing pro-independence parties decided to join forces under a single party list promoting themselves as a brand-new Front Indépendantiste. The parties comprising the "Front" were the Union Multiraciale (UM), the Union Progressiste en Mélanésie (UPM), a party formed after a split from the UM, the Parti Socialiste Calédonien (PSC), the Parti de Libération Kanak (Palika) and the Union Calédonienne (UC). The idea behind this "Front" was to put up a joint list of candidates for the 1979 territorial elections in order to win as many seats as possible.

2. The pro-independence parties in power (1979-1982): learn, put into practice, and reform

The territorial elections of 1st July 1979 resulted in political surprises. The united front strategy paid off for the now officially established independence movement. The "Front Indépendantiste" gained a total of 14 seats. The FNSC[37] gained 7 and the Rassemblement Pour la Calédonie dans la République (RPCR) list, comprising Jacques Lafleur's Rassemblement Pour la Calédonie, gained 15. In the wake of issues inherent to its alliance with the RPCR, the FNSC decided to form a new partnership[38] with the FI, resulting in the two parties taking

34 In the municipality of Bourail.

35 I. Leblic, "Chronologie de Kanaky Nouvelle-Calédonie (1774-2018). Version revue et augmentée en 2018", *Journal de la Société des Océanistes*, 2018/2, no. 147, p. 538. Available online at: https://www.cairn.info/revue-journal-de-la-societe-des-oceanistes-2018-2-page-529.htm

36 *Idem*.

37 See the lecture given by O. Fandos, "L'émergence d'une troisième voie : la FNSC (1977–1979)", Thursday 17 May 2018, at the ADCK–Tjibaou Cultural Centre (media library meetings), in the Agence de Développement de la Culture Kanak (Agency for the Development of Kanak Culture) Media Library, *www.mediatheque.adck.nc*, available online at: http://mediatheque.adck.nc/ (consulted in July 2020).

38 See the review by L-J. Barbançon, "Il y a vingt-cinq ans : le gouvernement Tjibaou" (18 juin 1982-18 novembre 1984), Noumea, ADCK–Centre culturel Tjibaou, Cahiers des conférences de l'ADCK, 2008.

control of a Government Council which would be known as the "Tjibaou Government", Jean Marie Tjibaou serving as Vice-Chair. This gave the pro-independence movement the chance to implement its first social reforms, including introducing an income tax, a genuine social revolution in New Caledonia. Concurrently, the movement experienced its first blows with the assassination of the Union Calédonienne Secretary-General Pierre Declercq, the identity of his assassin remaining unknown to this day.

3. From the Nainville-les-Roches Round Table discussions to the establishment of a National Liberation Movement (1982-1984): instituting a new balance of power to attain independence

Following the mysterious slaying of Pierre Declercq, fresh disruption broke out in 1983 in the Koindé Oui-Point[39]area. The local inhabitants protested the operations of a sawmill polluting creeks and rivers and threatening food supplies. Riot police were dispatched to the scene to restore order following a blockade of the sawmill. Two riot police were killed during the operation and most of those involved in the blockade were arrested and held in custody. Tensions were running high in June 1983 when Secretary of State for Overseas Departments and Territories Georges Lemoine summoned all New Caledonia's political forces to a meeting in Paris: the Front indépendantiste, the RPCR, the FNSC and the Council of Grand Chiefs, with a view to cooling tempers all round and putting everyone's demands on the table. The meeting would lead to a joint declaration setting out three key points. The first broke new ground by asserting the ambition to abolish colonialism and by recognizing the existence of a Kanak people in New Caledonia. The second significant point covered by this joint declaration stated the right to self-determination of this Kanak people and of other communities long established on the island. The third point committed the French government to supporting New Caledonia on its chosen path. *In fine*, the RPCR was the only party which refused to sign the document. The significant gains achieved by the pro-independence camp generated a great deal of hope. However, the non-ratification of the document by one of the parties meant the joint declaration lacked legitimacy and limited its effect.

Following this failure, Georges Lemoine tried a fresh approach in 1984 and proposed a status for New Caledonia. This time, the proposed status found favour with none of the parties. Accordingly, on 24 September 1984, the various pro-independence players met in Noumea to generate fresh impetus and join forces to form a national liberation movement: the Front de Libération Nationale Kanak et Socialiste. The idea was to combine their efforts and move beyond exclusively pro-independence party electoral ambitions. The main challenge consisted in breaking free from institutions by bringing together all pro-independence stakeholders: political parties and also a trade union, the Union Syndicale des Travailleurs Kanak et des Exploités (USTKE), and representatives of civil society such as the Groupe des Femmes Kanak En Lutte (GFKEL) and the Comité des Terres[40]. The Palika rejoined[41] the

39 Area located in the municipality of La Foa.

40 Committee established in 1980 in the north-west of the Main Island to organise land occupations with a view to continuing action on the settlement of Kanak land claims.

41 It left the FI in 1980 due to strategic differences: "1980 was also the year in which the Palika Congress held in Temala clarified its ideological standpoint and declared its commitment to socialism, defending the interests of all those suffering exploitation in the struggle for national liberation, and for withdrawal from the FI whose electoral ambitions had become clear, and for a front united from the outset. This clarification led to Naisseline,

movement through the FLNKS, although this occurred later, since before making such a decision, the party first needed to meet in congress to assess the stance taken by the party's activists and to define a common way forward. The Libération Kanak et Socialiste[42] (LKS) was the only party not to join the Front. In the opinion of the LKS leader, Nidoïsh Naisseline, grand chief of the Guama district on the island of Maré, if the aim was to break with official institutions, all key players and activists were under an absolute obligation to resign from their government and public employee posts as well[43]. Given that a large number of Front members and activists were employed by New Caledonia's various administrative bodies, this was not really a workable suggestion.

B. Endless strategies in an unstable socio-political climate (1984-1988)

1. Conceptualizing and achieving "Kanak Socialist Independence": a new road map for the independence movement (1984)

The Front's first well-known and significant action was therefore the active boycott of the first territorial elections provided for under the status[44] proposed by Georges Lemoine, held on 18 November 1984. The Front's key aim was to frustrate the elections and establish a balance of power with the French government. Union Calédonienne activist Eloi Machoro made the following speech:

> *It will be a hard fight. We have always chosen to fight with words in a way which does not stray too far from French law. You should be aware that, on 18 November 1984, if we are to succeed in actively boycotting the elections, you may have to forget about morality, you may have to forget about the law or if you mustn't forget morality or French law, you must be ready to make a choice and, in making your choice, you cannot let yourself be influenced by personal interests or individual interests* [...] *After 18 November 1984, nothing will ever be the same again in New Caledonia.*[45]

The front set up "combat committees" in each municipality of New Caledonia and used a number of strategies to prevent voters from going to the polls. Ballots were burned and ballot boxes damaged, as shown by the famous and dramatic[46] photograph of Eloi Machoro using his *tamioc*[47] to hack apart the ballot box at Canala townhall polling station.

No longer recognizing the existing public institutions, the FLNKS established its own government on 1st December, the "Gouvernement Provisoire de Kanaky", headed by Jean-Marie Tjibaou and a number of ministers including Yann Céléné Uregei as Minister of Foreign Affairs, André Gopoea as Minister of Internal Affairs, Communication and Land

Bailly and others leaving the party. They were later to found the LKS, Libération kanak socialiste, *in* P. Néaoutyine, 2005, *L'indépendance au présent. Identité kanak et destin commun*, Paris, Éditions Syllepse, p.34.

42 Political party formed following a split with the Palika during a Congress in Temala (Voh) in 1979. See previous citation.

43 R. Guiart, 2001, *Le feu sous la marmite,* Noumea, Le Rocher-à-la-Voile, coll. "Documents pour servir à l'intelligence du temps présent", 5, p.231-232.

44 Status defined by a law passed by the National Assembly on 6 June 1984.

45 See H. Mokaddem, 2011, *Le discours politique Kanak*, Koné-Nouméa, Les éditions de la province Nord, p.67.

46 *Ibid*., p.69.

47 A small axe commonly used in New Caledonia.

Issues, Eloi Machoro as Minister of Security and Yeiwéné Yeiwéné, spokesman and Minister of Finance and National Solidarity. This period saw the rise of social tensions. Activists from various combat committees used makeshift barricades to blockade roads. On 10 December 1984, two of Jean-Marie Tjibaou's brothers were killed in an ambush set up at Waan Yat hamlet by "Caldoches[48]" from the Hienghène region. Ten Union Calédonienne activists lost their lives that evening on their way back from a meeting in Hienghène. The very next day, Jean Marie Tjibaou ordered the FLNKS activists to remove the barricades.

All the same, Eloi Machoro, who was behind a great deal of dissident activity in and around Thio, led successful acts of sabotage, including disabling several gendarmerie Pumas,[49] without resorting to any of the firearms at his disposal. As a result of such guerrilla tactics, many European families, as well as those of "Caldoches" and other communities working in the mines, moved away from the mining village of Thio. There were strategic reasons for targeting the village since Thio was New Caledonia's major nickel mining centre and economic hub. While planning to extend his guerrilla operations to La Foa and the West Coast, Eloi Machoro was "neutralized"[50] by the GIGN[51] counter-terrorism unit, along with his right-hand man Marcel Nonnaro, on 12 January 1985.

For reasons of State and to restore calm and order in the territory, a state of emergency was decreed by the High Commissioner, Edgar Pisani, newly appointed to New Caledonia. The measure gave the French government the legal power to restrict the freedom of assembly and movement, and to imprison any person in breach of the Law. It also allowed the French government to proceed with the strategy known as "nomadisation"[52], which involved establishing mobile army squadrons in every area in New Caledonia, tasked with patrols and checks designed to ensure public safety. In essence, the strategy was an effective means of checking up on activities of various kinds within the reserves.

Over and above the brief lifespan of the various plans of action set in motion over this short period, the establishment of the FLNKS and the creation of a "Gouvernement Provisoire de Kanaky" gave prominence to the concept of "Indépendance Kanak Socialiste" (Kanak Socialist Independence – IKS) as a vital goal to be achieved. This concept was described in detail in the draft Constitution drawn up in 1986 by a working group appointed by the FLNKS political bureau but the content was made more specific. Accordingly, Article 7 of the draft specifies that:

> *Socialism is the guiding principle of the Republic's economic and social policy. It means guaranteeing, organizing the power of workers over the possession and management of the means of production, according to the terms and conditions defined by law.*[53]

48 Term applied to Europeans born in New Caledonia.

49 French army helicopters.

50 In military language, the term "neutralisation" can imply eliminating a target's capacity for harm. In this particular case, it involved the assassination of the targets identified for the operation.

51 The "neutralisation" took place on Dogny plateau near the village of La Foa. See R. Guiart, 2001, p.278-281.

52 The term derives from the "nomadisation" strategy used Algeria by the French military prior to the country gaining independence in 1962.

53 Front de Libération Nationale Kanak et Socialiste, "Projet de Constitution de la République Kanak", Noumea, self-published,1986.

And Article 9 states that:

> *Forward planning shall be the preferred means of implementing the economic and social policy of the Republic. In this regard, the Plan shall be the overriding rule for proprietors, managers, and owners of the means of production, as defined by law. Planning shall be developed and implemented in collaboration with workers, public authorities and organizations playing a role in social life, in accordance with the procedures laid down by law.*

These articles provide insight into the ideological thinking of leading FLNKS players. Establishing a plan for the economy and concentrating the means of production in the hands of the state are also concepts reflecting the Kanak vision of the common good. Viewed in this light, the land is not owned by humanity. On the contrary, humanity is dependent on the land. Humans can obviously make use of the fruit of the land but only in keeping with the aim of furthering the common interest. Instead of profiting private or vested interests, the whole community thus reaps the benefits. No one individual should accumulate wealth based on the common good. This IKS thinking was frequently reflected in institutional practice when pro-independence leaders had gained hold of the political and economic levers to implement their ideological aims.

2. The cultural, non-violent strategy of the FLNKS, and the importance of international relations: influence in educational and diplomatic terms (1985-1986)

The state of emergency and the neutralization of Eloi Machoro led the FLNKS to embrace new strategies at both local and international level. Firstly, it should be noted that institutions were reconfigured following the November 1984 – January 1985 period "troubles". Four regions known as "Fabius-Pisani"[54] regions were created with a view to decentralizing power which, until then, had been concentrated in Noumea. The French government's key aim was to give pro-independence supporters the chance to acquire experience in decentralized power control. Making political concessions also eased tensions, with pro-independence supporters focusing on ways of protesting as institutional insiders. As a result, they agreed to vote in the elections and to play the institutional game. Since Edgar Pisani approved the idea of independence in association with France, the aim also involved exercising power in readiness for coming independence.

In addition to the institutional framework, the independence movement placed much focus on its young people and set up a third avenue within the educational system, an alternative to private and public schools, by way of Écoles Populaires Kanak (EPK).[55] The aim was to educate children from a very young age, not only in the subjects covered by the French national education system but also in their own cultural heritage. The lessons were given by teachers and school parents. In August 1985, the Bwenando newspaper stated that almost 1,500 pupils were being taught in EPK schools. In the words of Simon Naaoutchoué: "teaching Kanak in colonial schools amounts to teaching the victims of exploitation to serve the interests of the

54 Status defined by a law passed by the National Assembly on 23 August 1985.

55 See J. Gauthier, 1996, *Les écoles populaires kanak. Une révolution pédagogique ?*, Paris, L'Harmattan.

exploiters. Teaching Kanak at EPK schools means teaching Kanak to serve the interests of the country according to needs, lifestyle and circumstances".[56]

In 1985 and 1986, the movement also continued moving forward on cultural and identity issues by encouraging its musicians to create a Kanak-specific music genre: Kanéka. Musicians like Gilbert Téin, Moïse Wadra and Théo Menango[57] pioneered the music genre, defining Kanéka as an acronym for "Kanak-born cadence".[58] After the performance of an initial anthem at the 1985 Pacific Arts Festival in Tahiti, a seminar was held in Canala[59] the following year, with a number of musicians getting together to play music blending traditional instruments and contemporary sounds. The "Kanak-born cadence" had taken shape. Kanéka music now provides a platform for airing political views and raising political awareness amongst young people.

This period also gave members of the movement an opportunity to engage with the international community. They approached groups on the left[60] and far left in France; they were also particularly active in seeking international support through Yann Céléné Uregei, Minister for Foreign Affairs. The delegation led by Yann Céléné Uregei was tireless in seeking out contacts in New York and, in December 1986, succeeded, with the support of the Melanesian Spearhead Group member states, in getting a significant majority of United Nations member countries to endorse New Caledonian independence. On 2 December 1986, by 89 votes "for" over 20 "against", the United Nations General Assembly adopted a resolution[61] to place New Caledonia back on the list of non-self-governing territories. Encouraged by this, the national liberation movement submitted a Constitution of the Kanak Republic draft plan, along with its flag, to the United Nations the following year.

Concurrently, the pro-independence movement adopted a new strategy of non-violence which included sit-ins in Place des Cocotiers, picnics held in Noumea's bays, and parades such as the "15 days for Kanaky" march. The Place des Cocotiers sit-in on 22 August 1987 ended when police arrived to forcibly break up the protest and clear the city square.[62] Photos taken by Australian reporters were viewed worldwide and helped alert the international community to ongoing political events in New Caledonia. In the words of Jean-Marie Tjibaou, "the goal we are fighting for is to gain sovereignty. For now, we are adopting this strategy of non-violence, it may achieve results up until independence, but it is limited in time depending on the events we instigate".[63]In 1986, a crucial event occurred in the constitutional history of the Fifth Republic. For the first time, the opposition won a majority in the legislative elections held on16 March. The French President, François Mitterrand, a Socialist Party candidate elected by direct universal suffrage in 1981, remained in power. However, there

56 "Interview with Simon Naaoutchoué", *Bwenando*, no.12, October 1985, p.14.

57 Leader of the Kanak band Yata. Yata is an anagram of "Ataï", figurehead and leader of the iconic 1878 rebellion in New Caledonia. See F. Bensignor, 201, *Kanéka Musique en mouvement*, Noumea, ADCK Éditions, p.37.

58 *Ibid*, p.52-54.

59 More accurately in Nonhoué.

60 Including the Association Information et Soutien aux Droits du Peuple Kanak (AISDPK).

61 United Nations [official website] - "Non-Self-Governing Territories–New Caledonia", online: https://www.undocs.org/en/A/RES/41/41 (consulted September 2020).

62 I. Leblic, *Ibid*. p.545.

63 J-M. Tjibaou, 1996, *Présence Kanak*, Paris, published by Odile Jacob, p. 228.

was a swing to the right in the government formed by members of the new parliamentary majority, and Jacques Chirac took over the reins. Through Bernard Pons, the new Secretary of State for Overseas Territories, France's new central government proposed a new status for New Caledonia, restricting the autonomy granted to the regions by withdrawing powers from them and reassigning such powers to the French government. The new status adopted by the National Assembly, commonly known as the "Pons Status"[64], aroused deep resentment amongst pro-independence supporters, who felt once again cheated by interplay between political majorities with no understanding of local realities. Moreover, the status provided for a self-determination referendum to be held the following year in which any citizen with proof of three years residence in the territory could vote. This condition, which effectively made the Kanak people a minority in their own country, led to a passive boycott[65] by pro-independence activists. At this point in their political struggle, the situation was unacceptable to the pro-independence camp.

3. The descent into violence (1987-1988)

In 1987, a series of events had an unsettling effect on the local political and social situation. The referendum provided for by the "Pons Status" was indeed scheduled and held on 13 September 1987. The option *"I want New Caledonia to remain within the French Republic"* gained 98.3% of votes. This result should, of course, be interpreted in the light of the independence movement's abstention from voting. Another event added fuel to the flames: on 29 October 1987, the Noumea Court of Assizes confirmed the acquittal of the individuals behind the Waan Yat ambush. In an interview given a few weeks after this verdict, Jean-Marie Tjibaou stated:

> *We are now in a self-defence situation. We need to plan how long our policy of resistance will last, together with its eventual outcome, plan and prepare to take actions that will break down the surrounding walls and pave the way to independence. Given the scale of the forces involved, our militant organization in the field must be strong, mobile, ubiquitous. One day, the government will be forced to take us into account, call into question the local and partisan interests it currently defends, and hold a genuine and definitive referendum on self-determination.* [66]

It was in 1988 that political tensions escalated to unprecedented levels. In February, an FLNKS Congress was held in Tibarama[67] to decide on a strategy which would bring down the new institutions set up by virtue of a status endorsed by the result of a referendum whose legitimacy was a matter of dispute. Unsurprisingly, the pro-independence leaders declared that they wanted no part in these new institutions. An initial incident took place at the same time in the same municipality, in the Tiéti Tribe village, where riot police were taken hostage by pro-independence activists. The New Caledonian regional elections and French presidential elections were scheduled to take place shortly afterwards. Discussions during the Congress led to a decision to continue the boycott strategy, i.e. to simply abstain from voting

64 Defined by a law passed by the National Assembly on 17 July 1986.

65 An active boycott aims to frustrate the elections, while a passive boycott simply involves refusing to vote.

66 J-M. Tjibaou, 1996, *Présence Kanak*, Noumea, Odile Jacob, p. 202–203. Excerpt from an interview in Hienghène on 24 December 1987, in *Kanaky*, no. 11 (December 1987 – January 1988), p.4–6.

67 In the municipality of Poindimié.

in the elections. The watchword sent to the FLNKS combat committees was more nuanced: each combat committee was free to decide how to go about frustrating these elections. And so a group of Ouvéa combat committee activists headed for the Fayaoué gendarmerie to hold a peaceful sit-in. The strategy was based on that used by Eloi Machoro – namely to hold sit-ins in public spaces, iconic symbols of the sovereign powers held exclusively by the French government. The situation degenerated when a gendarme newly posted to New Caledonia fired a first shot, and the "peaceful sit-in" ended with the deaths of four gendarmes. Some of the gendarmes were taken to the Watetö cave near Gossanah, and an initially peaceful sit-in deteriorated into a hostage situation. In the context of a period between two rounds of presidential elections, there could be no successful negotiations between the hostage-takers, the FLNKS and the various French government bodies. The Ouvéa cave hostage situation became an electoral issue. The two leading candidates, who were none other than the current French President and Prime Minister[68], were under an obligation to show firm support for the institutions they represented. The order to launch an assault was therefore given, the aim being to bring the hostage crisis to an end before the second round of the presidential elections. The outcome was conclusive and appalling: nineteen hostage-takers and two members of the military were killed.

Facing a cliff edge, the new Socialist Prime Minister Michel Rocard summoned Jean-Marie Tjibaou, representing the pro-independence camp, and Jacques Lafleur, representing the anti-independence camp, to Paris to seek a solution to the conflict. Rocard's message to the two men was the following:

> *This is Saturday evening and my first appointment is at midday on Tuesday. We will work behind tightly closed doors. No-one will leave to give information to anyone else* [...]. *There will be no second meeting, we will take the time we need but we will leave here at peace or at war. I hope it will be peace.* [...]. *I want no-one here to have the slightest doubt that if it really is war, France is ready for war, we can always double military personnel numbers on the spot.*[69]

Compromise was the only alternative open to both sides if they wanted to avoid finding themselves trapped in conflict on the ground, a situation desired by none of those present.

III. THE DEMAND FOR INDEPENDENCE AT THE TIME OF THE ACCORDS: GRADUAL PREPARATION FOR ACCESSION TO FULL SOVEREIGNTY AS PART OF A "DECOLONIZATION PROCESS" (1988– ....)

The Matignon-Oudinot Accords served to engage the peace process in New Caledonia by upholding the principle of rebalancing and of gaining the right to self-determination, with a referendum scheduled for 1998 (1). The Noumea Accord put the official stamp on decolonization by providing for the gradual and irreversible transfer of French government powers to New Caledonia, in accordance with the demand for independence (2).

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68 Namely, François Mitterrand and Jacques Chirac.

69 B. Salama and T. Marie (dir.), "Naissance d'une nation, Culture Infos", Documentary, 2013, 23rd minute. Available online at: http://www.dailymotion.com/video/x2addsj_l-outre-mer-naissance-d-une-nation-2013_people

A. The Matignon-Oudinot Accords and negotiations in preparation for a possible stalemate (1988-1998)

1. Achieving peaceful relations

Michel Rocard's famous phrase, cited above,[70] was indicative of this utilitarian approach to achieving peace. Although the goal was peace, it remained clear that military deterrents were the means of achieving it. In a famous open letter addressed to François Mitterrand, referred to as "Shall we be the last of the Mohicans", Jean-Marie Tjibaou issued the following challenge to the French President:

> *Mr. President, what future do you intend for us? Shall we be the last of the Mohicans of the Pacific region, like there were the last Tasmanians? As you know, the Kanak people have always refused to be considered as an archaeological vestige of world history. They will refuse even more fiercely to be the vestige of French colonial history.* [...] *French public opinion is sensitive to the massacres in Gaza in Palestine. I would ask you to remind the French people that, on their own ground, in a country at the other end of the world which they know as France, circumstances are the same as in the occupied territories.*[71]

Clearly a few tens of thousands of pro-independence activists could not launch a process of armed struggle against the world's third most powerful army on a Pacific island. As from 1988, pro-independence leaders were obliged to adopt a strategy which quickly became a keystone: negotiation. Possessing no military weapons and ill-prepared to take counter action when the need arose, as demonstrated by the Gossanah hostage situation, their only realistic strategy henceforth was, at any cost, to avoid an empty-chair policy. They needed to seize on every seat offered at negotiating tables to achieve progress at every level. It was in this spirit that the Oudinot Accords, following on from the Matignon Accords, were concluded with a view to setting out technical terms and conditions.

2. The "consensual solution" and the "mining prerequisite"

The compromise reached by Michel Rocard, Jean-Marie Tjibaou and Jacques Lafleur was signed on 26 June 1988. Delegations from each party formalized the establishment of three provinces: North, South and Loyalty Islands. Development contracts designed to ensure the practical implementation of rebalancing in New Caledonia were set in place. At the end of this period, a referendum on New Caledonia's independence was to be held in 1998, with voters required to provide proof of ten years residence in the territory.

Jean-Marie Tjibaou was obliged to devote a fair amount of time to convincing activists of the practical common sense of this decision, which meant that activists and political leaders would have time to learn the skills of institutional leadership and thus acquire a close knowledge of how to administer the future independent state. However, when Tjibaou travelled to Ouvéa with Yéiwéné Yéiwéné in April 1989 for the end-of-mourning ceremony for the nineteen

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70 The phrase also features in the documentary by Ch. Belmont, "Les médiateurs du Pacifique", MK2 productions, 1997, 115 minutes.

71 J. Andras, 2018, *Kanaky*, Paris, Acte Sud, p. 27.

activists killed in the assault on the cave a year earlier, both were assassinated by Djubelly Wéa[72], a pro-independence extremist opposed to the Matignon Accords. Although this tragic event rocked New Caledonia, adding one more to the long list of traumatic events suffered throughout the entire period, it did not entail any calling into question of the peace accords.
Very soon, as early as 1992, Jacques Lafleur foresaw the outcome of the referendum to exit the Accords, referring to it as a "sunset referendum", and suggested a "consensus solution" to emerge from the situation in an orderly manner without going through with the vote on self-determination. Lafleur said the result, given the majority of anti-independence voters comprising the electoral body, would be a foregone conclusion. Discussions with the pro-independence movement were set in motion. Nonetheless, as far as the pro-independence camp was concerned, there could be no way out of the accords without the guarantee of access to the mineral resources in the strongly pro-independence North Province, with a view to the construction of a mineral processing plant there. On these grounds, the movement imposed a "mining prerequisite" as a precondition for any future discussions. Consequently, the FLNKS agreed in principle to the signing of a new social contract (the future Noumea Accord), subject to obtaining a guarantee that the North Province would hold the mining titles needed for the successful implementation of its strategy. This strategy began with the purchase by the North Province of the Société Minière du Sud Pacifique (SMSP) in 1989. The aim was to process nickel in New Caledonia instead of simply mining it, thereby putting an end to a situation where Kanak were stuck with mining the nickel while the nickel industry was owned and run by foreign operators. Accordingly, the Bercy Accord[73] approved the exchange of mining titles to the Poum and Tiébaghi massifs held respectively by the SMSP and Société Le Nickel. The fact that the North Province had a 51% majority stake in the SMSP was a major lever driving the strategy. Key player Paul Néaoutyine summarized the strategy as follows:

> *If we are to become actors in the nickel industry, we believe that ore should be processed here. If we are successful, we shall prove, firstly, that we are capable of controlling a crucial national sector of activity, secondly, that rebalancing cannot be achieved solely by French Government development contracts and aid packages without ensuring the creation of sufficient added value here to take over from development funding.*[74]

The strategy remained that of ensuring readiness for independence by demonstrating institutional administration capability to future voters in the self-determination vote.

B. The demand for independence in the Noumea Accord: the gradual achievement of full sovereignty (1998– ….)

1. The common ground for a new accord and the constitution of a new electorate

Common ground having previously been found at Bercy, the Noumea Accord was the natural sequel and was signed on 5 May 1998 between the three traditional partners. It guaranteed

72 He was himself then shot dead by Daniel Fisdiepas, one of Jean-Marie Tjibaou's official bodyguards.

73 "The signatories to the Protocol are the SMSP, Eramet and its subsidiary Société Le Nickel (SLN), the French government, represented by the Minister of the Economy, Finance and Industry, the Secretary of State for Industry, and the Secretary of State for Overseas Territories, and the Territory (New Caledonia), in the presence of the Caisse Française de Développement (CFD)". Sénat.fr official website: https://www.senat.fr/rap/r05-007/r05-0079.html

74 . Néaoutyine, *Ibid*, p. 157.

that New Caledonia would share powers with the French government through the gradual and irreversible transfer of such powers. It also guaranteed the holding of a referendum on independence within a twenty-year timeframe, i.e. before the end of 2018. In economic terms, the pro-independence leaders worked on jurisdictional administration and developing the mining industry in the North. This strategy took the form of systematically acquiring a 51% public ownership stake in mining operations, via the SMSP and by means of a semi-public company. The North Province and the Loyalty Islands Province, both with significant pro-independence majorities, also developed a peripheral economy through two semi-public companies: SOFINOR and SODIL. The idea was to introduce the concept of socialism at institutional level. In this way, the means of production was owned by public institutions, thus preventing the inequalities characterizing previous regimes.

The make-up of electorates was the subject of dispute in the 2000s: the electorate to vote in elections for the provincial assemblies and the Congress of New Caledonia and the electorate to vote in the referendum on self-determination. Regarding the so-called "provincial" electorate, the debate focussed on the date any person claiming the right to become a New Caledonian citizen arrived in New Caledonia. The Noumea Accord provides for a period of ten years residence to make such a claim. However, this provision leaves room for interpretation as to the date from which the ten-year period runs. The anti-independence camp saw this as a "rolling" period, so whatever the date someone arrived in New Caledonia, anyone offering proof of ten years of residence could become a citizen. Meanwhile, the pro-independence camp considered that only people who arrived before 8 November 1998, i.e. before the referendum to approve the Noumea Accord, could become citizens and vote in elections for local elected representatives. They won their case via the 2007 amendment of the Constitution, which restricted the electorate to people who had settled in New Caledonia before 1998. Such restrictions, considered by many as infringements of their right to vote, led to appeals being brought[75] before the highest courts: Council of State, Constitutional Council, European Court of Human Rights, Court of Justice of the European Union. The transitional nature of the Noumea Accord and the fact that it constitutes a decolonization accord is frequently cited as justification for this restriction of the electorate[76] in New Caledonia. The electorate entitled to vote in the referendum on accession to full sovereignty was also, naturally, subject to restriction. The pro-independence camp's key concern was to ensure the automatic registration of all voters with customary civil status, without any need for administrative procedures. The anti-independence camp strategy focussed on ensuring that voters with customary civil status and common law voters received equal treatment. A consensus was reached in Paris on 2 November 2017 at a session of the Committee of Signatories, a forum which brought together the three Noumea Accord partners to examine and reach a compromise on differences of opinion regarding implementation of the Accord. Accordingly, only individuals who arrived in New Caledonia before December 1994 and were permanent residents, subject to written proof, were entitled to vote in the referendum held on 4 November 2018. People with customary civil status and people born in New Caledonia with income tax and social security records proving three years residence, thereby showing

75 See M. Chauchat, "La citoyenneté calédonienne", *Cahiers du Conseil Constitutionnel*, no. 23, February, 2008. Available online at: https://www.conseil-constitutionnel.fr/nouveaux-cahiers-du-conseil-constitutionnel/la-citoyennete-caledonienne

76 See the thesis by S. Robertson, 2017, *Contesting the 'Common Destiny': Citizenship in Decolonising New Caledonia*, Department of Pacific Affairs, Canberra, 357 p.

that New Caledonia represented the centre of their moral and material interests, were automatically registered.

It is not difficult to see that the electorate constituted a frequent rallying factor for the pro-independence camp. Political balances were fragile as a result of the ratio between Kanak population numbers and the numbers represented by other communities living in New Caledonia. The fact that the Kanak people had gradually become a minority population in New Caledonia explains why the Kanak took such a firm stance in debates on the issue.

2. Various views of what was to follow the Noumea Accord: working with or excluding partners?

There were shifts in the pro-independence groups during the period covered by the Noumea Accord. Some parties disappeared and were replaced by others. For example, as part of a strategy aimed at bringing together the "citizens of New Caledonia"[77] who did not want to be seen as supporting the Palika, activists from the Palika and other key civil society figures founded the Union Nationale pour l'Indépendance (UNI). Working under this label, the Palika could broaden its electorate by including non-Kanak in lists of candidates and also forge alliances by approaching other parties and putting up joint lists of candidates. Given that the UNI is currently serving its fifth term of Presidency in the North Province Assembly, the strategy paid off. As regards the end of the Noumea Accord, the UNI adopted the position of independence in partnership[78] with France, and possibly other international partners, in exercising the powers of the future state. Meanwhile, the Union Calédonienne has continuously been the majority party in the Loyalty Islands Province, and has also formed alliances, including within the Congress of New Caledonia, with the aim of achieving a robust political grouping. The UC also declared its support for a partnership with France and other neighbouring countries to boost efficiency in exercising New Caledonia's sovereign powers. Members of the FLNKS, the UC and Palika all used working groups to take up joint positions. The UPM and the Rassemblement Démocratique Océanien (RDO), two other members of the Front, were also involved in developing the FLNKS project of a shared social vision.

However, throughout the period of the Accord, some previously and newly constituted pro-independence groups came up with analyses which sometimes complemented and sometimes contradicted those advanced by the Front. For example, the Labour Party, founded in 2009, expressed the view, particularly embraced by former USTKE President Louis Kotra Uregei, that the Noumea Accord was a lure towards an independence that would never happen. This was why the party abstained from the referendum held on 4 November 2018. In 2020, a new movement was formed: the Mouvement Nationaliste pour la Souveraineté de Kanaky (MNSK). This comprised the Labour Party and a new party made up of a group of young and older graduates, the Mouvement Nationaliste Indépendantiste Souverainiste (MNIS). This movement declared that, this time, it supported a "Yes" vote in the second referendum,

77 Under the Noumea Accord, these are the people entitled to vote in the provincial elections held every five years.

78 Union Nationale pour l'Indépendance., Kanaky-Nouvelle Calédonie, un État souverain en Océanie. Contribution de l'UNI à la détermination de l'avenir politique et institutionnel en Nouvelle-Calédonie, Noumea, self-published, document drafted under the responsibility of the UNI strategy unit, 2018, p. 100-101.

and took a stronger line favouring full sovereignty for "Kanaky". This arm of the pro-independence movement could not easily approve the future name for the country advocated by the FLNKS: "Kanaky – New Caledonia". As far as the MNSK parties were concerned, the FLNKS had made so many compromises with the other signatories of the Noumea Accord, it had ended up losing sight of the very essence of the demand for independence[79], particularly the concept of Kanak Socialist Independence.

Other activists, former independence movement adherents, were of the opinion that, since 1988, the Accords, signed against a background of urgency and dissuasion, would not serve to achieve the territory's full sovereignty. Like the Congrès Populaire Coutumier Kanak (CPCK), they were committed to working on customary issues while pushing ahead with the land restitution scheme and looked, in particular, to the United Nations Declaration on the Rights of Indigenous Peoples adopted in 2006.

The political landscape of the independence movement and, more broadly, the Kanak claim is circumambient as regards the referendums on New Caledonia's post-Noumea Accord future, given the emergence of several political movements and beliefs within the ambit of the federating "Yes" result.

3. The referendums provided for by the Noumea Accord: the end of the tunnel for the independence movement in New Caledonia?

The referendum marking the end of the Noumea Accord could be held in 2014 but due to the lack of a majority vote, it did not take place until 2018, at the instigation of France through its central government. Having pushed back the date to the final deadline set by the Noumea Accord, the Congress of New Caledonia unanimously adopted a resolution setting the date of the referendum for 4 November 2018. The referendum involved three main issues: the transfer of sovereign powers, transforming citizenship into nationality, and international recognition of New Caledonia's status.[80] The following question was put to voters with proof of having spent a minimum of twenty-four years in New Caledonia: "Do you want New Caledonia to accede to full sovereignty and become independent?". The pro-independence camp lost out at the first referendum, held on 4 November 2018, with "Yes" garnering only 43.3% of the vote. Since in the second referendum held on 4 October 2020, the "No" vote was once again in the majority, although the gap was narrower – 53.26% for "No" compared to 46.74% for "Yes" – a third referendum is provided for by the Noumea Accord. If the result is again a majority of votes for "No", the Noumea Accord provides for discussions between the partners.

Meanwhile, the strategy adopted by most pro-independence movement parties consists of calling on their activists to vote "Yes" and to convince others to give their democratic backing

79 "According to MNSK members, the FLNKS failed to achieve the goals set when the independence movement was formed" in N. Goapana and S. Riahi, "Vers la création du MNSK : mouvement nationaliste pour la souveraineté de Kanaky", 2 August 2020, Nouvelle Calédonie 1ère, *www.la1ere.francetvinfo.fr*, online: https://la1ere.francetvinfo.fr/nouvellecaledonie/creation-du-mnsk-mouvement-nationaliste-souverainiste-kanaky-858234.html

80 Légifrance, Accord sur la Nouvelle-Calédonie signé à Nouméa le 5 mai 1998, online: https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000555817/ (consulted in August 2020).

to the independence camp. The "FLNKS project for a sovereign Kanaky-New Caledonia"[81], boosted by contributions from various Front members, gains in amplitude year after year, aiming to provide voters with a clear vision of the role of the FLNKS in the sovereign country.

CONCLUSION

To conclude this brief genealogy of the pro-independence movement in New Caledonia, it emerges clearly that negotiation and maintaining the power balance with the French government constitute two of the most effective courses of action available to the pro-independence camp. The turn of events in 1988 having demonstrated in no uncertain terms the limitations of a sustained power struggle, every breakthrough has been achieved through discussions with their partners, the French government and anti-independence parties. If "Yes" ultimately emerges as the result of the referendums on independence, the demand for independence will have achieved its ultimate goal: accession to full sovereignty. The foundations for a new social contract could be laid down by convening a Constituent Assembly, unprecedented in New Caledonia.

If the results of the referendums provided for by the Noumea Accord do not support, in the end, the demand for independence, negotiation clearly remains the course of action essential to seeking viable solutions for New Caledonia's future. In point of fact, this possibility was envisaged by the Noumea Accord back in 1998. Bringing together the various political partners in line with their respective scores over the course of the referendums would be a way of underlining their respective negotiation skills. Of course, forecasting which compromise the three partners might agree on is a tough proposition.

Throughout the historic progress of the independence movement in New Caledonia, briefly outlined in this article, one assumption can be continuously identified and traced in the discourse of its key players. This assumption is that the demand for independence is intrinsic to the very existence of the Kanak people. Thus, in a speech[82] given on 18 May 1983, Jean-Marie Tjibaou declared that the demand for independence would remain as long as the Kanak people survived:

> *But indigenous legitimacy is in us, it is in you. No-one established it! It is in the belly of Kanak land! It will not leave Kanak land! It will take form; it will emerge in independence. And independence is the people - it is you who assert this today. They could be millions against us, they can send all the riot police they like, possess the atomic bomb, helicopters, and the rest... all that won't wipe out the demand for Kanak independence.* [...] *This right... cannons could roll over it, rifles could shoot at it - but it will remain as long as one Kanak is there to breathe the breath of the land of New Caledonia* [...]. *Here, as long as there is one Kanak, the demand will remain. And the demand is not the property of Mitterrand, Lemoine or some other president, it belongs to the Kanak people.*

81 Front de Libération Nationale Kanak et Socialiste, *Projet du FLNKS pour une Kanaky-Nouvelle Calédonie Souveraine*, Noumea, self-published, 2018.

82 J-M. Tjibaou,1996, *op. cit.*, p. 113.

Most contemporary pro-independence players have themselves espoused this political thinking, evoking the claim to independence[83] and the restitution of sovereignty to the archipelago. The shift in meaning is interesting since this obviously does not just concern a claim linked to identity but an eminently political one. The aim is indeed to convince all citizens of New Caledonia to vote "Yes" in the various referendums on the outcome to the Noumea Accord. But instead of "Kanak independence", the focus is on "independence" in the broadest sense of the term, so that everyone can feel part of the process towards regained sovereignty. Given the multitude of groups championing the independence claim, its complexity and electoral weight in the current context suggests, notwithstanding, that the opposition to New Caledonia's independence holds on to a relative majority in electoral terms; the pro-independence movement will continue moving forward by adapting its strategies, in keeping with its unconventional trajectory, to respond to any change in context or circumstances.

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83 As shown by this quote by Daniel Goa, for example: "As long as a single Kanak remains, the demand for independence will remain" in Outremer 360°, "L'Entretien politique: 'Tant qu'il restera un Kanak, la revendication indépendantiste restera présente' declares Daniel Goa", 16 October 2018. Available online at: http://outremers360.com/politique/lentretien-politique-tant-quil-restera-un-kanak-la-revendication-independantiste-restera-presente-affirme-daniel-goa/

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PART IV

SOCIETY, IDENTITIES

KANAK CUSTOM: "A WAY OF WORDS AND ACTIONS THAT MAKES A HOMELAND"

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In the Kanak languages,[1] custom signifies: "A way of words and actions that makes a homeland" *(Façon de dire et de faire du pays)*. Custom is a concept which is both omnipresent in New Caledonian daily life and also extremely difficult to define; today, far from being considered as ancient lore, custom could not have greater relevance. A set of rules governing social relations, hierarchies, and interactions between groups, custom is, first and foremost, central to exchanges and relations between clan segments and the various identity-based groups which make up New Caledonia's Kanak population today. It encapsulates the exchanges and, therefore, relations between these clans and groups through a specific ritual, the "customary gesture", during the course of which words are spoken and gifts are offered and accepted as a pledge of these words. A customary gesture is made at all significant Kanak social occasions: welcoming an individual or a group, wedding and mourning ceremonies, pleas for forgiveness, specific agreements, agricultural cycle ceremonies, etc. These "moments of discourse", when bonds of loyalty and kinship are called to mind, serve to remind those present of clan-related values and duties.

Customary rituals serve as a reminder of the relationships to be perpetuated between individuals, clans and the spaces known as customary or country (homeland) areas. The lack of a "connecting" relationship can have destabilizing repercussions for individuals and groups. Gifting children (Leblic, 2004) between two individuals, land clans and chiefdoms is a remarkable example of the constant quest to "weave ties". An individual always metaphorically forms a "knot" in the tie or bond of relational identity. Formalizing social ties helps to build and consolidate identity.

Tjibaou throws light on this complex consolidated relational identity:

> *Custom is less an interpersonal relationship than a relationship between groups, communities.* [...] *a Kanak is not a single individual, he is the core of a relationship; he is the blood which flows in his veins, and the flesh, which are bestowed by his mother, but he does not own this flesh and this blood. On his death, ceremonies must be held to return his mortal remains to his maternal ancestors. At the same time, he is an individual known by the name given at his baptism, which*

1 In languages spoken in the Loyalty Islands and some spoken on the Main Island, the term "custom" is often rendered as: "A way of words and actions that makes a homeland". In Drehu, spoken in Lifou, it can be rendered in French as: *bouche du pays* ("mouth of the homeland").

gives him a status, perhaps a role in the social structure [...] *In this way, he is given roles, social responsibilities. Custom, for us, is the gesture which, at every moment, at every meeting, brings this relationship to mind.*"[2]

As summed up by Sébastien Lebègue:

Kanak custom is many facetted and complex. It defines a homeland's geography and the structure of society. It situates individuals in their environment. It ordains genealogies, and patriarchal and matriarchal lineage. It embodies a ceremonial exchange which defines the relationship and position between two individuals or groups. It finds expression in words, gestures and gifts. It is embodied in objects and yams. It represents the rules of communal life, decorum, welcome, respect and humility.[3]

Despised and shunned until very recently, Kanak custom and social structure have proved extraordinarily strong and resilient.

I. A SOCIAL STRUCTURE PROFOUNDLY IMPACTED BY COLONIZATION

A. The traditional customary structure

The Main Island and the Islands were inhabited by men and women who were known as Kanaks. They had developed their own civilization, with traditions, languages and customary rules which gave structure to both society and politics. Their culture and imagination found expression in various forms of creativity.

Kanak identity was rooted in a unique tie to the land. The identity of each individual, each clan, was defined by a specific relationship with a valley, a hill, the sea, a river estuary, and each preserved memories of welcoming other families. Natural spaces and exchanges were given structure by the names traditionally given to every feature of the landscape, the taboos setting some features apart, and the customary paths. (Preamble of the Noumea Accord, 5 May 1998)

New Caledonia was initially divided into several small self-governing areas distinguished by differences in language. These areas, also called "homelands" in the Kanak languages, were of immense importance because there appeared to be no real existence outside the group. Maurice Leenhardt stated that :

Melanesians are attached by every fibre of their being to their group; their worth is entirely dependent on the group and their position within the group. A Melanesian is defined by this position, is made real only through this position and the role assigned to it. He is one of the players in the great game of group life, responsible for ensuring its perpetuation and glory.[4]

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2 J.-M. Tjibaou, 1996, *La présence kanak,* edition prepared and introduced by Alban Bensa and Eric Wittersheim, Paris, Odile Jacob, cited by D. Bretteville, "Je ne sais pas ce que c'est, la coutume": la coutume kanak par-delà tradition et modernité, *Journal de la Société des Océanistes*, no. 147, 2018, p. 473-486.

3 S. Lebègue, 2018, *Coutume Kanak*, Èdition Au vent des îles.

4 M. Leenhardt, 1947, *Do Kamo. La personne et le mythe dans le monde mélanésien*, Gallimard, Paris.

1. Tie to the land and "ways of living" traditions

The relationship to the place of origin known as the *tertre* ("mound") is a significant factor harking back to the place first inhabited and to the common ancestor. The literal meaning of the expressions *mwaa* (Paicî), *lapa* (Drehu) and *meneng*[5] (Nengone) is "house".[6] They are a symbolic evocation of the "tie to the land". In Maré, Nengone in the native language, the customary marriage tradition known as *aehngeni hnameneng*, "showing the house" (Fig. 1), reveals how the "tie to the land" is sustained within the clan "house". In material terms, each "pile" of yams occupies, as an individual gift, a "small portion" of space[7] within the house. An individual is *connected to* and included in the fraternal lineage, which itself forms part of the clan "house." This ceremony is a way of "showing the house" which encompasses the geography, relational history and statutory socio-political aspects of the clan.

Figure 1: Ceremony of aehngeni hnameneng "showing the house"

Source: Wadrawane, 2021

Language and cultural areas constitute "countries" (homelands) and clans are perceived as small "pieces" or "parts" of "houses". The family is simply a lineage which inhabits these "houses". This makes it easier to understand, firstly, the importance of keeping respectful distances between "houses" and, secondly, why a "customary gesture" is required when entering adjoining areas. Human qualities such as respect and humility constitute "binding agents" facilitating smooth social coexistence, solidarity and exchanges. The clan is the key cornerstone of society. A reference to a clan includes the concept of a clan "house". The families originally forming a clan and the families welcomed within that clan, who are given

5 In the language of Nengone, Maré, the term tribe is translated as or refers to the "threshold of the house". The tribe is the entry threshold for several units of "houses". The clan is by definition a small "piece" or "part" of a house.

6 In a social context, "clan" often refers to or is translated by the term "house".

7 Each individual gift laid on the ground occupies a small portion of space or, literally translated, a "small piece of the lawn" of the clan house.

the clan name and a piece of land, live in harmony. Each family plays a specific role in the clan by obeying precise rules.

To introduce a quite different dimension, entering the homeland means, figuratively speaking, entering the great hut. Moreover, respect for human relationships is the foundation on which the hut is built, both symbolically and socially. The door is low – relative to the doorstep – obliging those entering to bend over, a frequent reminder to visitors that they should keep in mind the customs, traditions and values to be observed, such as respect and humility, when they enter. Learning to "inhabit the homeland" means learning how to "inhabit the hut" and the concept of "inhabiting" evokes the everyday practice of "being seated". Indeed, visitors are often asked to "be seated" in a hut to encourage discussion and conversation.

The following document (Fig. 2), taken from the book by Charles Illouz[8], an anthropologist at La Rochelle University, shows how "being seated" works within a given space. People unconsciously group themselves in keeping with generational hierarchies. The way space is occupied reflects a geographical and social relationship. Intergenerational social distances tend to be unconsciously maintained in everyday life.

Figure 2: "The ladies' paradise: two generations of women weaving baskets and chatting. In the background, older women; in the foreground, younger women, sisters-in-law" (Illouz, 2010)

Source: Wadrawane, 2021

2. The "customary gesture" and its social significance

The "customary gesture" as a "way of words and actions that makes a homeland" serves to permit entry and movement within spaces linked to the private sphere of "houses". The "gesture" is designed to signal the presence of an individual or group. While a "customary

8 C. Illouz, 2010, *La parole ou la vie*, Presses universitaires de Rennes.

gesture" is taking place, host and guest exchange compliments[9] and sober pleasantries. This traditional exchange plays a significant part in maintaining ties of honour and ethics.

3. Symbolic representatives of female authority

Maternal uncles (charged with the repository of life and the preservation of clan lineage) play a crucial role in Kanak customary ceremonies. They are the "symbolic representatives" of women[10] in spaces reserved for men. Although a woman[11] has three kinds of status – "sister-woman, woman-wife and mother-woman", her brother – the "uncle of the same womb" – often represents her in the space reserved for men at ceremonies where her presence is required. Nevertheless, although social life is ruled by maternal uncles, the preservation of society is the attribute of the *Grand Chef* (great chief). Although the term *Crand chef* is now in common use, it was actually a term employed by the French colonial authorities. The grand chief was often charged with implementing decisions taken by these authorities. In point of fact, the term "grand chef" does not have the same statutory meaning, in terms of social hierarchy, as that imposed on it during the colonial era. Kanak dignitaries and clans appointed and defined this exalted customary personage differently.

4. The eldest of the elders or the "head of the elder brothers"

The most faithful wording for the role of "Great chief" is "head of the elder brothers".[12] In theory, he is the most aged of the eldest branch of the clan. As keeper of the traditions, virtues and history of the clan, he is the bearer of the "word" of the clan and is responsible for overseeing the tribe's common interests, in agreement with the Council of Elders. The customary *Grand Chef* administers the social space or area with concerted and consensual authority since there is no such concept as absolute power in the Kanak world. In fact, the authority of the *Grand Chef* is founded on the allegiance of the clans who form his entourage and perform various roles within the chiefdom. This explains why the "word" must pass freely between the various clan chiefs – discourse and discussion accompanied by customary "parcels" (gifts) – before a unanimous decision can be taken. The "masters of the land" (the elders) play an ever-present role in the decision-making process and, indeed, the authority of the elders always supersedes the authority of the *Grand chef*. That is the reason for authority being "concerted and consensual": each individual has a specific role and prerogatives.

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9 It should be noted that the word "bonjour", sometimes used, is borrowed from French and does not exist in the Kanak languages.

10 Following the advent and adoption of Christianity, the portrayal and status of women in the Kanak world was gradually diluted.

11 The relationship between sister and brother forms the basis for the concept of "hidden power". The woman-sister does not appear in public in the husband's clan. Instead, the uncle of the same womb [brother or representative of the woman-sister] appears in public in the husband's clan. His status is often ruled by his sister [woman-sister]. This standing within the husband's space, which underpins the concept of *land-nourishment*, is inherent when the future father [husband] of a child [child-nephew or niece] takes second place to the maternal uncle whenever the child comes to harm. This symbolic status is reinforced by the child-nephew [of the maternal uncle], fostering the development of a culture of paternal culpability. However, the nephew will have territorial standing amongst his maternal uncles, who are required to put up with his caprices.

12 The ability to publicly overrule the "grand chef" is the exclusive prerogative of some specialized clans. For example, on the island of Maré (Nengone), the "Masters of evil" or "Masters of mediation" have the power to overrule the *Grand Chef*. They are generally "Masters of the land".

However, the *Grand Chef* may, subject to supervision by the "masters of the land", make use of unused arable land. Furthermore, the *Grand chef* can assign such land to new tenants and ensure that such land, for which he is also responsible, is successfully managed.

He may, under no circumstances, become the master of the land, and if he violates any of these principles governing the administration of power and affiliation to the land, the "masters of mediation" – another group, charged with ensuring the stability of the chiefdom – is entitled to reprove and remind him of his statutory powers as defined by the ancestral contracts on which his position and exercise of authority are based. These "masters of mediation" or *Atre ka Ngazo*[13] belong, moreover, to the ancestral line of past "masters of the land", but have the additional task of ensuring political balance within the chiefdom. Their authority and "tie to the land" are rooted in mythological and ancestral tradition.

Pastor Leenhardt offered the following interpretation:

> The land belongs to those who have become one with the land, the ancestors and the mythical beings".[14]
> "Set against the tradition of ancestor worship, the Land has a mythical dimension. For the Land is the ancestor, and often also the Totem. The Land is a Man and a whole genealogy: generations of men who have been nurtured by this Land and who, in return, have nurtured its memory. The Land is therefore an identity and embodies a shared sense of belonging [...]"[15]

Man therefore belongs to the Land, which serves both as an identity marker and the basis of social relations.

According to oral tradition, one clan amongst the others was the first to clear and farm the earth and to create a settlement. This clan became the master clan of the land. The other clans then became the holders of plots they farmed, and had the enjoyment thereof. This constitutes a form of multi-layered property based on rights and duties. The Land has the force of a political concept and cannot be reduced to an issue of real estate or actual rights. Land caretaking is the traditional form of land use and enjoyment thereof. The caretakers of the land are the families made welcome by the masters of the land, who have given their name to such families so they cannot be considered outsiders. The caretakers have a right to farm the land and enjoy the fruit of their labours. Land caretaking may be granted for a limited period or an unlimited period and entails mutual obligations between the caretaker

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13 Term used in the language spoken in Lifou. *Atre* = person, *Ka* = (in the sense of) who is, *Ngazo* = evil or bad, literally half man, half devil, equivalent to the word *Acania,* "Master of evil" in the Maré language, translated literally by M.-J. Dubois and adopted by C. Illouz. We recommend reading the commentary by M.-J. Dubois *in Mythes et traditions de Maré. Nouvelle-Calédonie*. Les *Eletok*, *JSO*, no. 35, Paris, 1975, p. 58-59. Herein, we will use the term: "master of mediation". Their real role is dealing with social disputes and conflict.

14 M. Leenhardt, "La propriété et la personne dans les sociétés archaïques", *Journal de la Psychologie*, July-September 1952, p. 278-292, particularly p. 278-292.

15 R. Lafargue, "Le contentieux classique de la terre. Terres de mémoires : Les Terres coutumières, une question d'identité et d'obligations fiduciaires", *in* E. Cornut and P. Deumier (eds.), 2018, *La coutume kanak dans le pluralisme juridique calédonien*, Research Report Publication, *L'intégration de la coutume dans le corpus normatif contemporain en Nouvelle-Calédonie*, Mission de recherche Droit et Justice, Presses universitaires de la Nouvelle-Calédonie, PUNC, p. 104. URL: http://www.gip-recherche-justice.fr/wp-content/uploads/2018/10/UNC-Coutume-web.pdf

and the master of the land. To understand these obligations, the concept of group living which underpins Melanesian society must be borne in mind: a balance must be achieved between the various members of the clan and between the various clans. The chief of the lineage is the "depository of this inalienable right covenanted at the time the mythical ancestor took possession", but he is only an administrator of the community space and acts as representative of the families.

B. Denial of the tie to the land

The French colonial authorities were quick to claim their ownership of land deemed to be abandoned. To impose control over land allocation, they prohibited settlers from purchasing land from customary owners. Given the widespread dispossessions of Kanak land and the often violent reactions by the Kanak, indigenous territorial property was recognized by an Order dated 22 January 1868.[16] The Order establishes indigenous reserves, providing that:

> *For each tribe of New Caledonia and its dependencies, an area of land, as a single holding or in parcels, proportionate to the quality of the land and the number of members making up the tribe, will be marked out, on the territory traditionally used and occupied by such tribe, in accordance with political laws between tribes.*

These areas of land, known as reserves, were the non-transferable property of the tribes. They would be unseizable. They could not be subject to any rental contract. However, the tribal chief could, by order and under French authority, allocate portions of the land to individuals or families within the tribe.

Heralded as legislation designed to protect the indigenous population, this order served mainly to further the purposes of colonization. Moreover, the colonial authorities retained the perpetual right to expropriate (land/property). Étienne Salmon, who was Public Prosecutor of New Caledonia in 1935, argued that "New Caledonia is experiencing today, and has been experiencing for over half a century, the consequences of a critical misunderstanding of the conception of land ownership held by the indigenous people".[17] The Order of 22 January 1868, analyzing Kanak land claims in terms of Western categories, would lay the foundations for this misunderstanding. It introduced economic criteria which run counter to the principles of traditional land tenure, and it granted the tribal chief land-related powers not accorded to him by customary rules. The land thereby became a property owned collectively by the tribe, non-transferable, unseizable and inalienable; a concept in complete contradiction to customary law, which grants possession of the land to the clan, a smaller social entity. Despite implicitly recognizing indigenous property, the 1868 Order would erode and undermine the concept.

As from 1871, almost all Kanak lands risked being taken over, all the more so since the land allotment process provided for in the 1868 decree resulted in few concrete actions. The increase in land appropriations, together with the damage to Kanak crops caused by settlers' cattle, mostly left to roam free, were the main factors behind the revolt led by Chief Ataï in

16 Order dated 22 January 1868 on the constitution of indigenous territorial property, B.O.C.N., 1868, p. 17-21.

17 E. Salmon, *Remarques sur le régime des terres indigènes en Nouvelle-Calédonie*, Paris, Recueil de législation et jurisprudence coloniales (Recueil Dareste), 1935, p. 1-12.

1878, which left 200 Europeans and an unknown number of Kanak dead. Severe measures were taken to stamp out the revolt, and were followed up by land confiscations.
In 1887, the Indigenous Code made the governor responsible for setting the boundaries and deciding on the name given to the territory of each tribe. The process of corralling all the Main Island's indigenous communities in reserves was completed within three years, from 1898 to 1900. Thereafter, land tenure remained basically unchanged for over half a century. The areas of land associated with traditional chiefdoms were never taken into account in establishing reserves. Only around 1/10 of the traditional chiefdoms emerged unscathed from the corralling process in the Main Island. It should be noted that the Isle of Pines and the Loyalty Islands, completely given over to indigenous reserves, were spared any agricultural colonization. Issues linked to land and culture in the islands were therefore very different to such issues on the Main Island.

For a clan, losing its land meant losing its identity and, left homeless, it was therefore obliged to re-establish itself on land occupied by other, often outsider, clans, thereby increasing pressures on the social structure. It was not always easy for the newcomers to come to terms with the masters of the land; rejection was often the rule in the initial period, and was followed by customary reparations.

C. Contempt for social structures

A crisis of authority also played a role in undermining the traditional system. By virtue of the Decree of 12 October 1887, the Governor took upon himself the power to appoint tribal chiefs and to define the scope of their authority. The French colonial authorities chose the customary chief if he met with their approval or, if he did not, had him deposed, exiled or locked up, and appointed a trusted individual instead. This procedure became a focus for resentment because, within the Kanak community, the whole tissue of customary and mystical relationships led people to continue showing respect for the grand chief deposed by the French government. Such imposed appointments created broken links in the chain of customary paths, an issue which remains a source of conflict today.

Although Governor Decision no. 840 of 8 August 1898 confirmed the existence of the tribes, it wrought significant changes in Kanak social structure by transforming the sociological concept of a tribe into a purely territorial concept, to be known as a district. As a consequence, the village was deemed to represent an indigenous community of the tribe and received the associated legal powers. This meant the district chiefdom suddenly acquired a higher rank than the village chiefdom; and the grand chief was granted authority to judge and sanction the lesser chief. As a result, in addition to their traditional customary role, chiefs were assigned specific administrative responsibilities. This arrangement accorded with the hierarchy-based customary structure of the Loyalty Islands, taken as the model to be imposed in the Main Island, where there was a more fragmentary organization of authority. The aim was to facilitate supervision of customary lands by granting favour to a select number of *Grands Chefs*. In some cases, great chiefs were appointed on the basis of similar, already established, customary roles, in other cases, the role was created.

There is no doubt that colonization disrupted the foundations of Kanak society, but the reserves within which Kanak communities were confined throughout the colonization era, which cut them off from the Western world and its mores, also meant that they were able to continue governing their social relations in accordance with customary rules and tradition.

However, the various clans have neither forgotten the land of their ancestors nor the original site of their land. After the Indigenous Code was abolished in 1946 and the Kanak people regained freedom of movement, they came into contact with an unfamiliar world which they would have to learn to live with. To be sure, a certain degree of acculturation had occurred as a result of rural migration and the assimilation of Western teachings, but Kanak culture had not been eroded. The result is a very marked dichotomy which needs to be addressed today. Clan structure remains the primary social framework, and custom continues to set rules and standards.

II. KANAK IDENTITY, RESILIENT AND HENCEFORTH ACKNOWLEDGED

The survey of the tribes, carried out in 1996 in partnership with the Customary Council, identified 341 tribes and 57 customary districts. In organizational terms, clans join together to create tribes, within customary districts, which are grouped to create customary areas. New Caledonia has eight customary areas: Drehu, Nengone, Iaai, Hoot Ma Waap, Xaracuu, Ajie-Aro, Paici Camuki and Djubea-Kapone. In 2019, 111,860 people identified as belonging to the Kanak community, 48% of whom lived in tribal villages.

A. Custom, constant guiding force for human relationships

The clan, as the crucible forging the fundamental social ties between different groups comprising the clan, is the cornerstone of Kanak social structure. Since 1980[18], a clan could be a land assignee in its own name, but it was only recognized as a legal personality following a 2011 decision by the Noumea Court of Appeal: "the Kanak clans, insofar as they have the option of using collective expression to defend the interests for which they are responsible, have the legal personality which enables them to take legal action".[19] This recognition of legal personality which, since 1867, had only been accorded to tribes (the districts), can be interpreted as the legal recognition of indigenous society, given that it is the sole entity which possesses land rights, the entity which carries the name and decides on the acceptance of new members. "This decision gives visibility to the reality; it restores the full compass of authority with which the clan is vested by Kanak society".[20]

A tribe comprises several clans. A significant number of tribes were created in the early 20th century by setting the boundaries of reserves; these did not necessarily reflect customary realities but served the determination by local authorities to bundle Kanak into the same area. Since then, the "tribe" has been fashioned, organized and adopted, in both customary and political terms, by families, clans and chiefdoms, in accordance with local contexts and customary relationships between different groups. The tribal chief (or lesser chief) acts as the liaison between the tribe and the administrative and political authorities. The Council of

18 Resolution no. 116 of 14 May 1980.

19 CA Noumea, 22 August 2011, RG no. 10/00531 & RG no. 10/00532.

20 D. Rodriguez, "La juridiction coutumière kanak (Juger en Kanaky)" *in* E. Cornut and P. Deumier (eds.), *La coutume kanak dans le pluralisme juridique calédonien*, Research Report Publication, *L'intégration de la coutume dans le corpus normatif contemporain en Nouvelle-Calédonie*, Mission de recherche Droit et Justice, Presses Universitaires de la Nouvelle-Calédonie, PUNC, 2018, p. 321. URL: http://www.gip-recherche-justice.fr/wp-content/uploads/2018/10/UNC-Coutume-web.pdf

Clan Chiefs, commonly known as the Council of Elders, represents the clans who make up the tribe. The Council now plays a central role in the governance of tribal affairs.
Colonization helped to bolster the role played by the chief by introducing a new balance between long-established clans and clans formed as a result of the reservation land allotment process. In the long run, this hybrid fusion of traditional and administrative systems established a social, economic and political balance. The result, for many tribes, was that power was shared between "newcomers and hosts" when it came to appointing customary authorities (lesser chief and president of the Clan Council). Since 2007, the clan chief's role has been amplified because the law on palavers transcribed by Customary Act requires approval by a customary authority, including the clan chief and the chief of the tribe concerned.[21]

Districts comprising several tribes are placed under the authority of a Great Chief. This is less a question of defined geographical area and more about assigning the clans settled within a tribe to a Great Chiefdom. 14 tribes are said to be independent because they are not assigned to any district. In the Loyalty Islands, the GreatChief plays a leading role in dealing with land-related issues whereas, in the Main Island, roles vary according to customary area. The District Council has the task of liaising between the Area Councils and the tribes, and is an informal body comprising representatives from all tribes within the same district. If the customary appointment of a grand chief proves problematic, the District Council may be called on to play a significant role.

B. A tie to the land, henceforth acknowledged

Reform measures designed to put an end to the unequal division of lands were instituted in 1978. Known as the *Plan de développement* économique *et social à long terme pour la Nouvelle-Calédonie* ("Plan for the long-term economic and social development of New Caledonia") or "Dijoud Plan", it provided that lands could be "given back to clans to enable them to live life fully in accordance with custom". Subsequently, the Territorial Assembly passed Resolution no. 116 of 14 May 1981 which introduced, alongside common law and reserve-related private property, the concept of clan property: "Clan land is the shared property of the family groups comprising the clan. These family groups are represented by the customary family chiefs who make up the Clan Council". Land reforms could henceforth be rooted in sociological realities. Lands could be returned either under the common law regime or under the special law regime (extension of reserves or clan allocation).

New reform legislation in 1982 recognized that "customary rights of another nature may pre-exist established European-type rights [...]"[22] A Land Office was established which, in 1986[23], became the ADRAF (Agence de développement rural et d'aménagement foncier - Rural and Land Development Agency), together with community land commissions, which

21 Country Law no. 2006-15 of 15 January 2007 *on customary acts*. JONC of 30 January 2007, p. 647.

22 Ordinance no. 82.880 of 15 October 1982 on land development, rural land organization and the recognition of customary rights to land in New Caledonia, explanatory statement.

23 In 1986, the ADRAF was a territorial public institution which would be made a French public institution in 1989 pursuant to the Matignon-Oudinot Accords. The agency is responsible for purchasing land and reallocating it to the clans. See: Decree no. 89-571 of 16 August 1989 on the basis of Article 94 of Law no. 88-1028 of 9 November 1988, laying down statutory and preparatory provisions regarding the self-determination of New Caledonia in 1998, and relating to the Agency for Rural and Land Development.

included representatives of the Kanak authorities charged with specifying the boundaries of customary land rights, henceforth recognized.

Until 1999, the ADRAF allocated lands to clans as part of a land use and economic development project. There was little practical observance of any economic development aspect of the project, and this was dropped with the signing of the Noumea Accord, which gave priority to the tie-to-the-land criterion. Indeed, the Preamble to the Noumea Accord reaffirms the significance of the "tie-to-the-land" for the Kanak people, and the Organic Law of 19 March 1999 reasserted the inalienable, unassailable, non-transferable and unseizable nature of customary lands, defined as lands owned by a natural person or a legal person with customary legal status and governed by customary law. The land reforms led to changes in the ownership of 165,000 hectares of land, i.e. 10% of the Main Island's land surface. 85% of these 165,000 hectares became customary lands, adding to the land included in the original reserves. Article 6 of the 1999 Organic Law provided that henceforth "in New Caledonia, the property rights guaranteed by the French Constitution shall apply, in terms of land, to private property, public property and customary lands [...]".

However, as Régis Lafargue explains, the issue of the preservation of customary land rights and the recognition by virtue of the tie-to-the-land of such rights within our legal system remains relevant today. "It could be argued that this 'tie' (the intangible aspect) between these lands and the clans who held them prior to colonization, and their living descendants, was not suspended by dispossession of the physical component (the material aspect)". [24]

C. Institutional inclusion of custom

The Noumea Accord (point 1.2.3 of the guidance document) stipulates that:

> *The manner of acknowledging the customary authorities shall be specified to guarantee their legitimacy. It shall be defined by the Customary Court of New Caledonia. Notification thereof shall be made to the French government representative and to the executive body of New Caledonia who are required to record it.*

Customary chiefs were therefore no longer appointed by French government authorities. Thus, article 141 of the Organic Law of 19 March 1999 states that appointments of customary authorities will be formally noted by the Customary Senate and notified to the President of the Government of New Caledonia and the French government representative. This notification process is of importance insofar as the Kanak customary authorities fulfil a public service function, thereby receiving remuneration.

The Customary Senate, which replaced the "Customary Advisory Council" set up by the Matignon-Oudinot Accords, was established by the Noumea Accord. It is tasked with speaking on behalf of the customary structures, with representing them, including in all matters relating to Kanak identity, a concept whose reach is specified by the Accord:

> *The full recognition of Kanak identity involves a clear specification of customary status and how it is linked to the civil status of persons with common law status, a provision for the*

24 Régis Lafargue*, ibid.*, p. 118.

institutional inclusion of customary structures, including through the establishment of a Customary Senate, the protection and promotion of the Kanak cultural heritage, the setting up of new legal and financial procedures to address requests and applications based on the tie-to-the-land, whilst promoting the merit thereof, and the adoption of identity symbols reflecting the crucial role of New Caledonia's Kanak identity in the endorsed community of destiny.[25]

The Customary Senate is made up of sixteen members appointed for a period of five years by each Customary Council, in accordance with accepted customary practices, with two members representing each of New Caledonia's customary areas. By customary consensus, the presidency rotates on an annual basis to ensure each customary homeland holds the post in turn. The opinion of the Customary Senate must be sought for all draft legislation relating to Kanak identity (New Caledonian identity signs, customary personal status, legal regime of customary land tenure and customary debates, customary area boundaries, and the terms and conditions of election to the Senate and Customary Councils). The Senate may also be asked to express an opinion on any other draft resolution by local institutions (government, Congress, provincial assembly) or by the High Commissioner on issues relating to French government jurisdiction. It can also initiate proposals by approaching local institutions and outlining recommendations relevant to Kanak identity. The Senate is represented in eighteen New Caledonian public bodies and institutions and in numerous committees and commissions (focussing on mining, environment, sport, social housing, urban planning and the prison system); it also plays an active role in research and discussions, and the general administration of New Caledonia. The part it has played in helping to control and manage the Covid-19 health crisis has attracted special recognition.

In response to Kanak demands for recognition of their identity, the Matignon-Oudinot Accords accorded the eight Customary Areas and their councillors official status, confirmed by the Noumea Accord. *The Customary Areas* comprise customary districts whose languages are closely related. The Customary Councillors have an advisory role; any dispute concerning a Customary Act must be referred to them. Their advice as to the interpretation of customary rules may be sought by any administrative or judicial authority.

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RELIGIONS IN NEW CALEDONIA

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New Caledonia is no exception to the rule applying to most of Oceania's island countries. Christianity is a component of national and of local identity. However, in terms of religion, New Caledonia is singled out by three characteristics: the country's population comprises communities from diverse backgrounds, who brought with them their religious beliefs and their concepts of the sacred. Surrounded by countries under British Protestant influence, New Caledonia was colonized by pro-Catholic France at a time when the Catholic Church, emerging from the revolutionary period in France, was driven by missionary fervour. Finally, populated by communities which tend to have little contact with each other, New Caledonia is both a developed country (particularly as regards Noumea) and a developing country marked by high levels of socioeconomic disparities. Consequently, religious characteristics associated with both developed and developing countries are found in New Caledonia. New Evangelical movements are very active here, as they are everywhere in Oceania; they mainly concern ethnic Oceanians, Kanak or Wallisians, for example, and have little impact on people of European origin, especially those from socially privileged groups.

First of all, this complex mosaic of faiths is a legacy. The archipelago, rooted in Kanak cultural tradition, initially shared a number of religious beliefs with the surrounding Oceanian world: mana, tapu[1], and also the pivotal role played by ancestral spirits.[2] In common with many traditional societies, the divine was seen as omnipresent and a series of precise gestures was needed to maintain the world order. New Caledonia was evangelized in the 19th century. British Protestant missionaries from the London Missionary Society made an unsuccessful attempt to convert natives on the Main Island, and were more successful in the Loyalty Islands.[3] French Catholic missionaries followed in their steps in 1843, and thereafter Protestant and Catholic missionaries shared the territory, with the Catholics claiming a clear lead. However, conversion to Christianity was a slow process and it took a hundred years before those still described as pagans by religious statistics finally disappeared. But the figures are misleading. Whole swathes of ancient beliefs survived and still survive in the hearts and minds of new

1 *Mana* is the power *(potestas)* possessed by some living beings or objects. It can grow and become a threat to others or, on the other hand, fade and vanish. *Taboos* (tapu) result when *mana* is present. Such religious beliefs exist throughout Oceania, although they are mainly evoked in relation to Polynesian societies.

2 This is the meaning of the rooftop totems seen on great huts, for example. Regarding ancestor beliefs, see A. Bensa, 1990, "Des ancêtres et des hommes", *De jade et de nacre*, Paris, p. 130-159.

3 Born of the 18th century revival of Protestant Evangelism, this British Protestant independent missionary society, nondenominational and largely Congregationalist, was founded in 1795 and had been active in Tahiti since 1797. From 1826, the LMS made their mission on Rarotonga in the Cook Islands the centre for their evangelizing work in the South Pacific, particularly for missions in Melanesia. Ta'unga, one of the first missionaries in New Caledonia was from Rarotonga. See, with an introduction and translated by G. Pisier, 1980, *Le témoignage de Ta'unga ou la Nouvelle-Calédonie vue par un « teacher » avant l'implantation européenne*, Noumea, SEHNC, no. 25.

converts. Meanwhile, other peoples set foot in the archipelago, which had become a French colony, bringing with them their own philosophical and religious beliefs. To the anti-clerical sentiments fuelled by deism and, particularly, atheism contributed by French officials and settlers, there were added beliefs from other backgrounds: Vanuatu, Kabylia, Tonkin, Java, Japan… Later on, in the more open world of the 20th century, New Evangelical movements also made their appearance in New Caledonia, although they had surfaced in Polynesia at an earlier date.[4]

Today, over 85% of the population of New Caledonia identify as Christians. Catholics make up about 2/3 of this group, and Protestants the remaining third. Religious indifference, much less ingrained than in Western nations, is on the rise but with less impact on New Evangelical movements. However, church attendance is not the only gauge of the vitality of religious faith. In the event of serious conflict, the authorities call on representatives of established churches to act as mediators. Church representatives joined the Freemasons in taking on this role in 1988 to pave the way for discussions and a return to civil peace in New Caledonia. In 2011, church representatives were sent to Maré as mediators to end the unrest which had plunged the island into bloodshed. The various documents drawn up by the authorities in view of the upcoming referendum and New Caledonia's future status, including both the *Kanak People's Charter (Charte du Peuple kanak)*, proposed by the Customary Senate and passed in April 2014, and the *Charter of New Caledonian Values (Charte des valeurs calédoniennes),* drawn up by a number of New Caledonian political figures in July 2018, refer to the "Christian values" of the peoples inhabiting the archipelago.

Religions in New Caledonia are far from moribund, they are very much alive. For indisputable historical reasons, they play a key social role, but they are caught up in far-reaching changes. In 1840, the *London Missionary Society* (LMS) made its first unsuccessful attempt to set up a mission on New Caledonia's Main Island. Three years later, Catholic missionaries held their first mass on Christmas Day 1843. They were Marist missionaries belonging to a congregation which had been tasked by Rome with the evangelization of Western Oceania. In 1842, they had established themselves in Wallis, which gradually became a real church-state. Like its neighbour Futuna, the entire population had been converted to Catholicism and the religious authorities and the customary chiefs were in complete alliance. Thus, throughout Oceania, Christian missions were in position prior to the establishment of colonial powers. The fact that Christian missionaries were the first to arrive, and that they always worked to set up educational, training and health structures, explains why they are so firmly embedded in local communities, who saw the churches as their natural defenders in all colonial rivalries and conflicts, and considered Christianity as an integral part of their present identity.

The Catholic missionaries' first mission to New Caledonia was a failure but they returned to establish a permanent mission in 1851, when they had the help of the French navy which was determined to oust the British, often in the person of ministers representing the main Protestant faiths. The priests and brothers involved in this adventure, along with Monsignor Douarre, first bishop of the apostolic vicariate of New Caledonia, set out to evangelize the native population, badly hit by a succession of demographic shifts and wars. They

4 To take an example, the Mormons, who founded a Mormon Church in New Jersey in 1830, had been active in Tahiti since 1844. Currently, 8% of French Polynesians are Mormons.

immediately took a stand as the protectors of the Kanak, a move which alienated the French colonial authority then being established in New Caledonia. From the start of Governor Guillain's time in office (from 1862 to 1870), the missionaries crossed swords with the colonial authorities, the white settlers and the penitentiary authorities. Coming from rural areas, they were often uncomfortable in the urban world of Noumea, where Freemasonry, active in the South Pacific since the 1860s, quickly drew in members of the notability.

In the Kanak world, evangelization, a relatively smooth process, upset the geopolitical balance between the various chiefdoms, and politico-religious rivalries erupted all over the place. Meanwhile, Father Rougeyron, mission leader since the death of Guillaume Douarre, set up camp on the outskirts of Noumea: there, he founded two missions modelled on the Jesuit Reductions in Paraguay, namely Conception and St. Louis. The missions brought together Kanak from all over the Main Island and the neighbouring islands, with the aim of training them in the Catholic faith so that, on their return home, they could act as assistants to the missionaries in spreading the faith, and also in spreading civilization. Those who were baptized deserved to enjoy the benefits of European technical advances.

The annexation of the Loyalty Islands, ten years after the Main Island, put a stop to the golden age of Protestant missionary zeal[5] and paved the way for a partition along religious lines, governed by political divisions.[6] This missionary rivalry partly explains the violent sectarian conflicts in the three islands, particularly in Maré from where Catholics were exiled in 1869. Their return did nothing to calm the situation, and sporadic fighting continued until the early 20th century, reaching a climax in 1880 with the Mendu massacre. The LMS was backed by the Methodists but shown little tolerance by the French authorities. Protestantism therefore owed its survival to its congregationalism and to its *natas*. In 1892, the LMS voluntarily handed missionary work over to the Paris Evangelical Missionary Society (Société des Missions *É*vangéliques de Paris – SMEP) but religious tensions in the Loyalty Islands remained high.

Further changes to the religious landscape occurred in the very late 19th century, which saw the arrival of Vietnamese, Javanese and Japanese labourers who, like the Muslim deportees shipped to New Caledonia in 1872, retained their own religious beliefs. These communities made no attempt to convert others and tended to blend into the general landscape of Christianity, mainly asserting their difference through funeral rites honouring traditional customs. The Catholic missionaries, already at odds with the agnostic and fierce anticlerical

5 Members of the LMS mainly relied on local catechists, known as *teachers,* whom they landed on the islands to take charge of missionary work. The first *teachers*, landed on the Isle of Pines, Lifou and Maré in 1840, and others left with the Tuauru in the South of the Main Island, were Polynesians. However, very soon after establishing themselves in the Loyalty Islands in 1854, the early LMS pastors trained local teachers they called by a Drehu name: *natas*.

6 The Protestant *teachers* succeeded in converting Chief Naisseline in Maré in 1848 and Chief Boula in Lifou in 1851. In 1856, the Protestants landed in Ouvéa, with Catholic missionaries following them a year later before going on to set up missions in Lifou and then Maré. Lifou is a good example of how religion and politics were intertwined: in 1842, the Boula chiefdom agreed to be converted by the Samoan teacher Fao. But when he tried to convert the Ukeneso chiefdom in 1850, the chief immediately demanded European Protestant missionaries. Since the LMS was unable to respond at once to the demand, the chief called upon the Catholics. J-F Zorn, 2011, "L'instant de la relève des missionnaires britanniques par les protestants français dans les océans Pacifique et Indien", *Histoire et missions chrétiennes*, no. 20, Karthala, Paris, p.120.

sentiments of a portion of the population, both in Noumea and amongst communities of freed convicts living in the bush, now found themselves in competition with Protestant missionaries, who landed in the Main Island in the 1880s and, as from 1894, obtained backing from the authorities. However, it was not until the arrival of Pastor Leenhardt in 1902 that Protestant teachers would radiate out from his mission station in Houaïlou and convert most of the remaining animists in the mountains to Christianity. The Catholic reaction was to be slow in coming but was led by Father Luneau, who founded New Caledonia's first seminary in Canala in 1931, and soon went on to found a school for married Catholic Kanak catechists based on the model of the Protestant *natas*.

This first period lasted until the mid-twentieth century and saw catechists, pastors and priests all working extremely hard to convert the Kanak population to Christianity. The Protestants had the advantage of their flexible teaching structures and the fact that each church was independent and organized its own services, the pastor only called upon to make rounds of inspection and train future *natas*. The *natas* were also responsible carrying the Protestant faith from the Loyalty Islands to the Main Island, taking advantage of former networks revitalized by work in the mines and plantations.

Men of faith, dedicated to instructing and educating, not only in religious matters but also in secular matters and, in the case of Catholic priests, to administering the sacraments, the missionaries were also all tireless builders. Churches and chapels rose from the ground, with edifices in stone fairly quickly taking the place of the humble early buildings. Churches and chapels often stood at the centre of a group of buildings which served as schoolrooms (lessons first taught in Latin in Catholic missions) and dispensaries or refuges offering shelter to communities marginalized by disease and civil unrest. In all these areas, the churches were alone in providing solutions and remedies to counter the ills of a people expected to die out and disappear. The Catholic church gave its support to the 1868 decision to create tribes, seeing this as a way of stabilizing semi-nomadic communities and making it easier to give them both religious guidance and any support they might need. The church had such a strong monopoly on providing education through local congregations that late 19th century attempts to introduce a public school system under Governor Guillain, and then in pursuance of French laws on secularism, were difficult to implement. When the Law on the Separation of the Churches and State was passed[7], the Governor informed Paris that it was unenforceable due to a lack of lay teachers. He was granted an exemption for the time needed to establish a fully public school system. In January 1939, the Mandel Decree-Laws[8] provided a way out of this legal religious-to-secular transition process. The Decrees acknowledged the public service roles of the Churches and they were therefore granted subsidies and funding. This explains why Catholic and Protestant schools play such an active role in New Caledonia today. The Catholic Education Authority (DDEC) is responsible for

7 The Law on the Separation of the Churches and State, the foundation of the French principle of *laïcité* (secularism), was passed in 1905 and provoked fierce hostility in Catholic circles. However, strict implementation of the law in France's overseas territories was impossible since public health and, especially, education services were often only provided by church congregations.

8 A decree-law is an executive decree issued by the government and having the full force of legislation. It is designed to enable technical measures to be taken while preventing them from becoming the subject of a parliamentary debate, which could easily cause a government to fall in the climate of political instability of the Third Republic.

67 schools, the Protestant School Alliance, for 46 and the FELP (Federation of Protestant Free Schools), which closed the iconic Nedivin secondary school in 2013, for 16. Application of the Mandel Decrees also prevented the 1905 Law being applied in the archipelago of New Caledonia. France's *laïcité* does therefore not exist in New Caledonia.

The missionaries had very mixed relations with communities of European origin. Relations with freed convicts and some convicts still serving time were bad and even atrocious, and resembled relations between the clergy and laity in France. Some Catholics were very firm supporters of the mission, starting with André Ballande, a native of Bordeaux (1857-1936), who did his utmost to promote the interests of missionaries in the South Pacific and especially in New Caledonia[9]. Although such support was crucial, the Churches often attracted hostility or indifference on the part of the settlers. The Churches continued to be very wary of these communities, who possessed all the vices of the industrialized world and passed these poisoned gifts on to the Kanak, whom they saw as big children who could be easily corrupted. As regards the settlers, anticlericalism was the prevailing zeitgeist and thrived on criticism of the missions' monopoly on schooling and of their land holdings. All this makes it easier to understand the growth of Freemasonry, the founding of a lodge being authorised by a 1968 order issued by the Governor. The Masonic presence has long been visible in Noumea, the Masonic temple (now the Federation of Secular Works building) being perched high above the cathedral.

The Churches' cultural transmitters *(passeurs culturels)* played a very significant role. They began very early on to translate the scriptures and religious publications into the Kanak languages. The first Protestant translations of the scriptures into *Nââ Numèè,* the language spoken in the south of the Main Island, and *Nengone*, the language spoken in Maré, appeared in 1847. In 1848, Father Goujon was working on a dictionary and translating texts for use in teaching reading and writing in *Kwényï* and French to pupils in the Isle of Pines. The Protestant *natas* were responsible for promoting *Drehu, Nengone* and *Iaai* (spoken in the Loyalty Islands), and *Ajië* (spoken in the Main Island), unwittingly contributing to the decline of other languages. A bible in the first three languages was published in London in the late 19th and early 20th century. As regards the Catholic missions, they were behind the creation and development of a French-based Creole known as *Tayo*, spoken in Saint-Louis. The number of *Tayo* speakers is currently steadily increasing in the south of the Main Island. Hard work by the church missions to preserve the Kanak languages was countered by the determination of the French colonial authorities to impose French. In 1921, an order was issued prohibiting two religious periodicals launched by Pastor Leenhardt and written in Loyalty Islands languages (mainly *Drehu*) and in *Ajië*.

Meanwhile, the churches showed willingness to champion local cultural traditions. In Europe, religious authorities were stressing that missionaries were "workers in the vineyard of the Lord", with Pope Benedict XV issuing his Apostolic Letter *Maximum illud* in 1919. The time had come for a transition from a missionary Church to a local Church run by native clergy. This changeover not only meant training indigenous pastors but also taking into

9 J.-M. Kohler and D. Shineberg, "Argent, religion et pouvoir en Nouvelle-Calédonie. André Ballande et les évêques, 1885-1935", *Journal de la Société des Océanistes*, no. 95, 1992, p. 151-183, available at http://horizon.documentation.ird.fr/exl-doc/pleins_textes/pleins_textes_6/b_fdi_33-34/36839.pdf.

account the beliefs, customs and traditions of local communities. Faith needed to become an inner conviction, proclaimed by leading a good Christian life and not simply by occasional or regular attendance at weekly church services and the great festivals of the Church year. The New Caledonian Catholic Church felt the effects of this general trend at a time when the colony's administrative authority was, like Sleeping Beauty, "asleep in the woods"[10] and when a New Caledonian society aware of its own specificities was beginning to emerge.

The 1925 Vatican missionary exhibition made Catholics aware of the hard work put in by members of the clergy of both Churches to save what could still be saved of Kanak cultural traditions. In the following years, this led to Kanak art being seen in a new light. While Father Gueneau was taking photographs of damaged rooftop totems turned into cemetery crosses, Father Gaston Barbeau was trying to create a New Caledonian art born of a fusion between Kanak artistic traditions and those of other communities. From a ceremonial axe in polished jade, part of the *regalia* carried by Main Island chiefs, he created a monstrance for the church at Pouébo.[11] More importantly, in 1953, he was responsible for the construction and the interior decoration of Sainte-Jeanne d'Arc Church at Koumac, a little-known example of this voluntarily cross-community art. The Kanak hut-shaped tabernacle was later to serve as a model for many bush churches.

And the Churches engaged in more widespread initiatives. Responding to a desire for change in the wake of the Second World War, to the communist threat and, above all, to the social and economic injustices heaped on the Kanak, the Churches became involved in social and educational movements, some of which became political movements. The four decades following the end of WWII are essential to an understanding of the contrasting attitudes of the Catholic Church and the Protestant Church towards demands for independence, right up to the present.

In 1946, France diffidently offered Kanak citizenship: the Churches made a point of instructing the "natives" in the exercise of their new rights. Between May 1946 and March 1947, Monsignor Bresson, with the help of a few priests and Kanak dignitaries, was responsible to setting up the Union des Indigènes Calédoniens Amis de la Liberté dans l'Ordre (UICALO)[12], a movement whose aims were social but which rapidly took on a political character, joining the Union Calédonienne, a multiracial Christian Democrat political party, in 1951. From that time, the Catholic Church distanced itself from politics to avoid all appearance of partisanship. It ceased to be the sole defender of the Kanak against the encroachments of settlers and the authorities. However, the Church's loss of support amongst the Kanak community was offset by the undisputed support it enjoyed amongst the Wallisians who were flocking to work in New Caledonia. Around the same time, the Protestants were to establish a Kanak community social organization, founded in Tibarama in June 1947 at a general meeting set up by pastors: the Association des Indigènes Calédoniens et Loyaltiens Français (AICLF). This also rapidly took a political direction, initially supporting the Union Calédonienne before turning against it under the influence of Pastor Charlemagne.

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10 According to the title of a book by P. Gascher, 1975, *L'administration coloniale de 1874 à 1894 – La belle au bois dormant,* Société d'études historiques de Nouvelle-Calédonie, Noumea.

11 *Kanak, l'art est une parole*, Paris, 2013, p. 158-163.

12 I. Kurtovitch,1997, *Aux origines du FLNKS, l'UICALO et l'AICLF (1946-1953)*, Noumea, Île de Lumière.

The surge in demands for independence in the 1970s made it more difficult for the Churches to define their position. Internal debates raged between loyalists and separatists. Some clerics resigned their offices: Jean-Marie Tjibaou was one of them and was defrocked in 1971. Many Kanak priests made the same decision.

The ethnic diversity of the faithful, the divisions within the clergy on political, economic and social issues, together with the equivocal reception of Vatican II, all help to explain the resignation of Monsignor Martin, first archbishop of New Caledonia, in 1970. Anxious to avoid exacerbating internal conflicts and encouraging faithful congregation members, whether loyalist or separatist, to leave the church, the Catholic hierarchy adopted a strictly neutral position which attracted criticism from both sides, particularly after the 1974 Synod of Bishops. Michel Calvet, appointed in 1981 as the new Archbishop, refused to countenance anything other than a neutral position both during and after the "*Events*". However, the Catholic Church was sometimes targeted by separatists: the churches at Pouébo and Balade had to close their doors for several months. Within the Church itself, members of the clergy also adopted pro-independence positions, as reflected by the Justice and Peace Diocesan Commissions of November 1985 and October 1986. In March 1987, publications by priests, in association with the Congregation of the Daughters of Mary, proclaimed the need to let the Kanak alone rightfully decide the future of the country. But the archbishop's refusal to adopt any position, although often criticized, proved to be the right solution. The dissenting Protestant Church led by Pastor Charlemagne made the same decision. But the Kanak Protestant majority came out for independence. Meeting at Houaïlou in August 1979, the Synod of the Evangelical Church of New Caledonia and the Loyalty Islands announced that its delegates were unanimously in favour of independence, "a prerequisite for the acceptance of other ethnicities".

The very significant role played in New Caledonia's history by the Churches and by Freemasonry, also hit by upheavals in the 1980s, explains why they both took part in the mediation process planned and directed by Michel Rocard to pave the way for a return to civil peace in a territory divided by what was called, due to a lack of consensus, the "Events". The mediators succeeded in initiating discussions between the protagonists, ultimately leading to the Matignon Accords in 1988. From then on, all New Caledonia's Churches shared the same aim: to promote peace through constant appeals to communities to live together in tolerance, a notion summed up in the term "common destiny" taken up by the Noumea Accord, signed ten years later.

To spell out the role the Catholic Church was intent on playing in the peace process, the Church used the celebrations marking its 150th anniversary in the archipelago to hold a customary ceremony of forgiveness. Even the ÉÉNCIL, composed almost exclusively of Kanak church members and established in extremely pro-independence areas, underwent change. In 2013, it became the Protestant Church of Kanaky New Caledonia (ÉPKNC) and affirmed its stance on Kanak independence. However, following the 2017 conference on the 2018 referendum, it issued a memo calling for people to respect the outcome of the voting and to show wisdom and common sense.

Since then, Catholic and Protestant clergy have been participants in every significant ceremony held. At the inauguration of the Jean-Marie Tjibaou Cultural Centre on 4 May 1998, all official speeches were preceded by an ecumenical prayer, led by a Catholic priest and a Protestant minister, for the success of the Noumea Accord, signed the following day.

In July 2004, a customary ceremony of reconciliation between the Tjibaou, Yeiwéné and Wéa families, involved in the assassination of Tjibaou and Yeiwéné, was held at Tyendanite, with the participation of three men, each representing one of Churches who played a role in New Caledonia's history.

And when in December 2017, the idea of a Committee of Wise Men and Women was floated, a committee made up of elders "recognised and respected, reflecting the diversity of New Caledonia", tasked with ensuring the integrity of the referendum campaign, people immediately thought of including a priest and a pastor.

In the years following the Events, the religions and religious traditions of other communities also received acknowledgement. Religious centres were built in Noumea: the Islamic Centre in 1986, the Buddhist Temple with its pagoda in 2001, the Synagogue in 2002 and the Vietnamese Church of Christ the King in 2005. But they were not frequented by many worshippers. For example, there are only a few hundred practising Muslims out of a community of around 7,000[13]. These religions do not really set out to convert new believers and they are seeing the same trends as the Christian churches: members of younger generations rarely attend services.

The Churches are indeed losing influence. The Catholic Church, elevated to an Archdiocese in 1966, could claim, as of 2016, to have 132,011 baptized members out of a population of 270,850.[14] Catholics thus make up a smaller proportion of the population whereas, a decade ago, they accounted for over 50% of New Caledonians. One of the Catholic Church's major problems is the decline in people, from all ethnic groups, attracted to the priesthood. The Marist priests, who belong to the congregation responsible for evangelizing Western Oceania, still make up the majority of priests but their numbers have fallen drastically, from 45 in 1950 to 17 in 2016. The Protestants are divided into two main camps, the ÉPKNC *(Protestant Church of Kanaky New Caledonia)* boasting greater numbers with 40,000 members, and the ÉÉLNC *(Free Evangelical Church of New Caledonia)*. In addition to these two Churches, there are smaller groups, often based in Noumea and its immediate periphery: mostly Pentecostal churches and Assemblies of God, which have sometimes split. Some, like the Evangelical Church of French Polynesia, have a definite ethnic character but are losing members, unlike other religious groups with a global spread, such as the Church of Jesus Christ of Latter-day Saints (Mormons) or the Jehovah's Witnesses, in New Caledonia since March 1960, well-known for their intensive proselytizing. Other religions (Islam, Buddhism, Judaism) are very much in the minority. Agnostics now make up around 10% of New Caledonia's population… Sunday church services are well attended even though congregations are aging and attendance is declining, except in the case of some evangelical groups. Christianity is celebrated joyously, with colourful ceremonies featuring songs and dancing.[15] As regards sects, these are non-existent and are more a product of the imagination than a reality.

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13 80% of Muslims in New Caledonia are descendants of Javanese workers and 15% of Kabyle deportees: the latter's historic centre remains Nessadiou near Bourail where, in recent years, a prayer hall has been built in addition to the cemetery. Other Muslims belong to diverse communities: Reunion Islanders, French, former Yugoslavs and some Melanesians.

14 Figures taken from the 2017 *Annuario pontificio* and available at http://www.catholic-hierarchy.org/diocese/dnoum.html, consulted on 30 October 2019.

15 R. Logier, "Les spécificités du champ religieux néo-calédonien. Hypothèses et analyses tirées de notre enquête menée en 2007", *Histoire et missions chrétiennes*, 2008/2 , no. 6, p.184.

Leaving an institutional church to join a new evangelical group is an individual or collective (often family) decision but never concerns an entire customary group. This is one of the reasons which makes converting individual members of the same tribe a sensitive issue. The Chepenehe case in January 1999 serves as a perfect illustration. Two women who were Jehovah's Witnesses refused to perform customary duties and were ordered to be whipped by tribal chiefs, then were whipped again when they filed a complaint for ill-treatment. This case clearly shows that leaving an institutional church with very strong ties to the customary world is tantamount to rejecting customary tradition and ignoring customary rules, which can be extremely burdensome and onerous. Conversion, sometimes justified a posteriori by the neo-pagan nature of customary tradition, leads to customary emancipation and is easier in an urban setting rather than in a bush environment. For a long time, this scenario concerned only the Kanak community but it now also affects the Wallisian community. Young people living in urban contexts in a situation of enforced or accepted marginality, show a growing indifference to religious and/or customary values.

New Caledonia still presents the image of a world where religion and custom are closely intertwined. This close collaboration, cultivated by Protestant and Catholic clergy and also by politicians, constitutes a factor making for balance and peace in an archipelago engaged in building its future. However, the lack of comprehensive measures addressing significant social issues leading to ever-greater inequalities has consequences capable of engendering lasting changes in outcome. The poorest members of the population, who include many Kanak and also people from other, mainly Oceanian, ethnic groups, are tempted by a new evangelism which is probably less strident than elsewhere. The most Europeanized communities are moving in social directions similar to those seen in wealthy countries: they are increasingly indifferent to religion without always turning to atheism. Meanwhile, young people in poorer urban areas have no reference point or model in terms of tradition or religion. They have lost touch with their roots and lost the values which guided their elders. New Caledonia's historical and new evangelical churches are appalled by this and are acting to help the poor and dispossessed through institutions like the Secours Catholique; however, they have not yet succeeded in convincing politicians to implement a costly health care and welfare policy for a portion of the population which, simply by reason of age, will play a significant role in tomorrow's New Caledonia.

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THE LANGUAGES OF NEW CALEDONIA

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New Caledonia is a multi-ethnic and multicultural archipelago with, according to 2019 census figures, a population of 271,407. It forms one of the Oceanian archipelagos where languages belonging to several families co-exist but are not all acknowledged or even treated in the same way. The Kanak languages form part of the subgroup of Oceanic languages (along with the Polynesian and Micronesian languages) belonging to the Austronesian language family. They are all languages of oral tradition – the only example of a writing system in the whole of Oceania is *rongorongo,* discovered on Easter Island –; reading and writing were introduced by Europeans. During the colonial period, the public education system completely disregarded these local languages, and they were prohibited at school in New Caledonia. Monolingualism was imposed during this period and French, deemed to be the only official language, is nowadays perceived by some Oceanian communities as the language of the elite and the language of success. Accordingly, addressing the issue of languages in New Caledonia is often seen as an assertion of identity and even of politics. But a language is defined as a system of communication shared within a community, symbolizing cultural identity and sense of belonging. Language is the carrier of the culture and also the thinking of a community, its specific comprehension of the world. Culture or, more broadly, cultural practices are transmitted through language. It is also crucial to understand that each language expresses a very particular vision of the world and functions in its own way. Enforced monolingualism can therefore be seen, to some extent, as an obstacle to personal thought, self-expression or, quite simply, living life to the full.

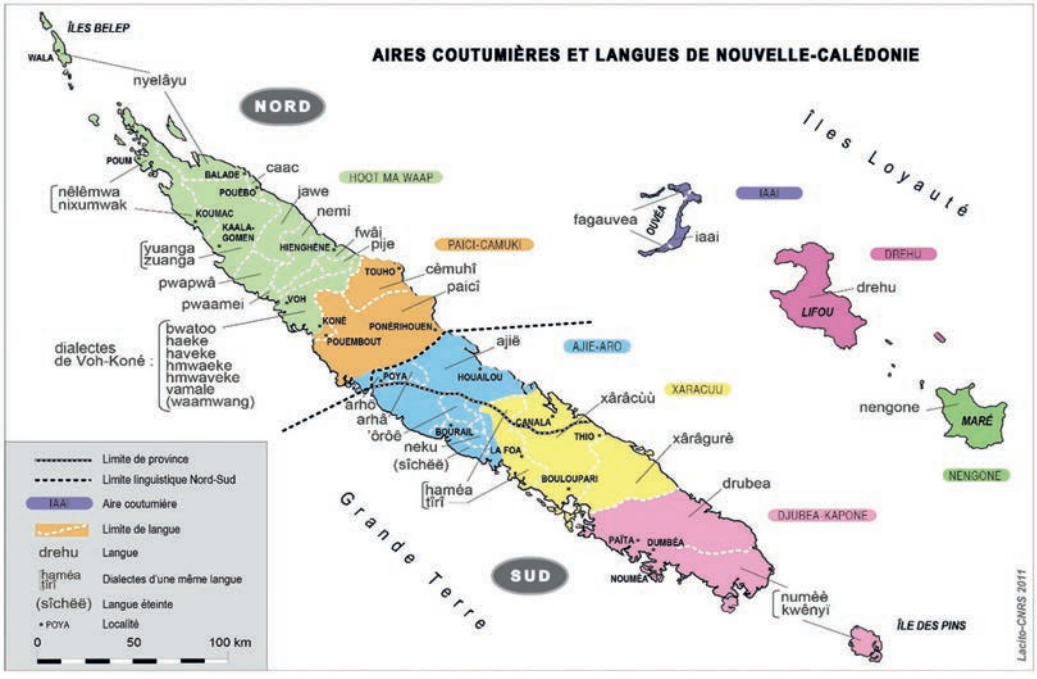
Yet New Caledonia is a country in which choices as regards political, social and even linguistic destiny are judged in the light of a particularly weighty colonial past. In political terms, several kinds of status have been considered and developed but have failed to prevent periods of serious unrest. Such periods of conflict have led to a general recognition that all communities must work together and accept each other to achieve their full potential. The coexistence of communities and especially the need for populations to show great adaptability has always been central to the intrinsically Oceanian (or Austronesian) conception of the world. It is a way of life that has meant that communities have co-existed for decades in islands, each community having distinct activities, methods and social systems capable of adapting to suit the environment. But the forcibly imposed European colonial vision indirectly established a hierarchy between peoples which, of course, changed the relationships between communities: the Kanak considering themselves as the first people and other peoples from recent settlements as not being first peoples, whereas all Pacific Islanders (including the Kanak) and Asians (particularly Indonesians and Javanese) are descendants of the original Austronesian peoples. It can be stated at this point that European colonization laid the foundations for a very real imbalance between the peoples living in New Caledonia.

Today, the country is engaged in a process which seeks to bring together the entire wealth and diversity of its peoples' cultures and languages. Could a language policy based on New Caledonia's linguistic diversity be envisaged? What future lies ahead for all these languages in a country moving towards a common destiny? These are all questions which underline the need for a review of the situation as regards the languages of New Caledonia, and a review would appear all the more crucial if we are to understand the language policy choices which will determine the fate of these languages. Indeed, the transmission and preservation of these languages are issues which must be addressed in order to safeguard linguistic diversity, the precious value of which is sometimes disregarded. Work done by linguists is essential in ensuring a language is preserved. Such research helps us to describe a language, understand how it functions, identify key strengths and characteristics, and draw out what it shares with other languages or, conversely, what sets it apart, thus contributing a more comprehensive study of linguistic typology. But a language still needs to be spoken for it to survive.

I. OVERVIEW OF THE LANGUAGES OF NEW CALEDONIA

New Caledonia is currently home to forty languages belonging to different linguistic families which can be traced back to various waves of migrant settlers. The first goes back 3,000 years, and the Kanak population alone, linked to this migration wave of Austronesian peoples from Southeast Asia, shares 28 languages dispersed as shown in map no. 1 below.

Map no. 1, Lacito-CNRS, 2011



A. Language families in New Caledonia

Two Indo-European languages were then introduced in the 19th century during the process of colonization: French and English. English did not make as much impact since it was mostly taught and spoken in the Loyalty Islands by London Missionary Society (LMS) missionaries evangelizing the people of Lifou, Ouvéa and Maré during the colonial period. Traces are still found today in Kanak words borrowed from English, for example, in Nengone (Maré) *balaigetr* meaning a covering, derived from *blanket*, *Sipun* (Nengone) derived from *spoon*, and *shuga* from *sugar*, etc.

New Caledonia has provided a setting for settlement colonization since 1860. Colonial policy was behind several migrations from Asian countries (Javanese, Tonkinese, Chinese and Japanese), designed to supply labour requirements for work in New Caledonia's nickel mines as from the 1870s.

Other Oceanian populations arrived during the nickel boom in the 1960s and, as stated by Isabelle Merle (2013):

> *The settlement project launched in the 1860s had an undoubted impact on New Caledonia's history, and appears to be repeated from one period to the next. The nickel boom in the 1960s attracted representatives from the Pied-Noir community (French colonial settlers) fleeing a newly independent Algeria, together with a community of labourers from Wallis and Futuna.*

Population migration necessarily entails the introduction of new languages: Javanese, Vietnamese, Chinese, Wallisian, Futunan and Tahitian, etc. are now therefore included in the languages spoken by the people of New Caledonia, in addition to the Kanak languages.
All these languages currently represent a range of linguistic families: Indo-European (English and French); Austronesian, which includes several languages belonging to two subgroups: the Oceanian subgroup which includes the Polynesian languages (Wallisian, Futunan, Tahitian, Marquesan, etc.) and the Melanesian languages (in addition to the Kanak languages and the languages of Vanuatu), and the subgroup of Western Malayo-Polynesian languages such as Indonesian, Bahasa Indonesia and Javanese. As regards Vietnamese, Chinese and Japanese, also spoken, these are Asian languages, each of which belongs to three distinct language families. In addition to French Caribbean Creole, also spoken in New Caledonia, there is another typically New Caledonian Creole, Tayo, spoken by a group of people of Kanak origin based in St. Louis (a tribe created by Marist missionaries in 1855)[1] in Greater Noumea. Tayo made its appearance in the early 20th century, a language born of the mixing of Kanak languages (such as Drubéa, Caac, Cèmuhî, etc.), Creole (spoken by Reunion Islanders) and French.

Thus, five families of languages are represented in this multifaceted archipelago of many colours, constituting a significant wealth of linguistic diversity. However, this linguistic abundance does not only derive from the number of languages, it is also linked to everything which goes to make up a language, i.e. phonology, morphosyntax and lexical field. Here, we will primarily present the main linguistic characteristics of the Kanak languages, and their highly diverse phonological and morphosyntactic systems.

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1 K. Lévy, 2018: https://information.tv5monde.com/culture/francophonie-le-tayo-un-creole-en-nouvelle-caledonie-251717

B. The specificities of Kanak languages

Languages are differentiated as much by their phonological systems as their grammatical properties. First and foremost, the phonological richness of the Kanak languages is made evident by the great variety of their consonant and vowel systems. Examples: Drehu (language spoken in Lifou) has 28 consonants (including voiced retroflex plosives *vs*. apical alveolar stops); Pije (one of the four languages spoken in Hienghène) has 35 consonants (including the opposition between voiceless nasals *vs*. voiced nasals and voiceless lateral fricatives *vs*. voiced lateral fricatives). Conversely, Polynesian languages have simple phonological systems: for example, Wallisian has twelve consonants and Futunan has eleven. But Fagauvea (spoken in Ouvéa, a language with the same roots as the previous two) and a Polynesian outlier language, possesses, besides these twelve consonants, a series of voiced stops /b/, /d/, /g/. Through coming into contact with Iaai, a Kanak language spoken in the same region, Fagauvea has expanded its consonant system. This characteristic is not unique to Fagauvea, it is shared by Polynesian outlier languages spoken in Melanesian areas. Connections between languages lead to some of their characteristics being enriched and to others being impoverished.

Evidence attests to co-articulated or complex consonants existing in the languages spoken in the North and Far North of New Caledonia:

- aspirated consonants opposed to non-aspirated consonants (p ≠ ph, m ≠ hm, etc.), such as in Nyelâyu: *pe* "skate/ray (fish)" ≠ *phe* "whetstone"; *ta* "mount" ≠ *tha* "bald"; *maak* "mango tree"; ≠ *hmaak* "footprint";
- these languages also feature post-nasal consonants (e.g. pm, tn, etc.), rarely found in languages worldwide, which tend to remain as a nasalized vowel preceded by an aspiration in other languages belonging to this area.

	Nemi	Fwâi	Nyelâyu
'wealth'	***tn****oot*	*t****hôô****t*	***h****noot*

We can cite Xârâcùù, spoken in the Canala and Thio areas, as an example of a language possessing an abundance of vowel sounds: Xârâcùù has 34 vowel phonemes, while Nââ Drubea, spoken in Unya (Yaté) and Païta, has 24 vowels (short and long). Linguists such as Haudricourt, Moyse-Faurie, Rivierre and Ozanne-Rivierre have identified some characteristics of the Kanak languages: languages spoken in the North of the Main Island are rich in consonants, while those spoken in the South are rich in vowels.

Some other Kanak languages, such as Paicî, Cèmuhî and other Kanak languages spoken in the South of the Main Island, reveal innovative features compared to other Oceanic group languages, such as the appearance of register tones, lower or higher, to distinguish between words. The Cèmuhî language has three tones _ high, medium, low_/*tíi*/ 'destroy' *vs.* /*tīi*/ 'harvest' *vs.* /*tìi*/ 'write'; /*pún*/ 'yellow, wilted' *vs.* /*pùn*/ 'head' *vs.* /*pùn*/ 'blue, dark green'.

Furthermore, the Kanak languages also possess grammatical particularities which deserve mention. These languages have a system of highly developed personal pronouns: there are three degrees of number (singular, dual, plural) and a contrast between inclusive or exclusive for first persons where dual and plural pronouns are concerned. The languages spoken in the North differentiate between several pronouns according to function, as does French with "je" (subject), "me" (object), "mon" (possessive). In these languages, a personal indicator

forms part of the verbal group, expressed at the head of the phrase, followed optionally by an object, and also a lexical subject coreferential with the personal indicator. This lexical subject is preceded by a marker which can vary depending on whether it refers to an animate or inanimate being.

Other notable particularities of the Kanak languages include:

- the expression of possession having complex constructions with, in addition to an opposition between alienable possession and inalienable possession, different classifiers depending on what one possesses;
- the linguistic system of space orientation combines topography-centred markers which are either absolute, based on prevailing wind direction (and not on fixed cardinal points) and which are used for moving about in a large space, or are relative and linked to the earth/sea axis for moving about in a small space. Kanak languages also possess demonstrative and directional particles situating the action both in space in relation to the speakers or the characters portrayed in stories, and also in time to highlight the stages by which the action develops over time.
- number systems are quinary and vigesimal (except Fagauvea, which uses a decimal system). There are also number systems with specific classifiers depending on what is being counted (long or round objects, plants, piles of yams, bundles of fish, etc.);
- New Caledonia is thus a country with a rich linguistic heritage and a complex colonial history, and the language issue remains omnipresent at a time when the country's future path is very much in the balance.

II. LANGUAGE POLICY IN NEW CALEDONIA

The first Europeans who landed in New Caledonia were bewildered by the great many languages they heard spoken, particularly the Kanak languages with their diverse sounds (vowels, consonants). Early linguists found New Caledonia a particularly rich field of research and it remains so today. New Caledonia's Kanak peoples have always been multilingual, well in advance of the colonial period. According to Haudricourt (1961)[2], at that time, egalitarian multilingualism[3] was prevalent. Colonization then reinforced Kanak multilingualism but, above all, disrupted language status by introducing linguistic hierarchy. The missionaries were obliged to learn Kanak languages and began teaching the reading and writing of the Kanak languages spoken in the Loyalty Islands, such as Drehu (Lifou) and Nengone (Maré). Some of these languages, such as Ajië (spoken in the Houaïlou region), were also used to preach Christianity and were therefore favoured by the missionaries, Ajië in particular, in comparison with other languages spoken on the Main Island.

However, while the reading and writing of Kanak languages prospered in missionary schools in the Loyalty Islands, in 1863 Governor Guillain issued a decree prohibiting the use of Kanak languages in all schools. As a result of this prohibition, French became the only official

2 A.-G. Haudricourt, 1961, Richesse en phonèmes et richesse en locuteurs, *L'Homme*, Vol 1, no. 1, 5-10.

3 An individual or community situation where several languages are used in various contexts: for example, neighbouring populations (Kanak or Oceanian), in contact with each other, using three or more languages for trading and matrimonial relationships. All languages were used regularly in various contexts.

language and the only language used in schools, the French language serving as an instrument of the French government's totalitarian colonial policy. This policy was reasserted in a decree dated 3 August 1905, article 12 of which stated, regarding primary schools, that "French will be the only language used in school". Since that time, Kanak languages and other languages introduced later by communities from Asia, for example, have been used only within the family circle or at cultural and customary events (in the case of Kanak communities, in tribal villages). Outside such contexts, their use remained strictly prohibited. The same rules applied to Oceanic languages such as Wallisian, Futunan and Tahitian, introduced during New Caledonia's economic boom years.

It was not until the 1970s, a century after the Guillain decree, that an upsurge of political and cultural demands led to language usage being reviewed and language issues put back on the agenda. An Office for Vernacular Languages was set up at the Centre Territorial de Recherche et de Documentation Pédagogique (CTRDP) to develop teaching materials to enable these languages to be taught in secondary schools. A climate of political instability reigned during the "Events" (1984-1985), and Écoles Populaires Kanak (EPK) were established in some regions following a political decision by the Kanak and Socialist National Liberation Front (Front de Libération Nationale Kanak et Socialiste - FLNKS). These schools were designed to counterbalance the "colonial" schools regarded by the indigenous population as the product of an elitist system dedicated to negating Kanak culture. The EPK schools placed the focus on Kanak identity and culture by teaching classes using Kanak languages. At the time, they were the only schools to acknowledge not only Kanak identity but also Kanak culture and languages.

When powers were delegated to the three Provinces in the 1990s, some Kanak languages were taught in weekly courses. In 1992, in application of the Deixonne Law[4] in New Caledonia, four languages (Ajië, Drehu, Nengone and Paicî) were offered as options at Baccalaureat level.

A. Research into languages

A national language policy, especially decisions and regulations relating to the vitality of languages, their status and social functions, enables the desired relationship between language and society to be determined. In the case of New Caledonia, the country's complex colonial history and the colonial injustices which are part and parcel of that history mean that the language issue is often bound up with political and identity-based demands. Moreover, as far as the Kanak population is concerned, languages form an integral part of their oral heritage. Languages are the channel through which customs (relating to marriage, mourning, adoptions) and their entire oral and intangible heritage – dances, songs, art, etc. – are passed from generation to generation. Learning and transmission always take place by the younger generation observing how the oral heritage is practised and performed by their elders. And so it is crucial to gain a better understanding of how Kanak languages are used in New Caledonian society: are they omnipresent, are they visible in urban and rural areas? Do social stakeholders take these languages into consideration?

4 Law no.51-46 of 11 January 1951 relating to the teaching of local languages and dialects. It was named the Deixonne law after Maurice Deixonne, who was at the time Rapporteur for the Parliamentary Commission on education, and who introduced the bill. The law had two purposes: to defend the French language and to protect regional languages.

The Noumea Accord (1998) served as a milestone in the acknowledgement of these languages, in fact, clause 1.3.3 states: "The Kanak languages are, along with French, the languages of education and cultural expression in New Caledonia. Their place in school curricula and in the media should therefore be increased and extensive thought should be given as to how to achieve this." This provision of the Accord was given legal effect in Article 205 of the Organic Law of 19 March 1999 relating to New Caledonia, which states that the Melanesian languages are recognized as languages of instruction:

1) *In order to promote its cultural development, New Caledonia, having consulted the Provinces, signs a special agreement with the French government. This refers, in particular, to the Kanak cultural heritage and the Tjibaou Cultural Centre.*

2) *The Kanak languages are recognized as languages of education and cultural expression.*

The language policy having thereby been given legal effect, implementation of these political decisions began the following year with the introduction of a degree course in Regional Languages and Cultures at the University of New Caledonia (in 1999) where four Kanak languages (Ajië, Drehu, Nengone and Paicî) are taught. The University of New Caledonia, as part of its performance agreement, is currently fully engaged in scientific research in the field of indigenous languages; among its six research laboratories, three of them are focussing on linguistics issues: the Troca team's mission is to shed light on the issue of languages in relation to Kanak society and, more broadly, Oceanian social structures in anthropological, literary and historical (including archaeological) terms; the Eralo research team covers the fields of linguistics, sociolinguistics, socio-educational and geographic contexts; the Lire team focusses on language teaching. Indeed, New Caledonia's linguistic diversity represents a key field of study for research professors, who spare no effort in raising awareness amongst all New Caledonia's communities of the rich learning experience offered to all children by linguistic diversity within the education system. There is no doubt that the linguistic diversity of New Caledonia's population plays a particularly powerful role in the acceptance of a common destiny and in the possibility of living it to the full.

The establishment of the Kanak Languages Academy (Académie des langues kanak – ALK) in 2007 was another very significant step forwards in the recognition of Kanak languages in New Caledonia. The Academy's missions include laying down rules of usage and promoting the development of these languages. At present, proposals for creating a written form of eight of New Caledonia's 28 Kanak languages have been published. Moreover, since 2009, the ALK has diversified its work, adopting an editorial policy encompassing various forms of publication: themed dictionaries, collections of texts, grammar books, etc.

B. Teaching languages

As stated above, language is the carrier of a community's culture and also of its thinking, the specific way in which it views the world. Teaching a language therefore involves teaching a people's culture, their way of being, of inhabiting the world, of thinking. As long as a language is spoken, it remains a living language so it is equally true that speaking and using the language keeps it alive. Thus, from every viewpoint, the teaching of languages is fundamental; in societal terms, it represents one of the essential means of transmission and evolution.

Currently, four Kanak languages (see above) out of the 28 existing in New Caledonia are being taught from first grade to university level. However, first grade Kanak language teaching remains optional, the decision resting with the children's parents. Unlike Oceanic languages (Wallisian, Futunan, Tahitian, etc.), Asian languages are not included in New Caledonia's education project (2019 reform).[5] Since 1st January 2000, the date on which responsibilities in the education sector were transferred, the three Provinces (Loyalty Islands, North and South) of the country each have their own policy as to the teaching of Kanak languages in primary schools. Responsibilities for secondary school education were transferred on 1st January 2012; Kanak languages also remain optional in secondary schools, they are offered as a Modern Language 3 option, as are Japanese and Latin.

In line with New Caledonia's education project (Decision No. 106 of 15 January 2016), the aim of the New Caledonia Department of Education (Direction de l'Enseignement de la Nouvelle-Calédonie – DENC) is to "develop the identity of New Caledonian schools". Since 2018, it has therefore made instruction in the basics of Kanak culture mandatory. As stipulated in the Noumea Accord, the primary aim of such instruction is to further the recognition of Kanak identity, as laid down by Article 1.3.4. It also aims to anchor schools within their cultural context. Such instruction can act as a springboard, particularly for Kanak or Oceanian students, by helping them to develop confidence and self-esteem. It also gives all students a better understanding of Kanak customs, practices and ways of life. In Greater Noumea, some Kanak children (and even Oceanian children from Wallis, Futuna, etc.) no longer speak their language (or speak it very little). Teaching the basic elements of Kanak culture can act as a catalyst and encourage some Oceanian and Kanak children to learn or relearn their language, or perhaps to discover the languages spoken in the places they live.

As regards higher education, the University of New Caledonia currently includes a degree in Oceanic Languages and Cultures (licence de langues et cultures océaniennes – LCO) in the university's degree courses: the same four Kanak languages being still taught at the university (see above). These four Kanak languages were selected on the basis of the number of speakers: Drehu has around 15,000 speakers, Nengone around 10,000, Paicî around 7,000 and Ajië around 5,000.[6] LCO degree course students also acquire language skills (oral and written skills in a Kanak language), they follow an introductory course in an Asia-Pacific region language (Polynesian or Asian), they learn about safeguarding and passing on the linguistic and cultural heritage of Oceania, etc. The course is not however reductive since it gives students an opportunity to not only acquire but expand their knowledge of the languages and cultures of Oceania. The course also helps to boost fluency in French and English, to promote the teaching of French as a second language and, above all, to cherish and cultivate New Caledonia's linguistic diversity.

The aim is to provide students with the tools they need to achieve mutual acceptance, knowledge and recognition, or simply to accept the reality of linguistic, social and cultural diversity, so that the common destiny brokered by the Noumea Accord proves a positive experience.

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5 https://denc.gouv.nc/textes-de-reference/la-reforme-de-2019

6 According to Institute for Statistics and Economic Research figures for 2014.

Moreover, the crucial issue of language vitality must be addressed to identify the best approach to the preservation of endangered languages. According to UNESCO criteria assessing the vitality and endangerment of languages, sixteen Kanak languages are considered as endangered languages with fewer than a hundred speakers. To keep languages alive, they need to be passed on and teaching is one of the ways of passing them on. Linguists can also contribute to linguistic descriptions (grammar, vocabulary, dictionary, etc.), etc.; but the speakers of a language have a central role. They are the actors who must play their part by starting the process in their home environment: parents or grandparents must pass on their language to young people and children. Language is the carrier of a human culture, a civilization. In keeping with New Caledonia's language policy, assessing language vitality reveals how languages are used in social contexts. Their use in a variety of contexts (public or private) helps to promote language transmission and preservation. Perpetuating values, cultures and therefore Oceanic languages is a fundamental priority for a country like New Caledonia, a country facing the challenge of substantial change.

CONCLUSION

Under New Caledonia's language policy, only the Kanak languages, along with French, are taken into consideration; but only four of these Kanak languages are being taught. This means the Kanak languages are not given an equal footing and leads to differences in status, differences which also apply to all the other languages spoken in New Caledonia, some of which are completely overlooked. From the standpoint of pro-independence Kanak, making their languages a priority is justified by the Kanak status as first occupant, therefore these languages should be the primary concern of the language policy; the Oceanic languages (Wallisian, Tahitian, Futunan) and Asian languages (Indonesian, Javanese, Vietnamese, etc.) being represented in their countries of origin. But French is not treated in the same way as these languages because it is the lingua franca and the official language inherited from New Caledonia's colonial past. Currently, the predominance of French obscures New Caledonia's rich linguistic diversity. This situation is clearly the legacy of colonial concepts of language usage resulting in a dominant language holding sway over other dominated languages.

Moreover, for a country moving towards a common destiny, celebrating the social worth of the country's other Oceanic languages is essential. The concept of "living together" is not utopian, it must be achieved in practical terms and through the acceptance of the cultures and languages of other communities constituting the common wealth.

Consideration could be given to a balanced language policy rooted in a socially responsible approach encouraging community initiatives to raise awareness and appreciation of cultural and linguistic diversity. Addressing the issue of language vitality is inextricably linked to changes in society, so that social usage and, given this diversity, the resilience shown by the languages spoken in New Caledonia can be assessed. Work in collaboration by cultural, social and linguistic stakeholders would be of use in identifying how to balance this diversity in a pluralistic country to accomplish a common destiny. Finally, art mediation would also represent one of the avenues to be considered by New Caledonia's board of education with a view to facilitating access to cultural diversity.

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The traditional tripartite division of Oceania (Melanesia, Polynesia, Micronesia) has no relevance when it comes to matters of public health. A better division would be between a developed Oceania (Australia, New Zealand, Hawaii…), where health services performance equals that of Europe and North America, a developing Oceania (Northern Mariana Islands, Guam) and, alas, a less advanced Oceania (Papua New Guinea, Vanuatu, Solomon Islands, Nauru, Tuvalu, Kiribati…).

New Caledonia clearly belongs to the first group, resembling a sort of little France in terms of overall health organization and performance (I). But it is very much an Oceanian country, with all the characteristics of a post-colonial territory, distanced and set apart from France in the Pacific Region (II).

I. NEW CALEDONIA, A LITTLE FRANCE IN THE PACIFIC OCEAN

New Caledonia's health system is modelled on that of France (1), which it closely resembles in terms of public health indicators (2).

A. Health system delivery and organization modelled on France

New Caledonia's health system is governed by two mutually balancing principles:
- the application of French law, in accordance with the principle of legislative speciality: French law applies only if the legislator expressly so provides or if such application derives from the very purpose of the text adopted in France;
- the autonomy of this "overseas country": it has jurisdiction in the area of health and public welfare and can enact its own laws in the form of "country laws" and "resolutions of Congress".

In other words, some areas of healthcare have remained within the French government sphere, for two reasons:
- due to their gravity: the occurrence of large-scale disasters or adverse events, which can lead to implementation of operational plans and rescue measures falling within the jurisdiction of the French government;
- because they are deemed to affect not only health but also fundamental rights (respect due to the human body), public freedoms and the judicial system (professional jurisdiction of doctors and pharmacists).

In terms of healthcare, French laws currently cover a small number of vital issues such as medical and pharmaceutical studies, the granting of medical degrees, specialized certifications,

doctors' civil or criminal liability... or readying the health system for large-scale health threats (law no. 2007-294 of 05/03/2007).

The health system never fails to conjure up a little bit of France in the heart of the Pacific Ocean (health mapping, healthcare organizational plan, etc.), including the key role of public hospitals which provide free healthcare (subject to a small user charge).

The healthcare professions have their own ordinal structure, based on the French model but separate and independent (doctors, dental surgeons, pharmacists and midwives). In theory, the professions have their local disciplinary boards which, *via* an appeals system, report – under a freely signed agreement – to the national disciplinary board in France. Finally, referral can be made to the Council of State in Paris, in its capacity as supreme court.

New Caledonia's autonomous standard-setting role lies primarily in the regulatory domain. In New Caledonia, resolutions adopted by the Congress relate to all New Caledonia's areas of jurisdiction as laid down in article 22 of the Organic Law of 1999. This law refers to "social welfare, sanitation, health and border health controls" (article 22-4°), it being specified that the French government has jurisdiction over "maritime and air services between New Caledonia and other French territorial entry points" (Article 21 I 6°). New Caledonia also has jurisdiction over hospitals, regulation of the liberal professions, animal and plant health regulations and diplomas. The exercise of these powers has led to the adoption of a number of significant directives relating to ethics, appointing a primary care/coordinating physician, health policy (health promotion and healthcare costs control plan), occupational healthcare, health monitoring and border health controls. It was thus a resolution dated 2001 (no. 171 of 25/01/2001) which created the Agence sanitaire et sociale de la Nouvelle-Calédonie (New Caledonia health and social welfare agency) and a resolution dated 2008 (no. 421 of 26/11/2008) which set up the local health monitoring, border health control and serious health threat management system. More recently, mention should be made of the resolution (no. 114 of 24/03/2016) relating to the New Caledonia health plan "Do Kamo", "Être épanoui !".

B. Healthcare performance to rival Europe

The overall healthcare situation in New Caledonia is similar to that of a large European country. The standardized mortality rate (still at 5.76‰ in 2000) was for a long time higher than that of France (4.78‰). It now stands at 5.5‰. Regardless of the age structure of New Caledonia's population, this trend is comparable to that in French Polynesia which, however, fell below the threshold of 5 deaths per 1,000 population earlier (1996). This rate is only slightly higher than France and similar to or well below several French Overseas departments (Reunion Island 5.5‰ and, in particular, Martinique 7‰). Life expectancy (77.4 years for the population as a whole) remains higher than in most South Pacific countries. While lower than Australia and New Zealand, the figure for New Caledonia is higher than the overall average for the European Union (75.6), and above the figures for Poland (75.1), the Czech Republic (73.1) and Bulgaria (72.5). The gap between New Caledonia's infant mortality rate (4.9‰) and the rate in France (3.9‰) is narrowing, confirmation of a steady downwards trend. However, the number of doctors per 100,000 population (231.4 in 2017) remains lower than France, where the figure was 290.3 doctors per 100,000 population in 2009. A possible comparison with a department in mainland France would be the Hautes Alpes. To provide a point of comparison with other countries, one could cite Canada (210), the United States (220) and Austria (250).

Healthcare costs are mainly covered by the Caisse des Allocations Familiales, des Accidents du Travail et de la Prévoyance de la Nouvelle-Calédonie (New Caledonia Family Allowances, Workplace Accidents and Social Welfare Fund (CAFAT))[1] – the local social security scheme (62%), and the public authorities (25%) who provide healthcare cover for the worst-off (Aide médicale gratuite) and also contribute to disease prevention costs. But the Régime Unifié d'Assurance Maladie-Maternité (RUAMM) – the social security scheme for the self-employed, supervised by the CAFAT – is in deficit: in November 2019, reimbursements to private healthcare professionals and facilities were suspended, leading the government to release an emergency 4.5 billion XPF (€37 million) rescue package.

To help paint a picture, New Caledonia has a total of 1,100 available beds, giving a significantly lower ratio of hospital beds per 100,000 population than France: 449 beds compared to 711 beds for France. Nevertheless, New Caledonia is positioned well ahead of Italy (324 beds) and particularly Spain (255 beds).

This is evidently a purely academic average. Of course, the North Province does possess a Centre hospitalier du Nord (Northern hospital complex) with facilities at two (Koumac and Poindimié) and now three sites (inauguration of the recent Pôle sanitaire du Nord, in Koné), thus ensuring that the south and north of the province both enjoy fair access to healthcare services. However, this in no way remedies major disparities in healthcare provision. Furthermore, New Caledonia's overall approach to geography and healthcare provision shows clearly that it is a country apart and can by no means be conflated with mainland France.

II NEW CALEDONIA – A COUNTRY APART

New Caledonia has specific issues which often characterize ex-colonial Pacific Island territories (1) and it also suffers from serious disparities in terms of healthcare (2).

A. Specific issues which often characterize ex-colonial Pacific Island territories

As a general rule, local health legislation lags significantly behind legislation in France. One notable example of this concerns insanity/mental illness: neither the archaic Esquiros Act of 30 June 1838 relating to the insane, nor the Evin Act of 27 June 1990 on the civil rights and protection of persons hospitalized for mental disorders, were ever made applicable in France's Pacific territories. Prior to the introduction of recent legislation early in the current century, local law was established by a 1936 colonial decree. Until the last few years, in lieu of the 2000 (French) Health Code, the rules of the old 1953 public health code were applied, transposed into a local legal code in 1954/1955, and the "specially applicable" texts were often "copied and pasted" from French legislation and not really relevant to the realities of life in these Oceanian countries. The ways in which French law and New Caledonian law connect up are not always clear, even for lawyers. No real local public health code is yet in existence.

1 The CAFAT (New Caledonia Family Allowances, Workplace Accidents and Social Welfare Fund) is a private entity tasked with a public service mission: the management of public health and welfare services for the people of New Caledonia. It is mainly funded by employee and employer contributions deducted from wages and salaries.

Indeed, legal professionals are obliged to go on a real treasure hunt to identify the applicable provision. In addition to matters which fall under the jurisdiction of the Country (New Caledonia), legal experts need to examine whether the text of which they intend to make use has been made locally applicable, while unfortunately being all too aware that a provision rendered applicable has not necessarily been so rendered in its entirety, with the result that some words or phrases must be deleted, or substituted and supplemented by others. So jurists face a real jigsaw puzzle which needs putting back together before they can work out which rule to apply.

The local public health system has limited resources, meaning that the system can only function with the aid of substantial funding from France. Health expenditure as a share of New Caledonia's GDP has consistently increased to keep pace with growing needs. According to statistics from the Direction des Affaires Sanitaires et Sociales de la Nouvelle-Calédonie (New Caledonia Health and Social Services Directorate – DASS/NC), healthcare expenditure represented 7.90% of New Caledonia's GDP in 1999. Of course, this was slightly lower than France's 8.3% of GDP but still represented a considerable amount for the Pacific Region: indeed, with a per capita ratio of €1,327 in 2001, New Caledonia was already ahead of New Zealand (€1,092) and Japan (€1,126), whilst remaining below figures for Western Europe. Currently, health expenditure as a percentage of local GDP has never been higher (10.8% in 2012) and is no longer far behind France (12%). Social security contributions (deemed hefty for both employees and businesses) do not suffice to offset the scale of expenditure. New Caledonia is obliged to supplement them from its tax revenues and, in particular, with funding from France, which contributes vast amounts of financial aid (XPF153 billion in 2015, i.e. 1.28 billion euros).

The intertwining of powers (between France and New Caledonia) makes the management of large-scale epidemic threats more complicated. At the time of the H1N1 pandemic, which broke out in 2009 (so-called avian flu), the Minister of Health in Paris deemed that France would assume sole responsibility in the event of a serious health threat. In practice, and faced with a legal vacuum, the government of New Caledonia and the High Commission (representative of the French government in New Caledonia) spontaneously joined forces and set up a steering committee to deal with any possible spread of the H1N1 virus to New Caledonia. But it was France which freely donated the 50 or 60,000 doses needed for a vaccination programme. During the Covid-19 crisis, initial regulations took the very unusual form of a decree issued jointly by the President of the New Caledonia government and the French High Commissioner (No. 2020-4608 of 23/03/2020), which implemented a compulsory fourteen-day quarantine period in a closed dedicated facility, following the official requisitioning of local hotels (A. No. 2020-4322/GNC-Pr of 19/03/2020), whereas the legislation subsequently adopted by the Paris authorities (Order No. 2020-463 of 22/04/20 and Law No. 2020-546 of 11/05/2020 extending the health emergency) merely laid down the principle of a quarantine period at home (Public Health Code, Article L3131-15).

Whereas private healthcare preceded public hospital healthcare in France, the opposite is true in the Pacific, where public hospitals were established before the first private physicians set up practice; at the time these were not hospital doctors but physicians from the French navy. Even today, the predominance of the salaried healthcare sector and, within that, hospital services, should be noted. Of the country's 815 practicing doctors (as of 30 June 2018), only 263 were in private practice. The network of private healthcare facilities is at a minimum, with only one clinic in Noumea (the Kuindo-Magnin clinic) for the whole country: this does

not make it easy for private specialists who need to work in healthcare facilities (radiologists, surgeons…) to set up in practice. On the other hand, the country has retained the original, colonial-era, system of dispensaries: New Caledonia has 26 (5 of which are in the Loyalty Islands, the only one of the three provinces to lack a public hospital). There is no uniform classification for these small-scale healthcare facilities. On the ground, they may take the form of community & healthcare centres or healthcare-only centres, the former offering, in addition, the services of a social worker, or infirmaries with no in-house doctors or visiting/consultation centres which rely on visiting doctors and dental surgeons.

The lack of regard for traditional Kanak medicine is another colonial legacy; despite the lip service paid to traditional medicine by the 2016 "Do Kamo" scheme, it is largely ignored, a clear contrast with what has been achieved by neighbouring Australia.

Given these circumstances, there are huge gaps in the healthcare network. The vast scope of a centralized public health system makes sense in a country like France with high levels of healthcare service provision, but makes far less sense in islands where there is often no doctor or even nurse on the spot, merely a healthcare assistant. It is a cause for regret that doctors, dentists and pharmacists can only train in Europe when English-speaking Oceania boasts universities where they could study. The situation lacks consistency, since medical evacuations to Australia are available for New Caledonian patients and medical evacuations to New Zealand for Tahitian patients, proof that both these countries have highly trained medical practitioners. Clearly there is a need to generalize application of the measure introduced in New Caledonia by the Country Law of 23 August 2017, which allows local veterinary surgeons to train in Australia and New Zealand. The future Country Law relating to the practice of healthcare professions, the draft of which was adopted by Congress in 2019, should constitute a modest first step in this direction.

And finally, the pharmacy network is very unevenly distributed across the country, despite the number of inhabitants required for a licence to open a pharmacy being higher than in France (4,000 inhabitants in New Caledonia compared to 2,500 in France). Some islands do not even have a pharmacy (Belep, the Isle of Pines until 2015). Inequalities in the healthcare system are inevitable in such circumstances.

B. The endurance of astounding healthcare inequalities

The disparities are both geographic and social in nature.

The figure giving 223 doctors per 100,000 population is only an abstract average, and is not intrinsic to New Caledonia. Even in France, the statistics camouflage a disparity of 1 to 3 for all France's mainland departments, 1 to 2 for GPs and 1 to 7 for specialists.

But the phenomenon is even more pronounced in New Caledonia, a country marked by considerable geographical disparities. The demographic imbalance between Noumea and the rural outback, on the one hand, and the South Province and the country's two other predominantly Melanesian Provinces on the other hand, has continued to grow. Thus, the Loyalty Islands Province, which accounted for over 15% of New Caledonia's population in 1956, represented less than 10% of total population in the 2004 census, 7.1% in 2009 and 7% in 2014. The North Province has also dropped from 35.3% in 1956 to 19.3% in 2004 and to 18.4% in 2009, with a slight uptick in 2015 (19%). Currently, around 75% of the population

is concentrated in the South Province. Two out of three New Caledonians live in Greater Noumea, the natural location for the majority of healthcare services. The South Province accounts for 90% of doctors in private practice and 96% of medical specialists. The density of doctors in the Greater Noumea area stands at 272, rising to 404 within the city of Noumea itself... This figure is well above the figure for Provence Alpes Côte d'Azur, which is France's leading department in terms of numbers of doctors: 375 per 100,000 population. However, the density of physicians drops sharply to 104 in the Loyalty Islands Province, while density in Touho and Voh in the North Province is below 50. A divergence in excess of 1 to 8.

In fact, Koné only has one doctor per 633 inhabitants and Thio can only count on one doctor per 2,891 inhabitants, namely 35 doctors per 100,000 population. These ratios fall short of the worst figures for Sub-Saharan Africa: 59 physicians per 100,000 population in Burkina Faso, 49 in Mali (2008) and 39 in Chad, although New Caledonia's comparatively much smaller size makes this a somewhat bold comparison. Nevertheless, the low density of doctors explains the unusually high rate of non-medically certified deaths occurring in the North Province (more than 15% in Ouégoa, Hienghène and Ponérihouen) and the Loyalty Islands (Tadine, for example).

Almost all specialist practices are located within Greater Noumea. In 2004, only the town of Bourail, 200 kilometres north-west of Noumea in the South Province, boasted both a full-time cardiologist and radiologist. This is a far cry from standards in France (166 specialists per 100,000 population), even when compared with Corsica and the French Overseas departments in the Caribbean and the Indian Ocean. The Loyalty Islands Province has no specialist physician.

This is the most disturbing aspect of New Caledonia: two worlds in coexistence, facilities on a par with major developed countries alongside healthcare provision typical of the least developed countries.

The question also arises as to whether the division into provinces (a positive move in political terms) does not constitute, in this regard, a potentially exacerbating factor insofar as it has led to the development of two very different provincial public policies:

- In the South Province, private doctors are in very abundant supply and there are two private clinics. Aide Médicale Gratuite (free healthcare for those who qualify for no other healthcare scheme) in the municipality of Noumea only provides access to public sector healthcare, long regarded as a "poor relation". Did people not call (the old) Gaston Bourret hospital, "the Kanak hospital"?
- In the North Province and in the Loyalty Islands Province, there are few doctors in private practice, almost no specialists and no clinics; there are only public hospitals and dispensaries with salaried doctors. At one point, there was even an attempt to develop (especially in Lifou) a system for the distribution of medication outside the commercial pharmacy channel.

Given that these two "worlds" exist in a country the size of a pocket handkerchief, covering less than twenty thousand km², communities living in the least well-served areas can nonetheless take advantage of facilities in the best-served areas (especially if they travel to Greater Noumea!). The fact remains that life expectancy is higher in the South of New Caledonia (74.4 years) than in the North (70.1 years) or in the Loyalty Islands (71.6 years), the latter both being parts of the country with an almost exclusively Kanak population

(96.6% according to the 2009 census). The overall mortality rate stands at 4.8 per 100,000 population (2010). Along with French Polynesia, New Caledonia has the lowest mortality rate of all the Pacific island countries. But this figure throws a veil over local disparities: the mortality rate is twice as high in the Loyalty Islands Province (8.1 per 100,000 pop. in 2012) as in the South Province (4.5 per 100,000 pop.).

However, an analysis of the statistics does not point to a worsening of the situation because, although there was a very significant divergence in provincial mortality rates in the early 1980s, disparities have been narrowing in the North and the Loyalty Islands, where the figures are now close to rates recorded in the South Province in the early 1980s. Any further reduction appears no easy task, but nothing will be achieved without inter-provincial coordination.

Secondly, it is likely that ethno-cultural disparities underlie the geographical data because, in the same area, for example Noumea, differences exist which are difficult to distinguish from the usual social differences found in France between well-off and underprivileged populations.

Nevertheless, causes of death vary depending on which community people belong to. Deaths from tumours, cardiovascular diseases (43% of patients treated for chronic or long term illness, injuries and substance abuse, particularly legal drugs) occur more frequently amongst the overall European population. 62.6% of prostate cancers, for example, affect New Caledonians of European origin. Conversely, members of the Melanesian community are more likely to die from respiratory diseases or infectious and parasitic diseases. Similarly, there is a clear predominance of thyroid cancers amongst Kanak women: 42.9% compared to just 3.6% amongst European women.

But Decree no. 2009-1273/GNC of 17 March 2009, which lists the forty notifiable diseases, makes no provision for patient ethnicity, information which would ensure more detailed data. The DASS (Health and Social Services Directorate) website cites geographical differences and variations in age and sex but makes no mention of ethnic identity.

At most, a guess can be made on learning, for example, that 49% of the (342) cases of leprosy notified between 1983 and 2017 occurred in the North Province: Canala (39 cases), Koumac (21 cases) and Belep (20 cases), with active transmission in these three municipalities continuing over the past five years; an incidence rate in excess of the WHO 1/10,000 endemic threshold for 2017. This disease is not on the way out: in the Loyalty Islands Province (20% of cases), incidence is even back on the rise, significantly so between 1996-2005 and 2006-2017. And Melanesians are the principle victims. Reference to a 2013 DASS document reveals that the victims of 271 out of the 321 cases of leprosy recorded since 1983 were Kanak. In the European-majority South Province, only five sporadic cases of leprosy have been recorded outside Noumea over the past ten years.

Similarly, it is known that the incidence of tuberculosis, still significantly more common than in industrialized countries, is higher in Melanesian, Wallisian and Vietnamese communities… and that New Caledonians of European origin are the group least affected by it. In terms of the country as a whole, some municipalities continue to show a much higher incidence: principally Bélep, Ponérihouen, Hienghène, Houaïlou and Kaala-Gomen, all five in the North Province.

As regards dengue fever (4379 cases in 2017, including 387 admitted to hospital), the municipalities proportionally most affected have mainly Melanesian populations (Pouembout, Poindimié, Canala…).

The municipalities most affected by ciguatera (known locally as "la gratte") – 1,763 cases recorded between 1984 and 2010 – are all in the North Province, apart from Thio (264 cases per 100,000 pop.) – a municipality with a majority indigenous population allotted to the South Province when provincial divisions were established – and the Isle of Pines (291 cases per 100,000 population): they are Touho (213 per 100,000 pop.), and Poya (208 per 100,000 pop.), a municipality which straddles the provincial boundary.

In terms of leptospirosis (89 patients tested positive in 2017, the majority of cases occurring in the North Province), the municipalities with the highest local population percentages are also located in the North Province (Pouébo, Ouégoa, Ponérihouen…).

Despite a considerably lower number of acute rheumatic fever cases, prevalence in the North and Loyalty Islands Provinces is almost three times higher than in the South Province. These are very telling findings.

Now that this (ethnicity) parameter has been re-established by census/survey results since 2009, it should be factored in by the DASS. New Caledonia is "a society where the ethnic divide is also a social divide. Such ethnicity-based statistics therefore represent an essential tool for the assessment and development of public policies on housing, education and health" (Ph. Gomès).

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FROM EXPRESSIONS OF IDENTITY TO A PORTRAIT OF OCEANIAN YOUNG PEOPLE IN NEW CALEDONIA: AN OVERVIEW OF NEW CALEDONIAN LITERATURE IN FRENCH FROM 1853 TO THE PRESENT DAY

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How long has New Caledonian literature existed? Is it an emerging genre of literature? Why are books written in the French language in New Caledonia? Does New Caledonian literature have something special to tell us? All questions that reflect, even today, ignorance and lack of familiarity with New Caledonia's literary output, which has long endured the presumption that it has as yet no established form or structure, and suffered even more from ambiguity about where it stands between French literature and literature written in French. Moreover, the archipelago of New Caledonia has struggled to build and project a positive image, with the result that its artistic and cultural achievements are overlooked or simply dismissed.

And yet, Kanak cultural traditions constitute a rich and ancient heritage. In any event, the history of New Caledonia explains why letters, poems and novels have been written there in French for over 150 years, and only now in the Kanak languages. New Caledonia's literary output cannot boast a long and complex history comparable to European or Caribbean literature, or even to the ancestral orality in which Kanak culture is rooted, but the individual writings of which it is comprised can be gathered together to form a literary history.[1]

New Caledonian literature springs from the country's specific history (that of a Melanesian land annexed by France in 1853, a penitentiary, a colony which would become an Overseas Territory (TOM), and finally a *sui generis* collectivity moving towards to self-determination); at the same time, New Caledonia's literature provides one of the best records of the history and culture of the New Caledonians, or rather their stories and cultural traditions, because it enduringly sets down and preserves knowledge of them. It is one of the most revealing vectors for emerging expressions of identity, how they have been exacerbated and also outdistanced, together with the concerns besetting the people of New Caledonia in the run-up to the second referendum on independence.

This chapter, in response to the questions posed hereinabove, will attempt to provide the keys needed for a better understanding of New Caledonian literature and a clearer picture of the issues involved by setting out a brief overview of its literary history. Our aim is to demonstrate how the originality of New Caledonian literature lies in the way it has taken shape in symbiosis with the historic growth and construction of New Caledonian society, from annexation by France in 1853 to the present day.

1 V. Soula, 2013, *Histoire littéraire de la Nouvelle-Calédonie (1853-2005)*, Paris, Karthala, coll. Littératures.

I. BEGINNINGS OF NEW CALEDONIAN LITERATURE: WRITINGS BY OUTSIDERS (1853-1914)

A land of oral tradition, New Caledonia, in company with all the islands of the South Pacific, was pitched into a new era as European exploration of the Pacific intensified in the 18th century: an era of evangelization, writing and also colonization.

A. Writings by missionaries

Missionaries, particularly the Marist Fathers, were the first Europeans to settle lastingly in New Caledonia and they were the archipelago's first French language "writers". Indeed, their ministry required them to report to the religious authorities on the establishment and development of their mission.[2] The remoteness, loneliness and unfamiliarity of the missionaries' surroundings, and their experiences in encounters with the "natives" meant that writing became an essential part of their lives; their letters were to form a considerable body of correspondence, and they also wrote articles for the many religious newspapers and pamphlets circulating in the 19th century.[3]

As key eyewitnesses and careful observers of their environment, the missionaries were also to draft "scientific" works which, like the priest Père Lambert's *Mœurs et Superstitions des Néo-Calédoniens*[4], gave European readers new insight into the Kanak people and their way of life, and also local plant species and wildlife.

Although the "literary" nature of these writings is not always manifest, many of them hint at real literary ambition on the part of the Marist Fathers, aware as they were that their writings could potentially be published and disseminated in journals. Accordingly, their at times meticulous attention to style qualifies some of their writings as worthy inclusions in the field of literature.

The significance of such missionary writings in establishing the written form in New Caledonia is emphasized by their role both as a necessity and as establishing a new form of cultural expression, introduced perhaps but nevertheless enduring, in the territory. They still remain the vectors of the first portrayals and insights into the archipelago, its history, and "indigenous" culture. The missionaries were the first people to write about New Caledonia, from within its shores.

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2 Among the informative reports intended for the religious authorities, the collection of missionary writings on the Kanak insurrection of 1878 should be noted: F. Bogliolo (ed.), 2000, *Jours de colère, jours d'Ataï, l'insurrection de 1878 d'après la correspondance des pères maristes*, Noumea, Île de Lumière.

3 There are many articles on New Caledonia in, amongst other publications, *La Revue des missions catholiques (Review of Catholic Missions)*, published from 1868 onwards.

4 R. P. Lambert, 1999, *Mœurs et Superstitions des Néo-Calédoniens*, [1900], Noumea, Société d'Études Historiques de Nouvelle-Calédonie (SEHNC).

B. Writings by deportees

Writing was once again "introduced" by convicts, particularly by Communard political prisoners[5] sentenced to deportation in New Caledonia.[6] Born of their desire to connect with Europe despite being excluded and exiled, writing was also their only means of doing so, in defiance of the strict censorship enforced by the Penitentiary Authorities.[7] The deportees included intellectuals sentenced to exile for their involvement in the Paris Commune; they laid the foundations for a poetic and lyrical writing style perpetuating, advancing and exemplifying the French literature of the second half of the 19th century. The Communards in exile continued to write political texts, and also to develop a literary expression of exile and political struggle echoing the poetry of Victor Hugo. Some authors, such as Casimir Bouis and Louise Michel, reveal a truly filial poetic relationship with Hugo, sometimes even entering into correspondence with the author in exile in Guernsey. The gaze of these writers remains fixed on France and the barricades despite separation by thousands of kilometres of ocean and their farthest horizon being set by the Coral Sea.

Some works of penitentiary-related literature, such as Jean Allemane's *Mémoires d'un déporté de la Commune, des barricades au bagne*[8], herald a change of focus to life in New Caledonia, betokening a new basis for literary endeavour. Dividing his memoirs into two parts, the first dedicated to his involvement in the Commune, the second to his experience of deportation, Allemane turns his gaze away from France to depict life in New Caledonia. Cut off from the reality of life in France, he describes another reality: the colonization process in which he plays a part. The author is no longer simply a detached observer but has become an actor, a witness, an "historian" and an author writing about life in New Caledonia.

Another example of this change of focus in "deportee" literature, *Légendes et chansons de gestes canaques* by Louise Michel[9], is one of the major literary works inspired by New Caledonia to be written during the period. In the book, Louise Michel develops her interest in the Kanak world and reveals the poetic dimension of Melanesian oral literature. In *La Commune, histoire et souvenirs*[10], she pursues this New Caledonian theme, describing what she learned from her conversations with Daoumi, her Kanak source and informant, and transcribing a song in the language of Lifou and in French. Louise Michel's interest in the Kanak people is further underlined by her denunciation of the violent repression of the 1878 rebellion by French troops and their Kanak auxiliaries. Her perception, insight and curiosity about this land of exile once again find expression in her beautifully evocative descriptions of New Caledonia's

5 The name "Communards" is given to people who took part in the Paris Commune. A radical socialist, anti-religious, and revolutionary government that ruled Paris from 18 March to 28 May 1871, the Paris Commune was one of the consequences of defeat in the Franco-Prussian War and of the siege of Paris by the German army; the republican Parisians also refused to accept the authority of the largely monarchist National Assembly.

6 L-J. Barbançon, 2003, *L'Archipel des forçats, histoire du bagne de Nouvelle-Calédonie (1863-1931)*, Lille, Presses universitaires du Septentrion.

7 V. Buisson, 2001, *Lettres retenues, correspondances censurées des déportés de la Commune en Nouvelle-Calédonie*, Paris, Le cherche midi.

8 J. Allemane, 1975, *Mémoires d'un déporté de la Commune*, [1870], Noumea, SEHNC, publ. no. 15.

9 L. Michel, 1988, *Légendes et chants de geste canaques*, [1885], Paris, les Éditions 1900.

10 L. Michel, 1999, *La Commune, Histoire et* souvenir,s [1898], Paris, La Découverte, coll. Poche Littérature.

natural world. An idyllic vision of plants and landscape[11] such as this was fairly rare at a time when New Caledonia's natural environment was mostly perceived as a hostile embodiment of imprisonment in a tropical hell. Although, like many former Communards, Louise Michel was to return to France on completing her sentence, she bequeathed a compelling legacy of her time in New Caledonia.

C. Colonial writings

Although first and foremost a penitentiary colony, New Caledonia was also a settler colony. Apart from missionaries and convicts, the first Europeans to settle there were government and military officials plus a number of adventurers; however, the policy adopted by Governor Feillet from 1894 to 1903 was designed to end New Caledonia's role as "convict" colony and "turn off the tap of dirty water" to encourage free settlement, to burnish the colony's image and make it a place of productive potential.

This was the backdrop to the development, in the 1890s, of a colonial literary movement which continued until the second World War. This considerable body of literature took many forms: personal memoirs, colonial novels, invocations, eyewitness accounts and poetry. Conscious of their role in the trailblazing experience of founding a new world and seeking to evoke their sense of remoteness, even exile, authors popped up at every level of local society, writing at length about the very nature of the colonial experience. One of the notable works by civilian authors is the collection of essays *A mes enfants calédoniens*[12] by Pauline de Aranda-Fouché, the wife of a surveyor and member of New Caledonia's modest middle classes; another is the account by Ferdinand Knoblaugh of his collaboration with James Paddon, one of the first Europeans to freely settle in the archipelago, in *Six textes anciens sur la Nouvelle-Calédonie,*[13] and also the novel by government-appointed doctor Jacques Nervat and his wife Marie, *Célina Landrot, fille de Pouembout*[14]*,* published in 1904. There was also no lack of works by military authors in the late 19th century, one of the defining events of the period being the Kanak rebellion of 1878. The most arresting works include *Après 1878, les souvenirs du Capitaine Kanappe*[15] and, particularly, the *Carnets de campagne* by Michel Millet[16], an illiterate gunner who took part in and witnessed the repression of the uprising led by Chief Ataï. These accounts not only provide evidence of the socially diverse character of the French military, but also highlight the need to write to bear witness and to exorcise doubts and fear engendered by the colonial experience.

However, the works most clearly reflecting a literary identity rooted in New Caledonia during the colonial period are without doubt those published in the early 20th century by

11 *Ibid*.

12 P. de Aranda-Fouché, 2003, *À mes enfants calédoniens,* Noumea, CDP Scéren, coll. Témoignage points d'histoire no. 14.

13 B. Brou (ed.), 1988, *Six textes anciens sur la Nouvelle-Calédonie*, Noumea, SEHNC, publ. no. 42.

14 M. and J. Nervat, 1987, *Célina Landrot, fille de Pouembout, roman calédonien*, [1904], Noumea, Société d'études historiques de Nouvelle-Calédonie.

15 Ch. Courtis, 1984, *Après 1878, les souvenirs du Capitaine Kanappe,* Noumea, Société d'études historiques de Nouvelle-Calédonie.

16 M. Millet, 2004, *1878, Carnets de campagne en Nouvelle-Calédonie*, Toulouse, Anacharsis.

Marc Le Goupils, a senior teacher who left his Paris post to become a "Caledonian" coffee planter and settler.[17]

His use of the term "Caledonian" represents a literary and social turning point since it appears that Le Goupils was one of the first to apply this adjective to European settlers in New Caledonia – the term "New Caledonians" had so far been used to refer to the Kanak, as seen in the book by R. P. Lambert. With the removal of the prefix "Néo" (New), the term shed its primary meaning and henceforth referred to European settlers. The word "Canaque" (with a francized spelling) then became the term used to refer to members of New Caledonia's Melanesian population.

The early 20th century marked a decisive moment in both the history and literature of colonization, heralding as it did the advent of the "Caledonian" as a social and literary figure. Just half a century had witnessed a fundamental change in literary focus. Literature "transported" to and sourced outside New Caledonia gradually grew local roots. The New Caledonian archipelago became a subject of literary interest in its own right, there was a change in the way it was portrayed, and the penitentiary hell gradually gave way to a colonial paradise whilst authors acquiesced in defining themselves as "Caledonians".

II. THE EMERGENCE OF NEW CALEDONIAN LITERATURE (1914-1970)

New Caledonian colonial society evolved and grew in confidence in the early 20th century, enjoying the economic benefits resulting from the discovery of garnierite and the opening of the first nickel smelter in 1910; the growth of indentured labour, the rise in immigration, and the shutting down of the penitentiary in 1931 also played a key role.

In terms of arts and culture, the trend was towards exoticism, paving the way for the first generation of New Caledonian writers and the first expressions of Kanak identity.

A. The "first generation" of New Caledonian authors

This period nonetheless appears as characterized by a somewhat ambiguous relationship between New Caledonia and France. The two world wars were to have a disruptive effect on the process of exploring "otherness" and the portrayal of colonial communities, with factors including the establishment of colonial battalions comprising a mixture of Kanak and New Caledonian soldiers, leading to a significant shift in the way each community perceived the other.

Moreover, although the European community's self-identification as New Caledonian grew stronger during this period, New Caledonia's accession to the status of Overseas Territory in 1946 was to give this community a real sense of being abandoned. Many of them no longer saw France as their true home country yet they sought refuge there. A paradox reflected in the lives of authors Alin Laubreaux and Jean Mariotti.

17 M. Le Goupils, 1910, *Comment on cesse d'être colon, six années en Nouvelle-Calédonie*, Paris, Bernard Grasset.

Works of literature could thenceforth be defined as New Caledonian since they were no longer works written by visitors from France. This literary current gave rise to two distinct but not irreconcilable approaches and perspectives, the first of which was inward-looking, the expression of an often critical gaze directed towards colonial society and its hybrid nature. In *Le Rocher à la voile*, Alain Laubreaux[18] ferociously caricatures the bourgeoisie of early 20th century Noumea. Jean Mariotti's autobiographical fiction *Au fil des jours, tout est peut-être inutile* takes the same fiercely critical stance.[19]

Very much alive to New Caledonia's multi-faceted reality, Mariotti was aware of his own ambiguous cultural identity (not really Kanak and not quite French). And so the issue of identity is a core theme in his writings, an expression of his sense of ambivalence, caught between two very different worlds: the challenge of being a "white" New Caledonian. Mariotti's constantly wavering feelings about his own sense of identity led the author to spend much of his life as an exile in France.

The second form of literary approach taken by this "first generation" of New Caledonian writers can, unlike the first, be seen as "extroverted" or outwards-looking, directed towards the Other, and in particular the Kanak world. The realm of the penitentiary and the experiences of convicts or mixed-race people were also key themes, as seen in the writings of Georges Baudoux and also, to a lesser extent, Francis Carco.[20]

New Caledonian literature thus reflected society as it was at the time, fragmented and divided yet revealing a permeability embodied by characters of mixed-race. A distinctively New Caledonian form of literary expression was shaped by the porous relationship between social spheres in the country.

New Caledonia was now portrayed from within, and authors offered their readers clearer, more accurate and intimate insight through depictions of the pre-colonial era. They emphasized the importance of orality and Kanak oral tradition, seeking to give the written form an oral character by transcribing accents and expressions and also by the mise en abyme of narratives.[21]

Writers were thus fascinated by the Kanak world, which became one of the main themes of New Caledonian literature in the first half of the 20th century. Taking the Other into consideration meant questioning oneself, one's presence in the country and one's roots.

B. What about writing in the Kanak world?

Evangelization paved the way for increased literacy amongst the Kanak population during the second half of the 19th century and early 20th century. Many missionaries working in indigenous communities developed a keen linguistic and ethnological interest in Kanak culture; Pastor Maurice Leenhardt, in particular, published decisive research into the A'jië

18 A. Laubreaux, 1996, *Le Rocher à la voile*, [1930], Noumea, Grain de Sable.

19 J. Mariotti, 1929, *Au fil des jours. Tout est peut-être inutile*, Paris, Flammarion.

20 G. Baudoux, 1952, *Légendes canaques, Ils avaient vu des hommes blancs*, (vol. 2), Paris, Nouvelles Éditions Latines and G. Baudoux, 1985, *Jean M'Baraï, le pêcheur de* tripangs, [1920], *in Les Blancs sont venus*, vol. 1, Noumea, SEHNC no. 2.

21 G. Baudoux, *Les Vieux savaient tout, ils avaient vu les hommes blancs, op. cit.* and also Paul Bloc, 1998, *Les Confidences d'un cannibale*, [1965], Noumea, Île de Lumière.

language spoken in the Houaïlou region, and encouraged the development of Kanak writing and literature in the Main Island.

The first Kanak "writers" were inspired by Leenhardt's work and influence. Indeed, he encouraged the *natas* (native pastors) at his Do Néva mission to write. As early as 1920, Bwêêyöuu Ërijiyi, one of the *natas*, transcribed A'jië discourses, legends and other elements of oral tradition in notebooks[22] which were later translated into French by Maurice or Raymond Leenhardt. Other pastors also took to the pen, including Waya Gorodé – father of the female Kanak author Déwé Gorodé – who wrote *Souvenir d'un Néo-Calédonien ami de Maurice Leenhardt,* a still unpublished memoir. The fact that Gorodé wrote in French is indicative of a desire to reach a public beyond the Paicî linguistic and cultural sphere.

Histoire et psychologie des Mélanésiens, the first work in French by a Kanak author, began life as an academic thesis written in 1965 by the priest Apollinaire Anova-Ataba, and published in 1984 under the title *D'Ataï à l'indépendance*.[23]

Before it was even published, this text was rapidly recognized as significant; it was widely and attentively read in Kanak intellectual circles from the end of the 1960s. Copies from the first print-run quickly sold out. The literary impact of Anova's work appears considerable but remains somewhat difficult to gauge. Nor is it easy to assess its literary value. However, some passages, including the story of the 1878 rebellion and the description of Chief Ataï, possess authentic literary value in their epic portrayal of events, imbuing them with mythical or legendary status. It is also noteworthy that Anova included poems he had written, confirming his status as one of first Kanak writers in French. His poems would also have a major influence on the poetry of Déwé Gorodé in *Sous les cendres des conques*[24], seen particularly in her use of slang expressions, frequent use of the infinitive and even her syncopated rhythms.

Anova's work is crucial to serious reflection on the use of the French language as a vector for expressing Kanak thinking, Kanak identity and Kanak claims. He plays a *de facto* fundamental role in the development of creative contemporary Kanak literature written in French.

The first half of the 20th century witnessed the emergence of New Caledonian literature in parallel with a heightening awareness of both European and Kanak identity, themes which grew in scope and structure until the 1970s.

III. NEW CALEDONIAN LITERATURE IN A TIME OF POLITICAL CRISIS (1970-1989)

The New Caledonian literary landscape was to change significantly between 1970 and the end of the 1980s. Literary expression was striding forwards at the same time as a social and political crisis was overwhelming the archipelago.

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22 S. Aramiou and J. Euritein (eds.), 2002 & 2003, *Pèci i Bwêêyöuu* Ërijiyi, *Cahiers de Boesou Eurijisi*, Noumea, FELP/ADCK, coll. Bwêwêyê no. 7 & 8.

23 A. Anova-Ataba, 1984, *D'Ataï à l'indépendance*, Noumea, Édipop.

24 D. Gorodé, 1984, *Sous les cendres des conques*, Noumea, Édipop.

With social and ethnic divisions still very much in evidence, New Caledonian society underwent a period of heightened tension engendered by the enduring economic marginalization of the Kanak community, and by the need of each community to assert its own identity. This volatile situation heralded a period of violent conflict from 1984 to 1989, variously designated a "civil war" or the "events".

In literary terms, these years of turmoil were marked by the rise of Kanak literature, with writing driven by politics and the media tending to overshadow creative writing; the voices of writers belonging to hitherto silent immigrant communities also began to make themselves heard, determined to assert their own right to a place in the literary landscape against the backdrop of the social and political context of the time.

Paradoxically, the urgent political crisis had a dampening effect on New Caledonian literary production, while at the same time paving the way for a new approach to literary expression, and encouraging the flowering of new genres.

A. The advent of Kanak literature

Gaining in scope and freedom, works by Kanak authors in the French language became a vehicle for cultural and political demands, before they established their authentic status as literature in the 1970s and 1980s in the form of plays and poetry. These written works by Kanak authors by no means represent a negation of the oral heritage or even of the native language of their authors, quite the contrary.

The play-pageant *Kanake,* co-written by Jean-Marie Tjibaou and Georges Dobbelaere and performed in September 1975 at the Melanesia 2000 Festival, is a key work of the period.[25] It represents one of the few texts written by the Kanak leader, better known as an orator, and presents a synthesis in dramatic form of Kanak political demands at that time. Moreover, it constitutes a pivotal work of literature as the very first evocation of the mythical Teâ Kanaké (the first man, founding ancestor of the Kanak people), and also in giving prominence to specifically Kanak cultural traits such as clan organization, totemic hierarchy and the use of Kanak speech. Indeed, the dramatic form of the play-pageant references oral tradition. A denunciation of colonial violence and the negation of Kanak identity and a call for a Melanesian "awakening", *Kanake* is the literary declaration of the man who would rapidly become the most charismatic of pro-independence leaders. Clearly recognizing the legitimacy of Kanak culture and ending with a "plea for the future", *Kanake* set the tone and spirit, as early as 1975, which would be embodied in the "common destiny" project set out in the Noumea Accord of 1998.

However, Jean-Marie Tjibaou's vision as reflected in *Kanake* failed to prevent a political crisis. Kanak poet Déwé Gorodé emerged as a new literary, and political, female personality in the wake of the pro-independence struggles of the 1980s.

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25 Designed and organized by Jean-Marie Tjibaou, with French government support, this festival was the first major cultural event showcasing Kanak culture in its most diverse shapes and forms (traditional dances and songs, sculptures, weaving, etc. from all over New Caledonia and the Loyalty Islands) for the general public.

Her collection of poems, *Sous les cendres des conques*, broke away from traditions set by Kanak authors writing in French because, in Déwé Gorodé's hands, the French language became a symbol of commitment, an art form and, simultaneously, an intermingling of the literary and the political. A trailblazer, she set out to use the tools of French literary expression to attack colonialism, in a sort of "literary putsch".

Sous les cendres des conques marked the arrival of a powerful new voice decisively asserting the claim of Kanak writers, and a Kanak woman writer in particular, to take their rightful place in New Caledonia's literary, cultural and political landscape.

Literature, closely linked to society, reflected social change in its own evolution, whilst furthering a global renewal.

B. The saga novel and minority voices

Narrative fiction, following on from the colonial novels of the late 19th and early 20th centuries, was a literary constant until the 1980s. Times change, society evolves and the celebration of colonial achievement was replaced by a passion for tracing New Caledonia's history which would become a key theme in popular fiction, reflected not only in the saga novels of Jacqueline Sénès[26] but also in the "noir" thrillers written by Alain Fournier under the initials A.D.G.[27]

Fiction was also a form explored by writers from historic minority immigrant communities, thus reflecting New Caledonia's new image as an Overseas Territory. Jean Vanmai's *Chan Dang, les Tonkinois au temps colonial*[28] was the first such work. Vanmai gave a voice to the descendants of Indochinese indentured labourers and paved the way for writers like Dany Dalmayrac[29] and Marc Bouan[30], who respectively evoked the experiences of descendants of Japanese and Indonesian indentured labourers in New Caledonia.

Fiction writing offered a means of preserving and passing on memories, of asserting the identity of such minorities, legitimizing their place in New Caledonian society and also of calling attention to their integration.

C. New Caledonian literature and political crisis

Poetry greatly flourished during these unsettled times. With the 1984 publication of Déwé Gorodé's *Sous les cendres des conques*[31], poetry heralded a general resurgence in New Caledonian literature, and also appeared as the literary form best suited to expressing the intensity of responses to the political crisis and the violent conflict then overshadowing New Caledonia. Two key figures dominated New Caledonian poetry in the 1980s: Déwé Gorodé and Nicolas

26 J. Sénès, 1987, *Terre violente,* Paris, Éditions de la Seine, coll. Succès du Livre.
27 A. Fournier aka A.D.G., 1988, *Les Billets nickelés*, Paris, Gallimard, coll. Série Noire.
28 J. Vanmai, 1982, *Chân* Đàng*, les Tonkinois de Calédonie au temps colonial* [1980], Noumea, SEHNC, publ. no. 24.
29 D. Dalmayrac, 2003, *Les Sentiers de l'espoir kanak et nippo-kanak*, Noumea, Écume du Pacifique.
30 M. Bouan, 2003, *L'Écharpe et le kriss*, Paris, Publibook.
31 D. Gorodé, 1984, *Sous les cendres des conques*, *op. cit.*

Kurtovitch, two kindred souls who each expressed through their poetry the upheavals, loss and sorrow suffered throughout the social and political crisis.[32]

Nicolas Kurtovitch published *Vision d'insulaire*[33] in 1983 and *Souffles de la nuit*[34] in 1985; his work was instrumental in bringing New Caledonians of European origin to a truly profound change in perspective. Kurtovich, born to a long-established New Caledonian settler family, rejected the old divisions and the need to legitimize his presence in the country. He instead attempted to demonstrate that "otherness" – Kanak "otherness" – should be seen as an opportunity for encounters and not as a source of fear. Despite being stamped by colonization, his work can be considered as resolutely post-colonial[35] insofar as it attempts to do away with the requirement for literature to be sourced in the rooting of peoples.

The first *La Brousse en folie*[36] comic strip books by Bernard Berger were published in 1984, at the height of the political conflict in New Caledonia. Berger's biting and colourful caricatures of New Caledonian outback society provided an outlet for the social and political tensions dividing communities in the country. The *La Brousse en folie* comic strips met with immediate and enduring popular success, and the series rapidly achieved cult status amongst New Caledonians of every age and ethnic origin. In addition to using self-mockery and humour to defuse the atmosphere of tension and conflict, the comic books and caricatures of society succeeded in countering the communitarian views then popular.

La Brousse en folie provides a stylized portrayal of outback society based on four characters encapsulating each community (the Kanak, the "Caldoche" – outback descendant of European settlers, the Vietnamese guy – the Asian immigrant, and the "Zoreille" – the recently arrived incomer from France). Berger uses exaggerated character traits and clichés to unite people in laughing at themselves and at other people, each community getting an equal dose of mockery. As portrayed by Bernard Berger, New Caledonian society appears as united despite its inner diversity. Berger also conjures a New Caledonian culture shared by ordinary people by having his characters speak in typically New Caledonian French slang, engage in shared popular activities: hunting deer or "roussettes"[37], fishing, the cult of the siesta, television, fascination with American culture, etc. In this way, Berger offers an authentically New Caledonian literary alternative to the identity-based conflict taking shape in the 1980s.

The literature of the 1970s and 1980s increasingly reflected the complex issues affecting New Caledonia: the struggle for independence, minorities making their voices heard, efforts to avoid the pitfalls of violence, and the quest for a way out of conflict affirming authors' commitment to the process of "common destiny" set out by the Noumea Accord in 1998.

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32 V. Soula, 2019, "La poésie contemporaine de la Nouvelle-Calédonie et les 'Événements' de 1984-1989 : difficultés d'un discours (poétique) du bouleversement et du deuil", in Études francophones, University of Louisiana at Lafayette review, vol. 30.

33 N. Kurtovitch, 1983, *Vision d'Insulaire*, Paris, Saint-Germain-des-Prés.

34 N. Kurtovitch, 1985, *Souffles de la nuit*, Paris, Saint-Germain-des-Prés.

35 J-M. Moura , 1999, *Littératures francophones et théorie postcoloniale*, Paris, Presses Universitaires de France, coll. Quadrige. Manuels.

36 B. Berger, 1984, "Premières feintes de Tonton Marcel", *La Brousse en folie*, vol. 1, Noumea, La Brousse en folie.

37 Species of large fruit bat.

IV. RENEWAL OF NEW CALEDONIAN FORMS OF EXPRESSION AND COLLABORATIVE WRITING (1990-2005)

The signing of the Matignon Accords in 1988 by Jacques Lafleur and Jean-Marie Tjibaou, the two charismatic leaders of the "loyalist" and pro-independence movements marked the end of the period known as the "Events" and the start of a new decade characterized by rapid cultural development. New Caledonia's creative arts and literature embraced greater diversity. The people of New Caledonia were henceforth alive to the unique nature of the autonomous status their country had acquired in the 1990s. In 1998, with the Noumea Accord, the official recognition of Kanak culture by the French government and acknowledgement of the need to establish a common destiny, New Caledonia became a sort of institutional and intercultural laboratory.

The writers of New Caledonia were quick to engage with the intercultural project underpinning the Matignon-Oudinot Accords and Noumea Accord; and although poetry remained a key literary form, new genres such as plays, essays and novellas flourished. A literary metadiscourse also began to take shape, influenced by a number of writers and, in particular, by academic research developed in conjunction with the French University of the Pacific, later to become the University of New Caledonia.

A. Kanak literature written in French

Although, in the 1990s, works by Kanak authors were fairly low profile, they now firmly asserted their place as part of French language literature. Drawing heavily on the Kanak cultural heritage, transposing Melanesian oral traditions into literary texts, Kanak authors opened up new ground, moving beyond the purely political to proclaim a culture enshrined in a common destiny.

Their writings also take a freshly critical view of Kanak society and its struggles to give structure and meaning to custom and traditions in a contemporary environment. Thus, contemporary Kanak society is subjected to harsh scrutiny in Pierre Gope's plays *Où est le droit ? Okorenetit ?*[38], *Le Dernier crépuscule*[39] and also *La Parenthèse*[40].

Essays gave New Caledonian literature a more personal perspective. The return to more peaceful times also gave writers freedom to evoke memories and speech, influenced too by the trauma generated by the violent conflicts of the 1980s. Louis-José Barbançon's *Le Pays du non-dit*, an iconic and pioneering collection of essays exploring New Caledonia, was followed by the same author's *La Terre du lézard*; of high literary quality, Barbançon's works reveal a writer-historian laying claim, through his writing, to an oral culture shared with the Kanak world, and attempting to end rivalry between cultures and memories.

38 P. Gope, 2002, *Où est le droit ?, Okorentit ?*, Noumea, Grain de Sable.
39 P. Gope, 2001, *Le Dernier crépuscule*, Noumea, Grain de Sable.
40 P. Gope, 2005, *La Parenthèse*, Noumea, Traversées.

B. Collaborative writing

The shift in New Caledonian cultural life initiated in 1998 with the recognizing of Kanak culture by the preamble to the Noumea Accord and the inauguration of the Tjibaou Cultural Centre was a call to the people of New Caledonia to follow the path of "common destiny" and build a shared citizenship. It was a message which rang loud and clear in arts and cultural circles. Artists and writers were quick to engage and bring the project to life.

1997 saw the start of symbolic artistic collaborations, including Kanak visual artist Micheline Neporon's illustrations for Nicolas Kurtovitch's collection of poems entitled *Avec le masque*[41]. In 1999, Kanak poet Déwé Gorodé and New Caledonian poet Nicolas Kurtovich co-wrote *Dire le vrai*[42], *Tell the truth*, without question one of the most iconic works of this period; in 2002, Pierre Gope and Nicolas Kurtovitch collaborated on the play *Les Dieux sont borgnes*.[43]

Literature takes shape in a symbolic space which, central to the process of intercultural dialogue, plays a crucial role in the quest for a common destiny, reflecting a desire to banish old divisions and to build a literary – and artistic – community which is quick to adopt free exchange and openness as its *credo*. Literary roots thus take on a new meaning, a unique and yet collective engagement in time and space, freed from any rivalry between peoples and cultures.

V. NEW ASPIRATIONS AND OCEANIAN URBAN EXPRESSION (2000-2017)

The primary concern seen in the literature of the 2000s, freed from the shackles of community and identity-related conflict, was New Caledonia's need to open up to the rest of the world.

A. The literature of movement

The theme of the "Other" and engaging to the point of merging with the "Other" were central to this literary revival. However, this "otherness" no longer focussed on New Caledonia's other communities. New Caledonian literature, driven by talents such as Nicolas Kurtovich and Frédéric Ohlen, amongst others, aspired to broader horizons, with novellas and poetry reflecting a quest for universality. Without questioning their own roots, they sought inspiration beyond New Caledonia, looking elsewhere (Australia, Japan, Europe, etc.) and embracing the concept of movement.[44] The appeal of travel, of remote places, is a commonplace in literature. In the context of New Caledonia, this appeal has another dimension insofar as it serves as confirmation that local literature has moved beyond the assertion of identity to pursue intercultural issues beyond the limits of New Caledonia itself. Positioning themselves as travelling writers, the authors of the baby boom generation set

41 N. Kurtovitch, 1997, *Avec le masque*, Paris, Les Cahiers du Pont sous l'eau.

42 D. Gorodé and Nicolas Kurtovitch, 1999, *Dire le vrai*, *Tell the truth*, Noumea, Grain de Sable.

43 P. Gope and N. Kurtovitch, 2002, *Les Dieux sont borgnes*, Noumea, Grain de Sable.

44 The titles of their works often reference walking, traveling, distant places: F. Ohlen, *Le marcheur insolent*, *La peau qui marche*, and N. Kurtovitch, *Le Piéton du Dharma*.

out, without turning their backs on New Caledonian history[45], to break definitively with the colonial heritage and its role in defining their identity.

B. Portrait of a young generation of Oceanian New Caledonians

A new generation of writers, born in the 1980s, was emerging at the turn of the 2000s and 2010s. Too young to have experienced the "Events", this "Matignon generation"[46], as journalist and documentary writer Anne Pitoiset dubbed them, grew up bathed in the intercultural *credo* of their parents' generation. They drew a portrait of New Caledonian society which, although less polarized than that of their fathers, was nevertheless complex and violent, often characterized by discontinuity.

Paul Wamo, a leading light of this new generation of authors, quickly made a name for himself as the mouthpiece of a new Kanak identity, resolutely young, urban, apolitical and at ease with globalization.[47] Wamo was born in Lifou in 1981; in 1983, his parents moved to work in Rivière Salée, a suburb of Noumea. Refusing to be labelled, Paul Wamo used slam poetry[48] – a form of performance poetry that combines the elements of performance, writing, competition, and audience participation – to give voice to a generation of Kanak who, torn from their traditional and customary environment by the rural exodus of their elders, were struggling to define their identity. The uprooted generation described by Paul Wamo ran the risk of "amnesia"[49], of forgetting their roots, yet at the same time were part of a trend freeing them from an identity at times experienced as a burden in a globalized society.[50]

Vincent Vuibert, another major author of the 2010s, constructed his narrative in the form of chronicles, rooting it in an authentic and convincing social reality. In his book *Chroniques de la mauvaise herbe*, he depicts an urban community relegated to the geographic and economic fringes of New Caledonia's capital city.[51] Vincent Vuibert evokes a young multicultural generation which yet reveals signs of enduring and significant social divisions. His book describes a fringe multiculturalism shaped by young lead characters who, dabbling with delinquency, remain relegated to the edges of the city and society. Youth itself appears as a form of relegation, a marginalization. These young New Caledonians appear trapped by ancient divisions and the weight of the past – shadows of the penitentiary, colonization, inter-community conflicts and past struggles – which they cannot throw off.

This fresh – and young – image of New Caledonian literature would not be complete without reference to the role of Oceanian women. Following the example set by Déwé Gorodé, Oceanian women are not only preeminent as writers but have become a focus of literature.

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45 F. Ohlen, 2014, *Quintet*, Paris, Gallimard, coll. Continent noir.

46 "Génération Matignon", documentary film by L. Ciwell and A. Pitoiset, 2012, AAA Productions.

47 P. Wamo, 2005, *Le Pleurnicheur*, Noumea, L'Herbier de feu.

48 The concept of slam poetry originated in the 1980s in Chicago and spread to other large urban centres. C. Vorger, 2016, *Slam, une poétique*, Valencienne, Presses Universitaires, coll. Les Belles Lettres.

49 P. Wamo, 2008, "Amnésie traditionnelle", *in J'aime les mots*, Grain de Sable.

50 V. Soula, "La littérature calédonienne de la nouvelle génération : entre expression(s) identitaire(s) et dépassement", actes en ligne du colloque "La Nouvelle-Calédonie : un projet multiculturel ? ", article to be published in 2021.

51 E. Banaré, "D/Écrire une ville : géocritique de Nouméa à partir des brèches romanesques", in the *International Journal of Francophone Studies*, vol. 19, December 2016.

The 2010s also saw female concerns given greater emphasis, with female characters taking a leading role, moving beyond the sphere of "women's literature".[52]

Novels and novellas by Déwé Gorodé, Noëlla Poemate, Waej Genin-Juni and Isa Qala evoke with harsh forthrightness the often tragic fate of young Oceanian women.[53] Contemporary fiction highlights their torn identity, their physical, mental and spiritual suffering. Trapped between compliance with custom, arranged marriages[54], the inevitable independence required by an urban lifestyle[55] and the way it cuts them off from their families, their identity and their culture, finding their own place is a major challenge.

CONCLUSION

Deeply rooted in the social – and political – context of the archipelago, New Caledonian literature reflects a multifacetted society built on colonial foundations, which underwent a transformation unique in the annals of decolonization. It constitutes an unusual and specific literary current which has made very little mark on the overall landscape of French language literature. This rapid – and incomplete – overview of New Caledonia's literary history aims to show clearly that New Caledonian literature can now transition from a supposedly developing art form and achieve acceptance as a literary heritage. Both elucidating and responding to the history of a country moving towards its destiny, writers – like all artists, often the first to intuit social change – highlight key concerns and issues which should without doubt play a greater role in informing New Caledonian political debate and social perspectives at a time when the country is called upon to determine its own future.

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52 The Kanak writer Léopold Hnacipan also devotes much of his work to Kanak women and seeks to involve readers in questioning the place of women in the contemporary Melanesian world. L. Hnacipan and N. Poemate, 2011, *Oleti, oleti* !, Boulouparis, Écrire en Océanie.

53 V. Soula, "Femmes écrivains du Pacifique francophone : tressages littéraires contemporains", article to be published in *Small Islands, Big Issues. Pacific Perspectives on the Ecosystem of Knowledge*, publ. Peter Lang.

54 W. Wahetra, 2017, *Que la parole s'accomplisse*, Boulouparis, Écrire en Océanie. Waej Genin-Juni "Hula", 2015, *Nouvelles de Nouvelle-Calédonie*, Paris, Magellan.

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PART V

AUTONOMY

THE NOUMEA ACCORD AND THE STATUS OF NEW CALEDONIA

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New Caledonia's history is characterized by the successive legal statuses which have been imposed upon the country. When New Caledonia was annexed by France in 1853, it was declared a French colony. New Caledonia remained under colonial rule until 1946 when it became an "overseas territory".[1] And finally, since 1998, this South Pacific French archipelago located more than seventeen thousand kilometres from mainland France has been a "*sui generis* collectivity".[2] As such, New Caledonia does not fall into any traditional legal category covered by French law.

A decentralized unitary state since the amendment of the Constitution in 2003[3], France is subdivided into several tiers of "collectivity" (geographically-defined authority or governing body), each granted a greater or lesser degree of autonomy depending on the category to which they belong. The municipalities, departments and regions of mainland France (l'Hexagone)[4] have limited autonomy and constitute the regional or local authorities under common law. Overseas territories[5] are endowed with specific statuses conferring wider powers designed to take their cultural, identity-related and geographical specificities into consideration.[6] All these French territorial, regional or local authorities, diverse as they are, are governed by Heading XII "Des collectivités territoriales" of the French Constitution of 4 October 1958.

All but one, that is: New Caledonia. As a *sui generis* collectivity, New Caledonia has a legal status conferring a degree of autonomy and an institutional framework which are unique within the French Republic. Article 72-3 of the French Constitution, which lists by name

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1 This legal category was created by the French Constitution of 27 October 1946, as was the status of "Overseas Department" which applied to Guadeloupe, Martinique, French Guyana and Reunion Island. In the 1946 Constitution, the regime governing Overseas Departments was based on an assimilation principle, *i.e.* it was modelled on French law, unless a specific exception was laid down by law. The Overseas Territories, which included New Caledonia, were granted a special status which took into account the specific interests of such territories within the French Republic. In their case, the prevailing principle was that of legislative speciality, *i.e.* (French) laws and regulations were not automatically applicable and applied only if expressly specified. See Y. Pimont, 1994, *Les territoires d'outre-mer*, Paris, PUF, coll. Que sais-je ? no. 27-99.

2 Cf. II.

3 Historically, France is the archetypal centralised unitary state. A decentralisation process was introduced as from the 1980s to ensure better provision for local specificities. This was enshrined by the Constitutional Law of 28 March 2003 including, in Article 1 of the Constitution of 4 October 1958, the statement that France is an indivisible State whose "organisational responsibility is decentralised".

4 Name given to mainland France due to its hexagonal shape.

5 These are Guadeloupe, French Guyana, Martinique, Reunion Island, Mayotte, Saint Barthélemy, Saint Martin, Saint Pierre and Miquelon, the Wallis and Futuna Islands and French Polynesia.

6 See J.-F. Auby, 2018, *Droit des outre-mer*, Paris, LGDJ, coll. Systèmes; J.-Y. Faberon and J. Ziller, 2007, *Droit des collectivités d'Outre-mer*, Paris, LGDJ, coll. Manuel; J.-P. Thiellay, 2007, *Droit des outremers*, Paris, Dalloz, coll. Connaissance du droit.

all France's Overseas Territories, affirms New Caledonia's exceptional status. After citing all the collectivities (territorial, regional and local authorities) governed by sections 73 and 74, it states: "The status of New Caledonia is governed by Heading XIII". New Caledonia is therefore neither a territorial collectivity under article 72 of the Constitution, nor an overseas department and region under article 73[7], nor an overseas collectivity under article 74.[8] Moreover, in a 2006 judgement, the Council of State – the supreme court for administrative justice – concluded that New Caledonia could not be described as a territorial collectivity[9], confirming "the radically different nature of this *sui generis* collectivity".[10]

New Caledonia's status is indeed exceptional. Heading XIII of the French Constitution, which is devoted to New Caledonia, is somewhat laconic and refers back to the Noumea Accord. Signed on 5 May 1998, the Noumea Accord constitutes both the legal framework and the mirror of New Caledonia today. The outcome of a political compromise between the French government and New Caledonia's two main political allegiances – the loyalist Rassemblement pour la Calédonie dans la République (RPCR) and the pro-independence Front de Libération National Kanak Socialiste (FLNKS) – it is a strikingly unusual document which sketches the outlines for an equally unusual status. With a view to ensuring the gradual emancipation of New Caledonia and, in consequence, its decolonization, the Noumea Accord grants the territory a customized status, in marked derogation of common and evolving law. The unorthodox nature of the Accord was such that Prime Minister Michel Rocard told the signatories the very day the Accord was signed to "anticipate pleasurably the perplexity of public law professors faced with the innovative and unusual nature of the constitutional instrument [they had] just invented".[11]

In short, New Caledonia is to the overseas regional and local authorities what these are to the regional and local authorities of France: an exception. This particularity derives firstly from the consensual nature of the Noumea Accord (I). Moreover, given that no pre-existing status offered a solution adapted to New Caledonia, it was given a *sui generis* status corresponding to its marked specificities (II). This new transitional legal framework also has the specific objective of ensuring New Caledonia's gradual decolonization (III).

I. A CONSENSUAL STATUS

The rationale behind New Caledonia's current status explains why it is unorthodox. For years, the territory's legal framework was imposed by the French government. By excluding

7 These are Martinique, Guadeloupe, French Guyana, Reunion Island and Mayotte.

8 This status applies to French Polynesia, Saint Barthélemy, Saint Martin, Saint Pierre and Miquelon, and Wallis and Futuna.

9 The judge ruled that "New Caledonia is not governed by Heading XII of the Constitution relating to the territorial collectivities of the Republic but by Heading XIII, which it is specifically dedicated to New Caledonia, and that its organisation and powers are determined, in accordance with the Accord signed in Noumea on 5 May 1998, by the Organic Law of 19 March 1999, which does not describe it as a territorial collectivity", Council of State, Disputes Section, 13/12/2006, no. 279-323, *Genelle*.

10 Conclusions du commissaire du gouvernement sur l'arrêt Genelle, J. Ziller, *Droit des collectivités d'outre-mer*, *op.cit.*, p. 366.

11 Cited by F. Lemaire, "Propos sur la notion de 'souveraineté partagée' ou sur l'apparence de remise en cause du paradigme de la souveraineté", *RFDC*, no. 92, 2012, p. 821-850, spec. p. 822.

any consultation with the local authorities, this unilateralist position contributed to acute institutional uncertainty, leading to a situation of heightened tension plunging New Caledonia into violence (1). Peace could only be restored by a radical change in policy. The hoped-for turning point was reached with the negotiations leading to the Matignon-Oudinot and Noumea Accords. Because New Caledonia's status is based on consensus, it has paved the way for reconciliation and emancipation (2).

A. Imposed statuses: the time of tension

Prior to 1988, the French government position vis-à-vis New Caledonia was unilateralist. The successive statuses to which the territory was subject were imposed by France, giving rise to increasing tension and hostility with dramatic consequences.

Starting as a French colony and therefore entirely at the mercy of colonial France, New Caledonia became an overseas territory in 1946. This major step forward put an end to the application of colonial law, including the Indigenous Regime.[12] New Caledonia then became a French territorial collectivity like any other. Or almost. France's position remained ambivalent, given that it inscribed New Caledonia on the UN list of Non-Self-Governing Territories in 1946.[13] In so doing, the French government recognized that New Caledonia had not really been decolonized despite its change in legal status.

Furthermore, France maintained an authoritarian attitude over the following years. Between 1946 and 1988, a dozen different statuses were imposed on New Caledonia, a veritable "waltz of statuses"[14] granting the country greater or lesser degrees of autonomy, orchestrated

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12 From 1887 onwards, the Kanak people were subjected to the Indigenous Regime, thus becoming French subjects, *i.e.* non-citizens under French colonial administration. Serving as a *de facto* means of "legalising violence", the Indigenous Regime meant that France could control, repress and relegate local communities to reserves, irreversibly undermining and disrupting both their social structures and cultural traditions. See I. Merle, "De la 'légalisation' de la violence en contexte colonial. Le régime de l'indigénat en question", *Politix*, 2004, vol. 17, no. 66, p. 137-162; I. Merle and A. Muckle, 2019, *L'Indigénat. Genèses dans l'Empire français*, CNRS Éditions, Paris.

13 United Nations General Assembly, Resolution 66 (I) of 14 December 1946, "Transmission of Information under Article 73e of the Charter". The UN List of Non-Self-Governing Territories is a list of territories considered by the United Nations as not having been decolonized. The list was drawn up in 1946. When a territory is included on the list, the member state is required to transmit annually to the United Nations Special Committee on Decolonization information relating to conditions in the said territory. See United Nations General Assembly Resolution 1541 (XV) of 15 December 1960, "Principles which should guide members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter". France then rapidly ceased sending the information it was required to transmit about New Caledonia to the United Nations, effectively removing it from the list of Non-Self-Governing Territories. France eventually reinscribed New Caledonia on the list in 1986. For a detailed review of the steps leading to the reinscription of New Caledonia on the list of Non-Self-Governing Territories, see J.-M. Regnault, 2013, *L'ONU, la France et les décolonisations tardives : l'exemple des terres françaises d'Océanie*, PUAM, coll. Droit d'Outre-mer, Aix-en-Provence, p. 83-157. See also S. Mohamed-Gaillard, "Parcours de l'indépendance kanak de la Nouvelle-Calédonie aux Nations Unies", *in* E. Wadrawane & F. Angleviel (eds.), 2008, *La Nouvelle-Calédonie : les Kanaks et l'histoire*, Les Indes savantes, coll. Annales d'histoire calédonienne, vol. 2, Paris, p. 349-364.

14 S. Jacqemart, " Inventer la Nouvelle-Calédonie", *Annuaire des collectivités locales*, vol. 9, 1989, p. 61-79, spec. p. 64. See also G. Agniel, "L'expérience statutaire de la Nouvelle-Calédonie ou de l'étude du mouvement du yo-yo au service de l'évolution institutionnelle d'un territoire d'outre-mer", *in* J.-Y. Faberon (ed.), 1997, *L'avenir statutaire de la Nouvelle-Calédonie. L'avenir des liens de la France avec ses collectivités périphériques*, La Documentation française, coll. Les Études, Paris, p. 41-57.

by successive political changes in France.[15] France decided, New Caledonia endured the consequences and the situation gradually deteriorated. None of the legal regimes imposed on New Caledonia succeeded in creating a framework adapted to the territory's specific needs and character. In short, the instability and powerlessness of the country's institutions became glaringly clear.[16]

The lack of any attempt to take local aspirations into consideration helped boost the demands for independence which surfaced in the 1970s. In response, the supporters of keeping New Caledonia within France also got organized. And so New Caledonian society gradually split into two camps: the supporters of an independent New Caledonia – mainly headed by the FLNKS (Front de Libération Nationale Kanak et Socialiste) – and the advocates of keeping New Caledonia within the French Republic, basically under the umbrella of the RPCR party (Rassemblement Pour la Calédonie dans la République). The division gradually reached a point of no return, leading to a state of near-civil war during the 1980s. Discreetly named "the Events", this period reached its climax on 5 May 1988 with the tragedy at the Ouvéa cave which resulted in the death of twenty-one people.[17]

This brutal and bloody tragedy finally acted as a wake-up call to the French government and New Caledonia's politicians that a change in policy was urgently required. In France, a decisive alternative had until then almost always been used to resolve decolonization issues: assimilation as part of France or accession to independence, pure and simple[18]. Given that assimilation had got nowhere in New Caledonia, implementation of "an innovative policy of decolonization through differentiation strikingly divergent from the traditional French 'model' of decolonization" was needed.[19] This change in approach involved replacing the statuses imposed by France with a status negotiated with the New Caledonians, designed by them and for them, with a view to opening the path towards reconciliation.

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15 The most symbolic statuses include the "Defferre law" (outline law of 23 June 1956), the "Billotte laws" (2 January 1969), the "Stirn status" (28 December 1976), the "Lemoine status" (6 September 1984), the "Fabius-Pisani status" (23 August 1985), the first "Pons status" (17 July 1986) and the second "Pons status" (22 January 1988).

16 J.-Y. Faberon, 2012, *Des institutions pour un pays : la Nouvelle-Calédonie en devenir*, PUAM, coll. Droit d'outre-mer, Aix-en-Provence, p. 34.

17 On 22 April 1988, against a background of rivalry between pro-independence Kanak and anti-independence Caldoches (New Caledonian communities of European heritage), a group of Kanak planned a protest occupation of a gendarmerie. This protest, intended to be peaceful, actually served as the trigger of the tragedy. Four gendarmes were killed and 27 others were kept hostage in the Ouvéa cave for several days. On 3 May, the French government launched a military assault in which 19 Kanak and two soldiers were killed. The details surrounding the deaths of the Kanak hostage-takers remain unclear to this day. See (C.) Michalski, 2004, *L'assaut de la grotte d'Ouvéa : analyse juridique*, L'Harmattan, Paris.

18 The former colonies which are now Overseas Departments and Regions are illustrations of the assimilation policy. These are Reunion Island, Martinique, Guadeloupe, French Guyana and Mayotte. However, all other French colonies in Africa have gained full independence as, for example, in the case of Senegal, the Ivory Coast and Togo.

19 F. Melin-Soucramanien, 2013, "La République française et la Nouvelle-Calédonie : réussir (enfin) une décolonisation ?", *in*, *Espaces du service public. Mélanges en l'honneur de Jean du Bois de Gaudusson*, Presses Universitaires de Bordeaux, coll. Droit, Pessac, Bordeaux, p. 12391249, spec. p. 12-44. See also F. Melin-Soucramanien, "Les politiques françaises de décolonisation. L'émergence d'une politique de décolonisation par différenciation en Nouvelle-Calédonie", *in Mélanges offerts au Doyen Charles Cadoux*, PUAM, Aix-en-Provence, 1999, p. 205-212.

B. Negotiated statuses: the time of reconciliation

Aware of the urgent and pressing need for a radical change in policy regarding New Caledonia, then French Prime Minister Michel Rocard set up a peace mission in May 1988. Comprising representatives holding differing political, religious and philosophical views, this peace mission was designed to broker a deal between New Caledonia's key political players. Talks among New Caledonian representatives, and between them and French government figures were held in Paris. They led to the signing of the Matignon Accord on 26 June 1988[20]. This was finalized by the signing of the Oudinot Accord on 20 August of the same year[21]. The handshake marking the occasion, between Jean-Marie Tjibaou, the pro-independence leader, and Jacques Lafleur, the loyalist movement leader, became the symbol of reconciliation. The page had been turned on violence and a new chapter in New Caledonia's history could be written.

The Matignon-Oudinot Accords were political agreements and therefore still had to be given legal effect. The new status of New Caledonia was established by the Referendum Act of 9 November 1988 *setting out statutory and preparatory provisions for the self-determination of New Caledonia in 1998*. Negotiated and approved by both the FLNKS and the RPCR, the Act was based on a key concept: while political players could work together on issues of economic, social, and cultural development, reconciling their opposing views as to New Caledonia's future status was currently impossible. In other words, New Caledonia's political parties and the French government decided to work together on all issues on which they agreed and to kick into the long grass the thorny question of New Caledonia's future in relation to France.[22]

In view of those considerations, New Caledonia's new status was based on a two-fold strategy. First and foremost, New Caledonia's institutions were reorganized and accompanying economic, social and cultural measures were put in place to ensure a process of "rebalancing" benefiting the Melanesian community. The innovative measures included the division of New Caledonia into three regional authorities known as "provinces" (South Province, North Province and Loyalty Islands Province), a move designed to ensure that pro-independence supporters, a minority of New Caledonia's population, would hold power in two of the three provinces (North Province and Loyalty Islands Province), thus rebalancing the distribution of regional and national authority. Moreover, the Referendum Act of 9 November 1988 provided for the holding of a self-determination referendum between 1st March and 31 December 1998. However, this never took place.

The approach envisaged in the 1988 Matignon-Oudinot Accords proved fruitful since it brought a rapid easing of tension in New Caledonia. Nevertheless, as early as 1991, New Caledonia's key political players, anxious to avoid any risk of fresh outbreaks of civil turmoil, concurred in their unwillingness to grasp the nettle and ask for a yes or no to independence, as

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20 In reference to the Hôtel de Matignon, the name of the official residence of the head of the French government, *i.e.* the Prime Minister, where the negotiations took place.

21 In reference to rue Oudinot, the Paris headquarters of the French Ministry for Overseas Departments and Territories.

22 J.-Y. Faberon, *Des institutions pour un pays : la Nouvelle-Calédonie en devenir*, *op. cit.*, p. 43 and ff.

originally provided for in the Referendum Act of 9 November 1988. With a view to avoiding the "sunset referendum"[23], RPCR party founder Jacques Lafleur was the first to appeal to New Caledonia's political class and the French government to reflect on a consensual solution which would mean the independence issue could be further deferred, thus contributing to the firm establishment of peace in New Caledonia.

In the spirit of the Matignon-Oudinot Accords, the political partners worked on a new agreement for the future of their territory. Their negotiations resulted in the Noumea Accord, adopted on 21 April 1998 by the FLNKS and the RPCR and signed on 5 May 1998 by Prime Minister Lionel Jospin. The Noumea Accord was the reflection of a shared willingness to continue working together on the task, begun ten years previously, of building and decolonizing New Caledonia. The Accord was submitted to a territorial referendum on 8 November 1998 and was approved by 72% of New Caledonians with a turnout of 74%. Through their unambiguous adoption of the Noumea Accord, the New Caledonian people chose a completely new status setting customized institutions in place.

II. A *SUI GENERIS* STATUS

The status of New Caledonia provides striking proof that law is primarily an instrument subservient to politics. To address the very specific case and context of New Caledonia, the Noumea Accord sets up a *sui generis* status. This unprecedented status is unique in possessing constitutional value, thereby constituting a mini Constitution within the main (French) Constitution (1). It sets up entirely unprecedented customized institutions (2).

A. A mini Constitution within the main Constitution

The Noumea Accord of 5 May 1998 is an historic political agreement, akin to a mini Constitution within the French Constitution of 4 October 1958. Not only has it acquired constitutional value through the various texts with which it is now indissociably linked, but it also provides the foundation for an authentic New Caledonian social pact.

The Noumea Accord acquired constitutional value in an entirely unprecedented way. Initially, it was merely a political agreement adopted by two political parties and given the French government's official stamp by the Prime Minister's signature. As such, it had no binding legal value. And yet, by means of a referral mechanism, this simple political agreement was raised to the highest levels of the French legislative hierarchy. A few weeks after the Noumea Accord was signed, the Constitutional Law of 20 July 1998 enshrined Heading XIII "Transitional provisions relating to New Caledonia" in the French Constitution. This Heading, specific to New Caledonia, comprises two articles, Articles 76 and 77, each referring to the Noumea Accord. Pursuant to Article 76, "the population of New Caledonia is called

23 The concept of a "sunset referendum" is often used in New Caledonia to reflect the fact that any vote on accession to full sovereignty can lead only to a divisive binary and thus simplistic result, given that it involves answering yes or no to the question of independence. Working on building a consensual, negotiated institutional solution – possibly thereafter approved by referendum – might have been a more appropriate approach given New Caledonia's Oceanian cultural heritage and complex history. See J.-Y. Faberon, "Débats", *in* F. Faberon (ed.), 2016, *Diversité de la démocratie. Théorie et comparatisme : les pays de la Mélanésie*, LGDJ, Clermont-Ferrand, p. 301-316, spec. p. 480.

upon to vote by 31 December 1998 on the provisions of the Accord signed in Noumea on 5 May 1998". Article 77 provides that "After approval of the Accord by the vote provided for in Article 76" an organic law shall implement the Accord.

Two points should be added. Firstly, the New Caledonians approved the Noumea Accord in the referendum held on 8 November 1998. As a result, Article 77 entered into application. Secondly, in accordance with the decision of the Constitutional Council in Resolution no. 99-410 DC of 15 March 1999[24], the organic law required to implement the Noumea Accord should "comply with the spirit and guidelines of that Accord".[25] It therefore follows that the Noumea Accord is more highly placed in the legal hierarchy than the organic law. Furthermore, insofar as the Noumea Accord can diverge from rules or principles of constitutional value, the Noumea Accord itself has constitutional value.[26] And so, bypassing all the usual parliamentary debates, this political agreement was enshrined in the French Constitution and set at the very summit of the French legal hierarchy. New Caledonia thus became the only French collectivity to possess a legal status having constitutional value.[27]

Not only does the Noumea Accord possess constitutional value but the content of the Accord is also akin to that intrinsic to constitutions. The Noumea Accord is not a homogeneous text and actually comprises two parts, a preamble and a guidance document. The guidance document defines the main principles relating to the status of New Caledonia. It is organized in six main sections dealing with Kanak identity, institutions, powers, economic and social development, the evolution of the political structure in New Caledonia and the implementation of the Accord. The guidance document, central to the Noumea Accord, establishes a specific institutional system – which we will return to – as does the constitution of a country.

The preamble of the Accord, like the preambles of constitutions invested with marked symbolic significance, lays the basis for a remodelled society, serving in a way as a "social contract".[28] Fully aware that a knowledge of the past is key to understanding the present and planning for the future, the authors of the document devote much thought to New Caledonia's turbulent history. The text first recognizes that "the shadows of the colonial period, even if it was not devoid of light, [...] [brought lasting trauma for the original population". It is therefore necessary to "acknowledge the memory of these difficult times, to

24 CC, Resolution no. 99-410 DC of 15 March 1999, Loi organique relative à la Nouvelle-Calédonie.

25 It was Organic Law no. 99-209 of 19 March 1999 relating to New Caledonia which amplified the guidelines set out in the Noumea Accord.

26 See Court of Cassation, Plenary Session, 2 June 2000, Melle Fraisse, Bull. civ., AP, no. 4 p. 7; CC, Ruling no. 2004-500 DC of 29 July 2004 Loi organique relative à l'autonomie financière des collectivités territoriales.

27 The vast majority of other collectivities within the French Republic possess a status of legislative value (for example, regions and departments). At most, they can be accorded a status of organic value, *i.e.* above the law but below the Constitution, as in the case of French Polynesia (cf. Organic Law no. 2004-192 of 27 February 2004 relating to the autonomous status of French Polynesia). However, New Caledonia remains the only collectivity to be accorded a status of constitutional value.

28 H. Mokaddem, "Qui est peuple en Nouvelle-Calédonie aujourd'hui ?", *in* J.-Y. Faberon, V. Fayaud & J.-M. Regnault (eds.), 2011, *Destins des Collectivités politiques d'Océanie : Peuples, populations, nations, États, territoires, pays, patries, communautés, frontières*, vol. 2, PUAM, coll. Droit d'Outre-mer, Aix-en-Provence, p. 615-623, spec. p. 617. See also F. Garde, "Le préambule de l'Accord de Nouméa, prologue d'une histoire officielle ?", *in* E. Wadrawane & F. Angleviel (eds)., *La Nouvelle-Calédonie : les Kanaks et l'histoire*, *op. cit.*, p. 79-86.

recognize the wrongs, to return their stolen identity to the Kanak people - this will amount for them to a recognition of their sovereignty". But it is also, and above all, a question of transcending these divisions by "allowing the original people to form a human community together with the men and women who live there, affirming their common destiny", this aspiration having since become the "motto"[29] of the Noumea Accord. The precondition for making this social vision a reality is "re-establishing a social contract between all the communities living in New Caledonia, and sharing sovereignty with France, on the path towards full sovereignty". In short, as aptly summed up by the Noumea Accord itself: "The past was the time of colonization. The present is the time of sharing, through rebalancing. The future will be the time of identity, in a common destiny".[30]

So, in terms of both form and substance, the Noumea Accord is akin to a mini constitution within the main Constitution. As French constitutional expert G. Carcassonne pointed out, "what is concerned here are not so much specific constitutional provisions as another Constitution, that of New Caledonia, enshrined in our beneficent 1958 French Constitution under Heading XIII".[31] Furthermore, the singular nature of New Caledonia's status is manifest in the unique institutions it sets in place.

B. A unique institutional structure

The Noumea Accord establishes a truly customized status granting New Caledonia an unparalleled degree of autonomy within the French Republic.[32] A number of mechanisms encompassed by this status derogate directly from the French Constitution. Such derogations are made possible because the Organic Law of 19 March 1999, in which they feature, is itself provided for by the Constitution and by the Noumea Accord which, let us not forget, has itself constitutional value.

New Caledonia is characterized by a territorial structure based on four distinct levels: the French government, the Collectivity of New Caledonia, the provinces and the municipalities. Since the territory is still part of France, the French government has a presence in New Caledonia: it is represented by a High Commissioner of the French Republic. In the same way as the Prefects appointed throughout France's entire national territory, the High Commissioner is the guarantor of public order, defence and justice in New Caledonia.[33]

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29 H. Mokaddem, "La reformulation permanente de la souveraineté de la Kanaky/NouvelleCalédonie", in N. Gagne & M. Salaün (eds), 2010, *Visages de la souveraineté en Océanie*, L'Harmattan., coll. Cahiers du Pacifique Sud contemporain, Paris, no. 6, p. 185-209, spec. p. 187.

30 Noumea Accord, 5 May 1998, preamble.

31 G. Carcassonne, *La Constitution,* 2009, Paris, Éditions du Seuil, coll. Points Essais, p. 377.

32 For an overview of New Caledonia's institutions, see F. Garde, 2001, *Les institutions de la Nouvelle-Calédonie*, L'Harmattan, coll. Mondes Océaniens, Paris; M. Chauchat, 2011, *Les institutions en Nouvelle-Calédonie. Institutions politiques et administratives*, Noumea, Scérén, CDP de Nouvelle-Calédonie, coll. Université; J.-Y. Faberon, *Des institutions pour un pays : la Nouvelle Calédonie en devenir*, *op. cit*.

33 Article 1 of Decree no. 2007-423 of 23 March 2007 relating to the powers of the High Commissioner of the Republic, to the organisation and action of French government agencies in New Caledonia provides that: "The High Commissioner of the Republic in New Caledonia is vested with the authority of the French government. He shall have responsibility for national interests and compliance with the laws. He shall represent the Prime Minister and each of the ministers. He shall ensure the enforcement of government regulations and decisions. The High Commissioner shall, subject to the authority of the ministers and in accordance with the conditions laid down by the same decree, direct the decentralised agencies of French government administrative authorities in New Caledonia."

Conversely, compared to his/her counterparts, the High Commissioner of New Caledonia has far fewer powers, and in this particular case, fewer and fewer. We will return to this point, but the Noumea Accord and the Organic Law of 19 March 1999, supplementing the former, provide for a process of gradual transfer of powers from the French government to New Caledonia and its provinces. Thus, over time, the French government's sphere of jurisdiction has diminished to a point where it finally covers only the sovereign powers.[34]

Conversely, on the principle of communicating vessels, the collectivity of New Caledonia has been granted ever greater powers. The country possesses specific institutions for the exercise of these powers.[35]. Granted, it has a deliberative assembly and an executive body like France's other territorial collectivities. However, setting an entirely innovative precedent, the former – the Congress – possesses legislative power, while the second – the government – operates on a collegiate basis.

Comprising 54 members representing the Provincial Assemblies[36], the Congress of New Caledonia is the territory's deliberative assembly. A major innovation introduced by the Noumea Accord lies in the Congress having the power to adopt not only administrative acts but also, importantly, legislative acts.[37] In certain areas listed exhaustively in Article 99 of the Organic Law of 19 March 1999, such as identity symbols, taxation, labour law and social security, New Caledonia's Congress may adopt acts known as "Country Laws". Such acts have legal force. As such, they are subject to oversight by the constitutional judge, i.e. the Constitutional Council, whereas acts adopted by all other French territorial collectivities are subject, due to their regulatory nature, to oversight by the Administrative Judge. Accordingly, the Congress of New Caledonia is the only institution which exercises a truly autonomous legislative power competing directly with that of the French Parliament. In the space of 20 years, from 1999 to 2019, the Congress has passed more than 200 Country Laws (over a third relating to New Caledonia's tax regime), proof that New Caledonia has taken full control of this unique power.

The Government of New Caledonia, the territory's executive body, is equally unusual. It represents almost the only instance in the world of a government elected not on a majority vote basis but by proportional representation based on the parties represented by the members of the Congress. In line with the spirit of the Noumea Accord, the members of

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34 Article 3.3. of the Noumea Accord, entitled *"Sovereign powers"*, provides that: "Justice, public order, defence and currency (together with credit and exchange rates), and foreign affairs (subject to the provisions of 3.2.1) shall remain within the competence of the French Republic until the new political structure resulting from the votes put to the populations concerned, provided for in 5."

35 Article 2 of the Organic Law of 19 March 1999: "The institutions of New Caledonia include the Congress, the Government, the Customary Senate, the Economic, Social and Environmental Council and the Customary Councils".

36 The Congress is formed by the coming together of a portion of the members of each Provincial Assembly: 7 members representing the Assembly of the Loyalty Islands Province out of the 14 elected members of this Assembly; 15 members representing the North Province Assembly out of the 22 elected members of this Assembly; 32 members representing the South Province Assembly out of the 40 elected members of this Assembly.

37 Noumea Accord, point 2.1.3: "Some resolutions of the Congress shall take the form of Country Laws"; Article 107 of Organic Law no. 99-209 of 19 March 1999, relating to New Caledonia: "Country Laws have legal force". About this, see C. Gindre-David, 2009, *Essai sur la loi du pays calédonienne : la dualité de la source législative dans l'État unitaire français,* Paris, L'Harmattan, coll. Grale; N. Clinchamps , "Les lois du pays dans le droit français", *in* P.-Y. Chicot, R. Etien and P. Teisserenc (eds.), 2013, *L'influence des régimes juridiques des collectivités territoriales d'outre-mer sur l'évolution de l'État français*, Paris, Cujas, coll. Actes et études.

the Government, from five to eleven, are elected by the deliberative assembly based on a list system of proportional representation. The Government therefore represents the same political parties as those making up the Congress. This allocation system means that minority and majority political parties jointly form the executive, with decisions made based on a majority of members (who do not have individual powers). In addition, the President of the Government plays a role restricted to the coordination and representation of New Caledonia. All these features ensure that power is shared, and give priority to seeking a consensus, a central tenet of Oceanic cultural tradition.[38]

In addition to these two central institutions, New Caledonia is also endowed with three other institutions. The Customary Senate represents the Kanak customary community, a key component of New Caledonia's culture and identity. It is made up of 16 customary senators, two from each of the eight existing customary areas.[39] Any draft bill or proposal for a Country Law relating to identity symbols and customary status can be brought before the Customary Senate. It therefore acts as a second legislative chamber representing Kanak custom, although the powers of the Customary Senate are far from being on a par with Congress. And finally, New Caledonia's institutions also include the Economic, Social and Environmental Council, called on to advise on legislation within its remit, and the Customary Councils, representing each customary area and having jurisdiction on customary issues.

New Caledonia is further divided into three regional authorities known as "provinces": the South Province, the North Province and the Loyalty Islands Province. Once again, the provinces constitute regional authorities of a type found nowhere else in the French Republic. The provinces were set up in 1988 by the Matignon Accord and each has an elected Provincial Assembly. The members of each assembly are elected by direct universal suffrage for a term of five years: 40 members for the South Province, 22 members for the North Province and 14 members for the Loyalty Islands. The provinces have a very broad scope for action since they have general jurisdiction.[40] In other words, they have authority over all areas not specifically subject to the jurisdiction of the French government, New Caledonia or the municipal authorities. Centrally placed within New Caledonia's institutional system, the provinces play a vital political role in ensuring continuous dialogue and the future development of New Caledonia. Provincialization has decentralized political and administrative powers throughout the country: the South Province, in which Noumea lies, is home to a majority of anti-independence voters, while pro-independence voters form the majority in the North Province and the Loyalty Islands Province, thereby ensuring a balance of power promoting peace in New Caledonia.

Lastly, as in France, New Caledonia's municipalities represent the most localized level of administrative responsibility. The 33 municipalities "are freely self-governing through

38 J.-Y. Faberon, *Des institutions pour un pays : la Nouvelle-Calédonie en devenir*, *op. cit.*, p. 75.

39 The eight customary areas are special subdivisions existing alongside the administrative subdivisions. They include individuals having Kanak customary civil status, therefore not subject to common law, and have jurisdiction in matters of private law matters relating to customary civil status, customary lands and issues involving Kanak languages and culture.

40 The provinces have responsibility for public primary education, rural and maritime development, economic and tourism development, youth and sports initiatives and environmental protection.

assemblies elected by universal suffrage".[41] Seen in this way, New Caledonia's municipalities are assuredly the local authorities most closely modelled on their counterparts in France. Although there are some specific features[42], the rules and regulations governing the composition, election and operation of municipal councils are based on the provisions of the General Local Authorities Code applying to French municipalities. Traditionally, New Caledonia's municipalities are vested with jurisdiction under a general clause which means that they can act in any area of municipal community interest.[43] In practice, this amounts to recognizing that municipalities have residual jurisdiction.

The unique features of New Caledonia's status are the reason for New Caledonia being known as a *sui generis* collectivity. The goal pursued by the Noumea Accord underlines this uniqueness: ensuring the decolonization of New Caledonia.

III. A STATUS FOR DECOLONIZATION

New Caledonia has a unique administrative framework because its status is designed to ensure the country's gradual emancipation (1). *In fine*, the aim is to pave the way to self-determination (2). As such, the Noumea Accord establishes an "unprecedented process of decolonization"[44] supported by the French government.

A. The aim: ensure New Caledonia's emancipation

The Noumea Accord aims to pave the way towards New Caledonia's emancipation by furthering development and building a common destiny shared by the various communities of people living there. To achieve this, New Caledonia needed to be given the means to deal with the issues involved. A number of measures based on the concepts of sharing and rebalancing were set in place to enable New Caledonia, pending the referendum on self-determination, to achieve a significant degree of autonomy without actually parting from France. Shared sovereignty and New Caledonian citizenship represent the two defining measures underpinning New Caledonia's status.

In accordance with the Noumea Accord:

> *The sharing of powers between the French government and New Caledonia shall signify shared sovereignty. It shall be gradual. Powers shall be transferred on implementation of the new framework. Others shall be transferred according to a set timetable, which can be adjusted by the Congress, in accordance with the principle of self-organization. The transferred powers cannot be reclaimed by the French government, and this shall reflect the principle of irreversibility governing these arrangements.*[45]

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41 Article 3 of the Organic Law of 19 March 1999.

42 M. Chauchat, *Les institutions en Nouvelle-Calédonie. Institutions politiques et administratives*, *op. cit.*, p. 143.

43 According to Article L 121-25 of the Code of New Caledonia Municipalities, "the municipal council shall debate and rule on all issues concerning the municipality".

44 V. Goesel-Le Bihan, 1998, "La Nouvelle-Calédonie et l'accord de Nouméa, un processus inédit de décolonisation", *AFDI*, vol. 44, p. 24-75.

45 Noumea Accord, Preamble, point 5.

Shared sovereignty therefore means, first and foremost, the sharing of powers between the French government and New Caledonia.[46] Even though there exists, as part of a decentralization process, a like sharing of powers in regard to other French territorial collectivities, there can be no quantitative or qualitative comparison with the aforementioned arrangements. New Caledonia is also unique insofar as the Noumea Accord and the Organic Law of 19 March 1999 provide for the gradual transfer to New Caledonia of the powers held by the French government, to the point where the latter retains only the so-called sovereign powers, such as justice, defence or the conditions for attribution of nationality. Powers held by the French government powers are to be transferred to New Caledonia in four stages, corresponding to the four successive terms in office of the Congress preceding the referendum on self-determination (1999–2004; 2004–2009; 2009–2014; 2014–2019). This innovative arrangement ensures New Caledonia's gradual progress towards independence.

At the present time, apart from the powers specified in Article 27 of the Organic Law of 19 March 1999 (legality audit, higher education, audiovisual communication)[47], the transfer thereof being optional and such transfer not having been requested by the Congress of New Caledonia[48], all transfers of powers provided for in the Noumea Accord have been accomplished. To take an example, New Caledonia now passes its own civil, commercial and environmental regulations, whereas traditionally these are areas under French government control elsewhere throughout France's national territory.

New Caledonia enjoys an exceptionally wide range of powers, together with unprecedented authority to implement such powers. As discussed above, the Congress has legislative powers which it can employ in a number of fields listed exhaustively in Article 99 of the Organic Law of 19 March 1999. Furthermore, in line with the aim of emancipating New Caledonia "the transferred powers cannot be reclaimed by the French government, and this shall reflect the principle of irreversibility governing these arrangements".[49] In other words, all powers are transferred once and for all; the French government cannot take back such powers. This principle of irreversibility serves as an authentic guarantee of New Caledonia's advance towards ever greater autonomy.

46 See J. Page, 2001, *Du partage des compétences au partage de la souveraineté : des territoires d'outre-mer aux pays d'outre-mer*, Aix-en-Provence, PUAM, coll. Collectivités locales, , p. 333-351; J.-Y. Faberon & J. Ziller, *Droit des collectivités d'Outre-mer*, *op. cit.*, p. 377-413; M. Chauchat, "Transferts de compétences et avenir de la NouvelleCalédonie", *AJDA*, 2007, p. 2243-2247; O. Gohin "Comment dépanner l'accord de Nouméa ? Réflexions sur les nouveaux transferts de compétences", *AJDA*, 2008, p. 291-296; M. Chauchat, *Les institutions en Nouvelle-Calédonie. Institutions politiques et administratives*, *op. cit.*, p. 100-124.

47 Article 27 of the Organic Law of 19 March 1999: "The Congress may, from the start of the term beginning in 2009, adopt a resolution providing for the transfer, under a subsequent organic law, of the following powers: - regulations relating to administration of the provinces, municipalities and their public institutions, legality auditing of the provinces, municipalities and their public institutions, the accounting and financial system applying to the public authorities and their public institutions; – higher education –; audiovisual communication".

48 Nevertheless, on 17 September, the UC-FLNKS political alliance tabled a draft text requesting the transfer of the powers specified in Article 27. This draft text will need to be passed by a majority in Congress before such transfer of powers can proceed.

49 Noumea Accord, Preamble, point 5.

The innovative character of the Noumea Accord lies not only in its provision for the gradual and irreversible transfer of exceptionally broad powers to New Caledonia, but also in its creation of New Caledonian citizenship.[50] Acknowledging that New Caledonian society is essentially heterogeneous, a society in which a variety of communities with past histories of conflict currently co-exist, the Noumea Accord promotes the project of "common destiny". This core concept embodies not only the basis for New Caledonia's overall status but also a goal to be accomplished. The common destiny epitomizes the aspiration to ensure New Caledonia's emancipation by bringing its communities together. New Caledonian citizenship is the legal instrument serving this political agenda and takes on the character of an essential component in the move towards decolonization.

In the preamble, the signatories to the Accord state: "It is now necessary to lay the foundations for a New Caledonian citizenship, enabling the original people to form a human community together with the men and women who live there, affirming their common destiny".[51] This citizenship, which could be transformed "after the end of the period of application of the Accord, into a nationality"[52], has two dimensions.

Firstly, fairly unusually, New Caledonian citizenship takes the form of setting in place a policy to oversee and manage access to local job opportunities. The key concept is to give job recruitment priority to "*people long resident in New Caledonia*".[53] The link between local employment and citizenship was unequivocally established by the Organic Law of 19 March 1999 which states that the issue is "to support or promote local employment […] to the advantage of the citizens of New Caledonia"[54], although this link is not exclusive in nature (people who prove they have been resident for long enough may also be concerned). This scheme for protecting local employment forms an intrinsic part of the rebalancing policy, which is itself a key component in the decolonization process.[55]

Secondly, and much more conventionally, New Caledonian citizenship has civil rights implications because it "forms the basis for limitation of the electoral body for elections to the country's institutions and for the final referendum".[56] New Caledonian citizens alone have the right to vote in these specific elections, from which French citizens who do not

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50 See O. Gassiot, "La consécration constitutionnelle du droit du sang comme fondement principal de la citoyenneté calédonienne", *Politeia*, no. 12, 2007, p. 13-40; N. Clinchamps, "Distorsions et corps électoraux en Nouvelle-Calédonie", *Pouvoirs*, no. 127, 2008, p. 151-165; M. Chauchat, "La citoyenneté calédonienne, no. 23, 2008, p. 56-60; F. Garde, "Naissance et avatars de la citoyenneté calédonienne", in J.-Y. Faberon, V. Fayaud, J.-M. Regnault (eds.), *Destins des Collectivités politiques d'Océanie : Peuples, populations, nations, États, territoires, pays, patries, communautés, frontières*, *op. cit.*, p. 583-590; J.-Y. Faberon (ed.), 2013, *Citoyenneté et destin commun en Nouvelle-Calédonie*, Aix-en-Provence, PUAM, coll. Droit d'outre-mer.

51 Noumea Accord, 5 May 1998, preamble.

52 Noumea Accord, 5 May 1998, point 2.

53 Noumea Accord, 5 May 1998, point 5: "To take labour market limitations into account, provisions shall be set out to promote local employment opportunities for people long resident in New Caledonia".

54 Article 24 of the Organic Law of 19 March *1999 relating to New Caledonia*.

55 See A. Chirez, "Droit au travail et préférence locale : les exemples de la Polynésie française et de la Nouvelle-Calédonie", *in* J.-Y. Faberon, V. Fayaud, J.-M. Regnault (eds.), *Destins des Collectivités politiques d'Océanie : Peuples, populations, nations, États, territoires, pays, patries, communautés, frontières*, *op. cit.*, p. 715-724; F. Garde, "Qu'est-ce que l'accord de Nouméa dit du rééquilibrage ?", *in* J.-Y. Faberon & T. Mennesson, 2012, *Peuple premier et cohésion sociale en Nouvelle-Calédonie. Identités et rééquilibrages*, Aix-en-Provence, PUAM, coll. Droit d'Outre-mer, p. 177-186.

56 Noumea Accord, 5 May 1998, point 2.

have New Caledonian citizenship are *a fortiori* excluded. Two distinct special electoral bodies were determined, one for the election of members of provincial assemblies and the other for the vote on self-determination.

To be included, individuals need to meet criteria[57] – the complexity of which has engendered endless legal debates – designed to identify the "communities concerned".[58] Specifically, only New Caledonians with strong ties to New Caledonia because they are of Kanak heritage, because they were born in the territory or because they can prove they have been resident there for long enough, are entitled to have a say in local political life and in determining the future of the territory.[59] The infringement of the right to vote and the principle of equality enshrined in the French Constitution which New Caledonian citizenship represents is considered legitimate and legal, in terms of both international law[60] and national law[61], because it is intrinsic to the process of decolonization of the territory.[62] New Caledonia's gradual emancipation must give it the means required for self-determination.

B. The ultimate goal: ensuring the self-determination of New Caledonia

Viewing the Noumea Accord as representing a fixed status would be a simplification insofar as it makes provision for a genuine decolonization process which is, as such, transitional in nature – it should be noted again that Heading XIII of the Constitution is entitled "Transitional provisions relating to New Caledonia".

The Noumea Accord is not intended to constitute a permanent institutional framework. It provides for its own abeyance, specifying that it constitutes a "solution [which] defines for a period of twenty years the political framework of New Caledonia and the terms and conditions of its emancipation". Consequently, as noted by the European Court of Human Rights in the Py v. France ruling of 11 January 2005, New Caledonia's status is an "incomplete and provisional system".[63] It does not simply set out a structure for New Caledonia today; it also provides the framework for an evolving process of self-determination with the ultimate goal of organizing a referendum on New Caledonia's accession to full sovereignty.

Since 1988, New Caledonia has had its sights set on the prospect of holding a referendum on self-determination. Originally scheduled for 1998 by the Matignon Accords and later postponed by 20 years under the Noumea Accord, the crucial vote was finally held on 4 November 2018.

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57 See Article 188 of the Organic Law of 19 March 1999 for the conditions for inclusion in the electoral roll for provincial elections, and section 218 of the same Law for the conditions for inclusion in the special electoral roll for the referendum on accession to full sovereignty.

58 Constitution of 4 October 1958, article 77.

59 10 years to vote in the provincial elections, 20 years (must have arrived in the territory in 1998 at the latest) to vote in the referendum on New Caledonia's accession to full sovereignty.

60 See the United Nations Human Rights Committee, Views under article 5, paragraph 4 of the Optional Protocol to the International Covenant on Civil and Political Rights, Communication no. 932/2000 of 26 July 2002; ECHR, 11 January 2005, *Mr. Py v. France*, Ref. no. 66289/01.

61 Constitution of 4 October 1958, Heading XII "Dispositions transitoires relatives à la Nouvelle-Calédonie".

62 N. Clinchamps, "Distorsions et corps électoraux en Nouvelle-Calédonie", art. cit., p. 151-165.

63 ECHR, *Case of Py v. France*, 11 January 2005, no. 66289/01.

To the question "do you want New Caledonia to accede to full sovereignty and become independent?"[64], 56.7% of New Caledonians voted "No", with a record turnout of 80.6%.

However, this result did not constitute a definitive "No". The referendum of 4 November 2018 was in fact only the first stage of a complex and step-by-step process. Point 5 of the Noumea Accord provides for the potential scheduling of not one, but three successive referendums on New Caledonia's accession to full sovereignty. Should the result of the first referendum be negative, a second ballot could be held at the request of one-third of the members of New Caledonia's Congress. It must be held at least six months but not more than two years after the first referendum and pose the same question. Called for by the majority of New Caledonia's political community[65], a second referendum on self-determination was scheduled for 4 October 2020.[66] In the event of another result in the negative, a third referendum could be held within two years of the second ballot – i.e. by the end of 2022 – on the same issue, unless New Caledonia's political representatives decide against another ballot and negotiate the future status of New Caledonia in collaboration with the French government.

In the event that the result of a third referendum should once again be "No", the Noumea Accord provides that "the political partners will come together to review the situation". They would therefore ultimately be required to define New Caledonia's new status within France. Conversely, if the second or third referendum results in a "Yes" vote, New Caledonia will accede to full sovereignty. Pursuant to Article 5 of the Noumea Accord, this will involve "the transfer to New Caledonia of sovereign powers, access to an international status entailing full responsibility and organization of citizenship into nationality". As a sovereign country, New Caledonia will have full right and power in the exercise of its own powers, i.e. it will acquire total freedom to determine how it exercises its powers.

Whatever the choice made by the New Caledonian people, the Noumea Accord is a success, *a minima* because it paves the way to self-determination for New Caledonia. Seen in broader terms, New Caledonia's status is proof that there are customized solutions to be found where rigid preconception and prejudice have no role to play. With the support of the French government, New Caledonia has proved its ability to build a legal framework tailored to the country's own identity. The task ahead for New Caledonia will be building its "post-Noumea Accord" future by consolidating the gains of the last three decades.

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64 Decree no. 2018-457 of 6 June 2018 calling on voters and scheduling the referendum on the accession of New Caledonia to full sovereignty.

65 Following the negative result of the referendum held on 4 November 2018, the elected representatives of the Avenir en Confiance alliance (anti-independence) and the elected representatives of the UNI and UC-FLNKS and Nationalist alliances (pro-independence) each asked for the second referendum provided for in the Noumea Accord to be held.

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THE ROLE OF THE FRENCH REPUBLIC

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A French High Commissioner in New Caledonia, the representative of the French government, once said jokingly: "I'm a kind of ambassador with a fat chequebook". Humour and irony are sometimes the best way to describe an existing state of affairs. New Caledonia may not be a sovereign state but its degree of autonomy and relations with the Administering Power are such that the role played by the representative of the French government has a great deal more to do with diplomacy than with implementing government policies.

The French government is at once "the depositary of sovereignty, (the) instrument of political power (and the) spokesperson for the common interest".[1] From this perspective, the French government's primary mission is to enable the exercise of national sovereignty.

In legal terms, the French government is currently responsible for exercising sovereign powers; it ensures the smooth running of New Caledonia's institutions, provides funding to local authorities, supports the rebalancing process, and guarantees the implementation of the Noumea Accord, to which it is a signatory. Its role has become gradually and officially more limited in line with New Caledonia's advances along the road to emancipation. This state of affairs is the result of a lengthy historical process during which the French government often found itself in conflict with New Caledonian factions and, more particularly, the pro-independence movement. Nevertheless, over and above its powers, in the strict meaning of the term, the prestige France has acquired by adopting a neutral stance on the independence issue has meant it has alternately played the roles of arbitrator and mediator in all crisis situations.

I. THE FRENCH GOVERNMENT, CONTROLLING THE INSTITUTIONAL YO-YO

Guy Agniel, New Caledonia's first Professor of Law, used the image of a yo-yo to depict New Caledonia's relations with the French government. New Caledonia is the body of the yo-yo, moving towards and away from the finger of the player - the French government – which controls the yo-yo's movement up or down the string. "The yo-yo moves up and down, nearer to or further from the player's finger – to the extent of the string to which it is attached, 'comes to rest' beside the finger or at the end of its string... The uninitiated may think the

1 J. Picq, 1994, *L'État en France : servir une nation ouverte sur le monde*, La doc. française, p. 15.

yo-yo moves under its own momentum but careful observers will realize that its fascinating trajectories are controlled, almost imperceptibly, by the player's finger".[2]

New Caledonia remained a pawn to French ambitions for colonial power from its annexation in 1853 right up to the tragic events of 1988, which led to the signing of the Matignon-Oudinot Accords designed to end the violence and restore peace by setting New Caledonia on the path towards decolonization. Thus, the French government retained a leading role in the administration of New Caledonia up until 1999. Vacillating between policies of decentralization and concentration, the central government has wavered one way and the other, has been clumsy, has made mistakes, has granted autonomy, taken it back and then returned it once more, driven by its own interests and by pressures within New Caledonia, before finally renouncing a share of sovereignty in favour of long-suffering New Caledonia.

A. From the absolute power of the finger controlling the yo-yo…

Regardless of changing times, the French national parliament and/or the French government have always been responsible for decisions affecting New Caledonia's internal status: local institutions and how they operate, the powers delegated by the French government, the powers it retains, etc. In other words, New Caledonia has never been granted the power of self-organization, let alone constitutional power. In the wake of World War II, France was intent on consolidating its colonial empire by structuring it around the French Union, which included three categories of colonies: at one end, the Overseas Departments governed by assimilation to the French system, at the other, Associated States without sovereignty but a large measure of autonomy and lastly, the Overseas Territories (which included New Caledonia), an intermediate category, the profiles and outlines of which had not been defined. Thereafter, from 1946 onwards, the French government systematically requested the opinion of the Territorial Assembly regarding any status planned for it by the government. Given that the principle of legislative speciality applied to the Overseas Territories, French national laws and decrees were not automatically applicable and applied only if expressly specified and after consultation with local authorities.

France has also always retained the key powers characterizing a nation state - the sovereign powers: defence, currency, foreign affairs, justice and public order, and has always financed New Caledonia's public services and development, although New Caledonia was granted fiscal autonomy in 1957 and New Caledonians were never required to pay French national taxes. The other powers were exercised either by the French government or by the local authorities depending on successive statuses.

France was first represented by a Governor and then, from 1976, by a High Commissioner: there have been considerable changes in the role played by the French government on the ground and its involvement in local institutions. The functions and powers of the executive represent the best measure of French government dominance in New Caledonian political life.

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2 G. Agniel, 1997, "L'expérience statutaire de la Nouvelle-Calédonie ou de l'étude du mouvement du yo-yo au service de l'évolution institutionnelle d'un territoire d'outre-mer", *in* J.Y. Faberon (ed.), *L'avenir statutaire de la Nouvelle-Calédonie. L'avenir des liens de la France avec ses collectivités périphériques*, La Documentation française, coll. Les Études, Paris, p. 4157. URL: https://larje.unc.nc/wp-content/uploads/sites/2/2017/01/histoire_institutionnelle_de_la_nc_agniel.pdf

During the century of colonialism (1853 – 1957), power was vested in the Governor, depositary of the French head of state's authority in the colony. The Governor was sometimes assisted by a privy council with a purely advisory role, sometimes by an elected general council with limited responsibilities, whose decisions the Governor could veto; the French government exercised the bulk of powers, including that of enacting national laws to render them applicable in New Caledonia.

It was not until the 1957 decree[3] implementing the Defferre Outline Law in New Caledonia that "the freedom for (self) governance and the democratic management of (its own) affairs", as promised in the preamble to the Constitution of the Fourth Republic, became a reality in New Caledonia. This status applied the principles of decentralization through the establishment of a local government and an assembly with very broad powers. While the Governor continued to preside over the government, he played a much reduced role because the real head of the territorial executive was actually the elected vice-president. The General Council became a Territorial Assembly comprising 35 members elected by a single electoral college. The Territorial Assembly had extensive, substantial and, above all, clearly defined powers: health, taxation, social security, customary civil status, agriculture, fisheries… thus reining in the powers of the French government.

France's determination to maintain a presence in the Pacific to ensure the security of nuclear experiments, and the French resolve to control the mining sector during the boom period of nickel-based economic growth led to New Caledonia's autonomy under the Outline Law being reduced as from 1963[4]. The post of elected Vice-President of the Government Council was abolished; the Council being limited to assisting the Governor, Head of the Territory, in his role as Administrator of Territorial Services. Then, in 1969[5], the French government reclaimed some of the powers transferred to the territory, including the regulation of so-called strategic raw materials, including nickel, and the tax regime on investments in New Caledonia.

As from 1976, the French government lost overall jurisdiction, with its responsibilities limited to a list laid down by law. This reversal of the rule of distribution of powers and jurisdiction came in response to compelling calls for New Caledonian autonomy and to the emergence of the demand for independence. Concurrently, a local government once again became the country's executive. France wished to demonstrate its determination to scale back its role in New Caledonia. All the same, although these legal mechanisms may have appeared to signal an easing of French government influence, they were in reality highly symbolic, because France held far more powers than in 1957, and the High Commissioner still presided over the government. The next status, adopted by France's national parliament in 1984, in the teeth of unanimous opposition by the Territorial Assembly, led to the period of violent conflict known as "the events".

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3 Decree no. 57-812 of 22 July 1957 establishing a Council of Government and extending the powers of the Territorial Assembly in New Caledonia.

4 Law no. 63-1246 of 21 December 1963 on the organization of public authorities in New Caledonia, known as the "Jacquinot Law".

5 On 3 January 1969, several laws, known as the "Billotte Laws", encroached on New Caledonia's areas of jurisdiction: Law no. 69-4, 3 January 1969, amending mining regulations in New Caledonia; Law no. 69-6, 3 January 1969, introducing tax regimes for some investments in the territory of New Caledonia; Law no. 69-5, 3 January 1969, on the establishment and organisation of municipalities in the territory of New Caledonia and dependencies.

B. To shared sovereignty as a check on the yo-yo effect

The four years of near-civil war reached their climax in 1988, when a number of gendarmes were taken hostage in the Ouvéa cave during the run-up to the second round of presidential elections, with the French President and Prime Minister both facing off in the election. France, shocked by such an unprecedented situation, ordered the army to get the hostages released. The dramatic assault on the cave cost the lives of 19 separatist activists and two military personnel and caused political controversy and outrage. The higher echelons of government in France were traumatized and stunned into awareness of both their responsibility for what was happening in New Caledonia and the gravity of the breakdowns between communities. The French government launched a "peace mission"[6] headed by a prefect and comprising Church representatives, a Freemason, and two legal experts, who were entrusted with the delicate task of getting peaceful discussions back on track in New Caledonia. The initiative paved the way for the signing of the Matignon-Oudinot Accords, symbolized by the handshake between Jacques Lafleur and Jean-Marie Tjibaou.

At this crucial stage in New Caledonia's history, the French government succeeded in creating the conditions for replacing confrontation with a peace-building process. For the first time, it adopted a position of neutral mediator, and would continue to act as a neutral mediator regardless of political majorities in Paris. The fate of New Caledonia would no longer be contingent on political ideology and political in-fighting in Paris. The French government supported New Caledonia in this process of decolonization within the French Republic, no longer imposed its ideas and, importantly, helped in building New Caledonia in collaboration with the New Caledonians, from institutional organization to rebalancing policies. And it was at the request of New Caledonia's policymakers, concerned by their constant differences of opinion, that the High Commissioner once more found himself the executive authority in the territory. As a result, the High Commissioner ended up wearing two hats again: representative of the French government and head of the territorial authorities.

During the ten-year period required to implement the Accords, the French government gained the confidence of New Caledonia's political forces, thus acquiring an authority based primarily on proven reputability.

The French government showed skill and dexterity in bringing to a successful conclusion the negotiations leading to the 1998 signing of the Noumea Accord, the main purpose of which was to put the whole self-determination issue on hold for two decades while pushing ahead with the decolonization within France process. Under the Noumea Accord, France agreed to give up part of its sovereign powers: "The sharing of powers between the French government and New Caledonia shall signify shared sovereignty. It shall be gradual. Some powers shall be transferred on implementation of the new structure. Others shall be transferred according to a set timetable, which can be adjusted by the Congress, in accordance with the principle of self-organization. The transferred powers cannot be reclaimed by the French government,

6 See: S. Mohamed-Gaillard, "Michel Rocard et la Nouvelle-Calédonie. Une décolonisation dans la République" *in* A. Bergounioux (ed.), 2020, *Michel Rocard Premier ministre*. Paris, Presses de Sciences Po, "Académique", p. 161-174. DOI: 10.3917/scpo.bergo.2020.01.0161. URL : https://www.cairn.info/michel-rocard-premier-ministre--9782724625608-page-161.htm

and this shall reflect the principle of irreversibility governing these arrangements".[7] This paradigm shift is exemplified by the constitutional process of adopting the Noumea Accord and its position in the legal hierarchy. The Noumea Accord, negotiated and signed by the French government and New Caledonia's political forces, was then incorporated by reference into the French constitution, without French constituent power being able to change a single comma. The responsibility for its entry into force as constitutional law by means of a referendum then fell to the New Caledonian people. Being a take it or leave it option, the French national constituent power amounted to jurisdiction bound by the will of New Caledonia's political forces, and its power was further constrained by the decision of the "New Caledonian people", the sole authority vested with the power of actually incorporating the Noumea Accord into the legal system. And this remains the position, since amending the guidelines of the Noumea Accord, which are principles of constitutional value, without the agreement of the New Caledonian people, is quite simply unthinkable.

The concept of "shared sovereignty", closer to anagogy than legalism, carries a mystical force which irreversibly reduces the power of the French government in New Caledonia.

Sovereignty being vested in the French parliament, it has the "power to determine its own jurisdiction" and is the authority which, officially, determines the status of New Caledonia and organizes the distribution of powers and jurisdictions. This is the substance of Organic Law no. 99-209 of 19 March 1999 relating to New Caledonia, in full accordance with the Noumea Accord and the other constitutional provisions which do not contradict it.

II. THE FRENCH GOVERNMENT AND THE EXERCISE OF SOVEREIGNTY

A. French government powers in New Caledonia

France retains the sovereign powers: defence, currency, justice, public order, nationality, immigration, external relations. In an innovation introduced by the Noumea Accord, the exercise of some of these sovereign powers is shared with New Caledonia's institutions. Accordingly, New Caledonia, entitled to accede to international organizations, authorized to appoint representatives in Pacific nation states and able to conclude international agreements for and on behalf of France, can conduct its own strategy of regional diplomacy. Residence permits issued to foreigners in mainland France do not cover New Caledonia. All applications for long-stay visas in New Caledonia must be referred to the government of New Caledonia, which is the only authority competent to grant work permits.

French government jurisdiction extends to other areas not strictly qualified as "sovereign" but on the borderline, or which are difficult to dissociate from state authority. France therefore still exercises certain powers, the transfer of which has not been requested – higher education, audiovisual media, rules relating to the administration of provinces and municipalities, and also supervision of legality and budgetary control – together with other powers not scheduled for transfer, such as criminal law, electoral law, research, measures to

7 Preamble of the Noumea Accord of 5 May 1998, point 5. URL: https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000555817/

combat money laundering and the financing of terrorism, maritime and aviation safety and the weapons and munitions regime.

Legislative powers are wielded by France's national institutions (Government, Parliament). The French government is represented in New Caledonia by a High Commissioner, who no longer fulfils a dual role since the executive is henceforth the New Caledonia government. The High Commissioner is the depositary of French government powers and represents the French government. The Decree of 23 March 2007[8] provides that:

> *The High Commissioner of the Republic in New Caledonia is vested with the authority of the French government. He shall have responsibility for national interests and compliance with the laws. He shall represent the Prime Minister and each of the ministers. He shall ensure the enforcement of government regulations and decisions. The High Commissioner shall, subject to the authority of ministers* [...] *direct the decentralized agencies of French government administrative authorities in New Caledonia.*

Under these provisions, the High Commissioner is both the representative of a legal entity, the French Republic, and the representative of the political power, the Government. The High Commissioner is responsible for the enforcement of laws and decrees, he "lays down the guidelines required for the implementation in New Caledonia of national and community policies within his remit".[9] He acts as a government informant, speaks on behalf of the French government vis-à-vis institutions, negotiates and concludes agreements with New Caledonia, for and on behalf of the French government. He is represented by a Deputy Commissioner in each Province.

The High Commissioner plays a particularly significant role in the field of public order, for which he is directly responsible, overseeing action taken by the National Police and the National Gendarmerie Units in terms of public order and administrative policing, also organizing defence and the planning and implementation of non-military defence measures. As the overall administrative police authority, the High Commissioner takes measures required to maintain public order, i.e. to keep or restore public peace and security, public health and public morality, to which may be added the preservation of human dignity, subject to the powers transferred to the President of the Government of New Caledonia in matters of public safety (fire and rescue). He is empowered to act in place of another official, including in the event of a municipal authority failing to act.

The High Commissioner is also a Deputy for the government in French "State action at sea" matters concerning the maritime domain of New Caledonia and Wallis and Futuna, and is assisted by the Maritime Domain Commander (sea rescue, fisheries policing measures, etc.). He authorizes the commanders of navy vessels and army aircraft to officially record crimes at sea involving migrant trafficking, narcotics, piracy and illegal fishing.

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8 Decree no. 2007-423 of 23 March 2007 relating to the powers of the High Commissioner of the Republic, to the organization and action of French government agencies in New Caledonia.

9 As in "the European Communities".

The High Commissioner's scope of jurisdiction does not extend to military defence missions; these are the province of the Commander-in-Chief of New Caledonia's Armed Forces, who has authority over the French Army, Air Force and Navy. The judiciary is constitutionally independent. In New Caledonia, justice is delivered by the Court of Appeal, which rules on judgements handed out by the District Court, the Joint Trade Tribunal and the Labour Court (judicial cases), by the Administrative Court (administrative cases) and the Territorial Court of Audit (auditing cases). Ruling on Court of Appeal judgements falls within the jurisdiction of the Court of Cassation, the highest court in the French judiciary. The Paris Administrative Court of Appeal rules on Administrative Court decisions; above it, the Council of State has ultimate authority, as it is the highest court in France for legal issues and cases involving public administration. It also fulfils the role of legal adviser to the executive branch (French government). In the case of New Caledonia, the Council of State is also tasked with the major responsibility of ruling on issues relating to the distribution of powers and jurisdiction. The Institut d'Emission d'Outre-Mer (IEOM – central bank for French overseas territories), a national public institution linked to the Bank of France, is in charge of monetary policy.

B. The role of the French government in New Caledonia's institutions

The High Commissioner "ensures the proper exercise of the powers held by the institutions of New Caledonia and the Provinces, and the legality of their acts". For this purpose, he is granted both political and administrative means of action and methods of control.

The High Commissioner may request that a special session of the Congress be held or a Provincial Assembly convened to address a specific agenda; and he may include in the agenda, as a priority, any issue on which the Congress must deliver an opinion. He attends Provincial Assembly meetings, and may request to be heard by the Congress. The High Commissioner has a specific role to play in the legislative powers exercised by the Congress since he can request a second deliberation of a Country Law and, following such further deliberation, refer it to the Constitutional Council, France's national authority charged with reviewing the constitutionality of all laws. The High Commissioner promulgates all Country Laws.

As the person tasked with convening newly elected government members to elect the president, the High Commissioner plays a part in constitutional governance. He is automatically entitled to attend government meetings; at the High Commissioner's request, any matter falling within French government jurisdiction is included, by law, in the agenda. He also has the right to suspend government decisions, thus requiring the government to review a resolution before it is finally adopted. "Placed at the very heart of the collegial institution, the High Commissioner meets all protagonists, listens to issues and debates, takes note of votes, thereby acquiring an intimate knowledge of ongoing issues and political balances, ensuring the efficacy of his supervision and actions, if any".[10]

The High Commissioner ensures the legality of the laws and actions of the municipalities, the provinces, New Caledonia and their public institutions. If a local authority adopts a resolution

10 M. Chauchat, 2011, *Les institutions de la Nouvelle-Calédonie*, CDP Nouvelle-Calédonie, coll. Université, Noumea, p. 190.

which he considers illegal, the High Commissioner can refer it to the Administrative Court, which has the power to revoke it. If there appear to be irregularities in the accounts and budgets of local authorities, the High Commissioner can refer the matter to the Territorial Court of Audit. He can also inform the French Public Prosecutor of any circumstances appearing to constitute a criminal offence.

The French government plays a vital role in the country's democratic life since it is responsible for organizing all elections and referendums on independence. The French national parliament and government establish the rules governing the holding of elections, and the High Commissioner and the mayors of the municipalities are responsible for implementing such rules. Accordingly, the special administrative commissions responsible for reviewing the electoral rolls for elections of representatives to the Provincial Assemblies and the Congress and for the referendum on self-determination are chaired by a magistrate and comprise a representative of the High Commissioner. Electoral procedures are supervised by a monitoring committee set up by the French government and chaired by a judicial magistrate. The High Commissioner also oversees the issue of ineligibility, declaring the automatic resignation of any elected representative revealed as ineligible post-election. Similarly, he monitors professional activities declared by elected officials to check for potential incompatibilities between one or more elective mandates or with any other post or position.

While the French government has no jurisdiction over natural resources, it remains central to discussions on mining policy insofar as the High Commissioner serves as chair of the Mining Council, which must be consulted regarding any draft regulations on hydrocarbons, nickel, chromium, cobalt and rare-earth elements, or any decision on mining code application, including when such decisions involve foreign direct investment. The High Commissioner may choose to exercise a special power to provisionally suspend a decision in the event of a difference of opinion between himself and the Council.

Finally, whereas jurisdiction over customary civil status, customary lands, and customary palavers has been transferred to New Caledonia, the Agence de Développement Rural et d'Aménagement Foncier (Rural and Land Development Agency – ADRAF) remains a French public institution, New Caledonia's elected representatives having never requested its transfer, which they could have done since 2004. Until 1988 and the Matignon-Oudinot Accords, the ADRAF was a territorial public institution. Nationalization of the ADRAF is justified by its very purpose – implementing the policy of returning lands to Kanak clans and tribes – the sensitive nature of the policy requiring neutrality. The ADRAF purchases land from private sellers or local authorities and then allocates it to clans or tribes under the customary land rights system (inalienable, unassailable, non-transferable and unseizable rights to the land).

III. THE FRENCH GOVERNMENT, A PARTNER IN THE NOUMEA ACCORD

While the French government no longer has any direct jurisdiction over economic matters, its funding capacity means that it remains a key player in New Caledonia's economic and social development. As such, it acts as guarantor of the "balance" central to the Noumea Accord and plays a full part in building the country.

A. Providing financial support to New Caledonia

The Preamble of the Noumea Accord provides that:

> *New Caledonia shall benefit from French government aid throughout the whole period that new structures are being put in place - in terms of technical assistance, training and the funding necessary for the exercise of the transferred powers and for economic and social development. These commitments will be inscribed in multi-year programs. New Caledonia will share in the capital or operation of the main levers for development in which the French government is a stakeholder.*

Of the €1.46 billion spent by the French government every year in New Caledonia (excepting the tax exemption scheme for some investments), funding allocated to local authorities by the French government in 2019 totalled €250 million. The French government pays New Caledonia an annual overall compensation grant, which totalled €52 million in 2018, to offset the burden associated with the transfers of power provided for in the Noumea Accord (sea traffic, air traffic, primary and secondary education, public safety, etc.).

Since 1990, multi-year development contracts with the Provinces, New Caledonia and some municipalities have also ensured support for New Caledonia's economic and social development. The goals include promoting the training of young people and their integration into the workplace, economic development, land-use planning and development, improving people's living conditions and cultural development. Since 1990, the French government has contributed a total of €1.7 billion through such contracts, the amount being allocated in accordance with the principle of rebalancing (34% for the South Province and 34% for the North Province, 15% for the Province of Loyalty Islands and 17% for New Caledonia). This policy of contract-based arrangements for French government interactions with New Caledonia's public authorities is supplemented by a scheme designed to meet the needs of the private sector: tax exemption ("défiscalisation"). Over 20 years, New Caledonian businesses have received funding aid assessed at around €1.2 billion.[11]

The period covered by the Noumea Accord is notable for two major ore processing plant projects supported by French government aid: the Southern Plant in Yaté, and the North Plant in Vavouto, the latter being seen as the rebalancing showpiece. Thanks to French government aid, the 1998 Bercy Accord enabled the North Province to gain the use of the Koniambo massif nickel reserves to acquire the majority share (51%) in a partnership with corporate giant Glencore for the construction of a ferronickel processing plant in the North. The French government funds major infrastructure projects in response to the dual challenge of rebalancing and developing the country: building port and airport infrastructure and new roads, providing access to sanitation and drinking water, and restructuring New Caledonia's healthcare services by building a new hospital complex in the South, the "Médipôle", and a second in the North. In terms of technology, the French government has supported, through

11 Rapport d'activité de l'État (French government progress report) for 2019: "Established in 1986, 'défiscalisation d'outre-mer' (tax exemption for French overseas territories) is a French government aid scheme for privately sponsored projects in New Caledonia. Under the tax exemption scheme, taxpayers in France are granted a tax cut in exchange for financing a sector-specific investment in New Caledonia. The tax exemption scheme represents the main source of French government aid to the private sector, with between 10 and 20 billion XPF going to support projects every year."

tax aid, the implementation of vital structural projects, such as work on and delivery of the Australia-Noumea undersea cable and the development of 3G. In terms of renewable energy, tax aid measures helped fund the entire wind farm capacity, supporting the transition to sustainable sources of energy. In terms of territorial continuity, the French government has granted tax aid to New Caledonia's international airline Aircalin to enable the purchase of three Airbus aircraft, to the domestic airline Aircal to replace its ATR aircraft, and to passenger ferry company Sudiles to purchase the new Betico II ferry.

Keeping the aim of improved living conditions in mind, the French government also contributes to the cost of construction, modernization or renovation of essential everyday facilities and equipment. For example, social housing construction subsidies are 80% financed by the French government. Indeed, access to housing, an essential aspect of policies to combat exclusion, is a French government priority.

The "400 Managers" scheme, set up in 1988 for a period of 10 years, has provided training in France for New Caledonians, with Kanak making up 70% of trainees, to take up managerial posts in New Caledonia. This programme was succeeded by the "Future Managers" scheme provided for in the Noumea Accord and based on the same goals. Since 1989, 1,742 young people have received grants, with a success rate of 78% and a job integration rate of 95%. As regards troubled teens and young adults, the French army initiative via the adapted military service regiment has succeeded in training around 600 young New Caledonians per year for various manual occupations and careers (mechanics, building, public works, livestock breeding, hospitality) and getting them into the workplace, achieving a job integration rate of 76%.

Finally, the Institut d'émission d'outre-mer (central bank for French overseas territories) works with New Caledonian banks on initiatives for refinancing via negative interest rate loans, when funding applications exceed local deposits and, therefore, cash assets available at the banks. These initiatives play a vital role in supporting economic development, and can require a major effort by the French government should the economic context be unfavourable, as was the case in 2020 due to the global health crisis.

B. Resolution of conflicts and political issues

The political Accord signed in Noumea on 5 May 1998 set up a body called "the Committee of Signatories" tasked, initially, with "assisting in the drafting of the texts required to implement the Accord" and then with "monitoring the implementation of the Accord". As partner and guarantor of the Accord, the French government heads up this committee, which meets annually in Paris, with the Minister of Overseas Territories or Prime Minister as chair. Originally a solemn consultation between the Accord's historic signatories, the Committee meetings have, over time, mutated into a decision-making body combining the ideas and efforts of the French government and all the representative political forces and institutional presidents. The meetings provide a place and a time for discussion on how each faction views implementation of the Noumea Accord, and for taking decisions on both key guidelines and intransigent dissensions. The French government plays a role of mediation or arbitration but rarely of authority.

Major financial issues such as development contracts and various French government budgetary allocations are systematically dealt with by the Committee of Signatories. The same is true of the policy on New Caledonia's integration into its regional environment,

insofar as this entails the joint implementation of a sovereign power necessarily implying Ministry of Foreign Affairs support. During the first term of office under the Noumea Accord, from 2000 to 2004, the members of the Committee looked for points of balance on sales of French government shares in companies contributing to development, as defined in paragraph 5 of the Preamble to the Accord providing that "New Caledonia will share in the capital or operation of the main levers for development in which the French government is a stakeholder".[12] From 2005 onwards, the Committee of Signatories focussed more specifically on the issue of gradual transfers of French government powers to New Caledonia. Finally, two recurring issues, central to political hostilities, require significant involvement on the part of the French government.

The first point at issue is nickel, the resource supposed to finance independence, a pillar of New Caledonia's economy, a catalyst for every passion and a major political stake. The French government no longer has any powers over New Caledonia's mineral reserves and yet it provides financial support for ore processing projects, offers the services of its specialists in the handling of environmental, industrial and international trade issues and financial and legal arrangements, initiates, takes part in and provides input for debates on strategy. In summary, it creates the conditions for discussion between policymakers, chairs working groups with a view to gradually leading policymakers to embrace compromises which either enable projects to succeed or prevent tensions from erupting on the ground. This is very substantially corroborated by successive statements of conclusions released by the Committees of Signatories.

The French government also plays a key role as part of the Committee of Signatories apropos of the various issues relating to the make-up of electorates and conditions for inclusion in electoral rolls for both provincial elections and referendum votes. Although the French government does have jurisdiction over the electoral system, it never makes any decision which has not been, at the very least, discussed with New Caledonia's political forces, and which, in the main, has been referred to an arbitration procedure accepted by the Committee and expressly approved by the statement of conclusions co-written by various players, all keen to influence each formulation. Disputes concerning the conditions for inclusion on provincial electoral rolls, and more particularly, the implementation of the 2007 constitutional reform restricting the electorate to persons established in New Caledonia prior to 8 November 1998, were resolved in a way acceptable to all sides due to the French government's determination to find a modus vivendi and modus operandi approved by the Committee of Signatories. Similarly, dozens of hours of discussion involving the Prime Minister were needed to reach a compromise on the terms and conditions for inclusion in the referendum electoral rolls, on the wording of the question for the self-determination referendum, not to mention the date proposed for the second referendum.

New Caledonia has traditionally been a country marked by conflicts and quarrels, leading to strikes, blockades, and public unrest. Clearly social relations lack a certain maturity, a

12 As specified in point 4.4 of the Accord, entitled "Control of the means of development", which states that "New Caledonia will be able, during the new period ahead, to have sufficient control over the main levers of its development. Where the French government, directly or indirectly, has full or partial control of such levers, New Caledonia will take its place according to terms and schedules to be established. When New Caledonia so wishes, French national public institutions operating solely in New Caledonia will become New Caledonian public institutions".

situation requiring significant involvement on the part of the French government, the only authority capable of establishing conditions conducive to sustainable peace. The French government, whose powers are gradually diminishing and which cultivates discretion, encourages policymakers and institutions to fully engage and play their role; the French government, whose actions and even existence are regularly challenged by every political force, is called on in the vast majority of conflict situations, whatever their nature, whenever the situation becomes so intense that an external authority is needed to calm things down. The French government relies far more on a form of moral authority than on actual power, and the New Caledonians continue to see it as a sort of guardian: "the French government must blow the whistle to signal the end of playtime"... is a favourite phrase used by New Caledonians when faced by a hopeless situation.

A peaceful resolution to the violent events (4 dead and 23 with gunshot wounds) on the island of Maré in 2011, set off by rises in the cost of plane tickets and escalating into fights between Kanak clans and tribes, was achieved through mediation set in place and coordinated by the French government. And, in 2013, the High Commission played a central role in negotiations to end a 12-day "general" strike by getting the parties involved to sign a memorandum of understanding on the "high cost of living". The same scenario applied to the "haulage operators conflict" in 2015, a dispute opposing the mine haulage operators and the president of the New Caledonia government on the terms for issuing nickel ore export authorizations. Since February 2017, the High Commission convenes a meeting every fortnight with everyone responsible for actions concerning the Saint-Louis Tribe, located within Greater Noumea, which has, since 2000, been plagued by internal tensions giving rise to delinquent behaviour and violent incidents involving local residents and road users. These are just a few of the most newsworthy examples, but the reality is that French government presence is required in every situation liable to escalate into public unrest or political gridlock. Furthermore, the French government's position of responsibility via ADRAF means that it can gather information on and understand customary disputes and gives it a role of mediator.

CONCLUSION

As the "temple guardian," the French government plays a key role which cannot be fully comprehended by simply reading the legal texts. Each visit by the French President or a Minister is a popular event appealing to all, and most often followed by a period of calm. Every scheme or programme must be established with a view to maintaining political and geographical balances, and very careful attention is paid to messages conveyed. The French government also acts as liaison with the international community to ensure full and informed understanding and respect for New Caledonia's decolonization process, and to guard against interference or attempts at destabilization. It sends the UN Decolonization Committee an annual report on New Caledonia's development and progress, supports UN Visiting Missions and encourages United Nations involvement in the holding of self-determination referendums with a view to enhancing their legitimacy.

However, the New Caledonians have a relationship with the French government which is far from black and white and remains full of contradictions. The separatists pursue their goal of breaking ties with France but show surprising respect for it, whereas the anti-independence leaders seeking "greater French presence" tend to heap blame on the French government. In

an interview in April 2021,[13] Sébastien Lecornu, Minister of Overseas Territories, evoked the place of the French government in these terms:

> *Already, the dividing lines are no longer where we have always believed they are. The very people who demand the decolonization of New Caledonia have ended up demanding the nationalization of this plant in the South. If someone had told us, after the Noumea Accord was signed in 1998, that New Caledonia's political forces would demand the nationalization of a private production facility* [...] *In the end, everyone waits upon one player: the French government. For vaccines, the French government is needed; for the takeover of the South plant, the French government is needed; to get everyone seated around the table, the French government is needed... It is clear that fiscal autonomy sometimes reaches its limits when a severe blow hits - in this case the health crisis. Once again, the French government will be there on cue: we will help New Caledonia by releasing 82 million euros, namely nearly ten billion Pacific francs, to contribute to expenditure incurred as a result of the health crisis. There is a name for this: national solidarity*.

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13 Sébastien Lecornu, Minister of Overseas Territories, interview *in Les Nouvelles Calédoniennes newspaper*, 8 April 2021 URL: https://www.lnc.nc/article/nouvelle-caledonie/politique/sebastien-lecornu-c-est-un-moment-de-verite

NEW CALEDONIAN NATIONALITY AND CITIZENSHIP ACCORDING TO THE OUTCOME OF THE NOUMEA ACCORD[1]

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New Caledonia occupies a unique place within the French Republic, by reason of its history, its status as set out in Title XIII, added to the 1958 French Constitution and referencing the Noumea Accord of 5 May 1998, thereby enshrined in the Constitution, and its unusual institutional and legal framework which takes it close to independence. The referendum process of accession to full sovereignty, inaugurated on 4 November 2018[1], represents a key stage in the constitutional transition known as "exiting" the Noumea Accord. Factors involved in this transition include the "citizenship of New Caledonia granted to French nationals meeting the conditions laid down in Article 188", as established by Article 4 of Organic Law no. 99-209 of 19 March 1999.

While much has already been written about this controversial "citizenship", the biggest bone of contention is the exclusion of those members of the French community who cannot lay claim to sufficiently close ties with New Caledonia, in particular French nationals who settled in New Caledonia after 8 November 1998, the date of the referendum on the Noumea Accord. Although French nationals who arrived just before that date may, after ten years of residence, claim access to citizenship, those who arrived after that date are excluded, regardless of their length of residence.[2] From now on, only young people aged 18 and over having one parent who is him/herself a citizen can be added to the special electoral roll for the election of members of Congress and the Provincial Assemblies (known as the "LESP").[3] A significant number of French nationals are thus excluded, even though they are subject to obligations established by these institutions under their legislative powers. This may well elicit sympathy, but it is nevertheless necessary to appreciate that by setting New Caledonia apart in the Constitution, the constituent authorized multiple exceptions to the fundamental principles and values of the French Republic.[4] Such limitation of the special electoral body was not

1 A slightly different French version of this paper was published under the title: "La citoyenneté de la Nouvelle-Calédonie selon l'issue de l'accord de Nouméa", *in* A. Dionisi-Peyrusse, F. Jault-Seseke, F. Marchadier & V. Parisot (ed.), 2019, *La nationalité : enjeux et perspectives*, Varenne-LGDJ-Lextenso, , p. 201-216. This text will be cited as a source of additional scientific references not essential here.
The 174,165 registered voters on the special first referendum electoral roll (liste électorale spéciale à la première consultation – LESC) voted by 56.67% (138,933 votes) for New Caledonia to remain within France (Official Gazette of 7 November 2018, text 1). Alongside New Caledonian citizenship, there is another special referendum-specific electoral body, provided for in Article 77 of the Constitution, the composition of which is governed by Articles 218 and 218-3 of Law No. 99-209. This citizenship is herein called "referendum citizenship".

2 Constit., art. 77 last paragraph; art. 188 I. b) of Law no. 99-209.

3 Art. 188 I. c) of Law no. 99-209.

4 Cons. Constit., 15 March 1999, No. 99-410 DC, consid. No. 3, and 19 April 2018, No. 2018-764 DC consid. no. 3.

deemed to be an infringement of fundamental rights and freedoms[5], insofar as it applies "strictly and solely to polls forming part of a self-determination process"[6], "involving the participation of residents who, regardless of ethnic or political affiliation, have contributed and contribute to the construction of New Caledonia by possessing sufficiently strong ties to the territory."[7] Citizenship was designed to serve for the duration of the Noumea Accord as a provisional and evolving instrument, the aim of which is to create a New Caledonian community across ethnic and community lines.

However, citizenship was not designed as a fixed concept, and the Noumea Accord laid down its flexible nature right from the start, with a view to its possible future transformation into New Caledonian nationality. The twenty-year period initiated in 1998 was intended to take concrete shape through the gradual assertion of this citizenship, instilling a sense of belonging shared by all New Caledonia's communities, towards a common destiny.[8] But apart from the usual consequences regarding the right to vote and to be elected, it confers few social rights[9] and no obligations, reflecting the fact that it still conveys little sense of identity. Whatever the outcome of the referendums, this "community of destiny" cannot be built on a citizenship that, in itself, remains so constricted. In this respect, the purpose of the Noumea Accord has not been accomplished, and the elements to reshape the concept as a citizenship based on a sense of belonging should be defined through a process of reflection on the institutional transition begun by the referendum process[10], whatever the result of the referendum. However, is such reshaping possible?

The Noumea Accord provides that "For as long as the referendums have not resulted in the proposed new political structure, the political structure implemented by the 1998 Accord will remain in force in its final stage of development, without the possibility of going back, and this 'irreversibility' will be constitutionally guaranteed ".[11] The Accord here lays down the principle of the constitutional irreversibility of achievements introduced under the Accord. While the precise compass of the expression "political organization" may be open to interpretation, and the actual scope of the guarantee of irreversibility may vary depending on whether it concerns the principle of an established setup and/or its legal system, this nevertheless constitutes a fundamental element of the Noumea Accord, without which the Accord would probably not even have been signed. The irreversibility guarantee thus gives the impression that, over and above the developments expressly provided for in the Accord and not yet finalized, the political structure will remain unchanged for an indefinite period. Therefore, before considering the ways in which citizenship would be transformed depending on the outcome of the referendum process (II), we should determine to what extent citizenship is an irreversible achievement of the Noumea Accord (I).

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5 CEDH, 11 January 2005, no. 66289/11, *Py c. France*, spec. consid. nos. 61 and 64. France's highest courts adopt the same line: CE Ass., 30 October 1998, *Sarran,* nos. 200286 and 200287; Cass. Ass. Plén., 2 June 2000, *Fraisse,* no. 99-60274, Bull. AP no. 4.

6 United Nations Human Rights Committee, 15 July 2002, cited by the *Py v. France* decree pt. 13.16, p. 13.

7 *Ibid*., p. 14.7.

8 Noumea Accord, Preamble, points 4 and 5.

9 Only precedence for local employment: art. Lp. 450, 451 and ff., Lab. Code NC.

10 É. Cornut, "L'identité comme socle du pluralisme juridique calédonien", *in* Ch. Bidaud (ed.), 2020, *L'identité et le droit*, Nouméa, Presses Universitaires de la Nouvelle-Calédonie, PUNC.

11 Art. 5 al. 5.

I. CITIZENSHIP: AN IRREVERSIBLE ACHIEVEMENT OF THE NOUMEA ACCORD?

Applied to the issue of citizenship, the question is whether the concept forms part of the scope whose irreversibility is constitutionally guaranteed (1) and, if so, whether the scope of such irreversibility is absolute or relative (2).

A. The scope of the guarantee of irreversibility

The guarantee of irreversibility applies to some issues (a), for a period which should be defined (b).

1. Material scope

Is citizenship covered by the constitutional guarantee of irreversibility set out in the Noumea Accord? Is this citizenship as defined by Articles 4 and 188 of the Organic Law, and/or referendum citizenship as set out in Article 218? The scope of the guarantee of irreversibility is a complex issue for two reasons.

The first is linked to the polysemic nature of the expression "political structure", which can be taken as including or excluding myriad aspects of New Caledonia's institutional, social, political, judicial and legal systems. The perusal of Title XIII of the Constitution and the Noumea Accord itself will doubtless help in outlining this scope.[12] Article 77 of the Constitution states, for example, that "French government competencies [...] will be definitively transferred to the institutions of New Caledonia", thus making such transferred competencies an irreversible acquisition. This also applies to citizenship and referendum citizenship, both of which are covered by Article 77 and also by the Accord, and which provide the basis for establishing a new nationality in the event of accession to full sovereignty.

The second concerns the reference to "the 1998 agreement", raising the issue of the integration of constitutional changes since that date. While the Noumea Accord is not designed to be amended, the Constitution has been amended, particularly as regards matters concerning the "political structure" set out by the Accord. This is the case for citizenship under Constitutional Law no. 2007-237 of 23 February 2007. Amending Article 77 of the Constitution, this law restricted accession to citizenship for French nationals with at least ten years' residence in New Caledonia to people having settled in New Caledonia no later than 8 November 1998. Is this fixed requirement a constitutionally guaranteed irreversible achievement? The answer depends on the constituent or interpretative nature of the 2007 Law, on the basis of its retroactive effect. What we have here is undoubtedly an interpretative reform[13], as borne out by preliminary work and discussions[14]. The aim was not to modify citizenship by making it subject to increased restrictions but to close a gap resulting from the opposing legal and ideological standpoints adopted by independentists basing their arguments on preliminary

12 M. Chauchat, "La transition constitutionnelle en Nouvelle-Calédonie, référendums et irréversibilité", *in*, 2018, *L'avenir institutionnel de la Nouvelle-Calédonie,* Nouméa, Presses Universitaires de la Nouvelle-Calédonie, PUNC, p. 41 s.

13 *Ibid*., p. 48.

14 Rapport AN no. 3506 (2006), D. Quentin; Rapport Sénat no. 145 (2006-2007), J.-J. Hyest.

work for the Accord and the 1999 Law, and anti-independentists basing their arguments on the position taken by the Constitutional Council.[15]

2. Temporal scope

A reading of the Accord, the rulings made by the highest courts or the parliamentary reports points up the temporary nature of the constitutional guarantee of irreversibility, given that the political structure set in place in 1998 is "transitory". In point of fact, the political structure will only be maintained as irreversible "As long as consultations do not succeed in achieving the proposed new political structure". Once this process has been accomplished, the Noumea Accord will lapse and the institutional framework can be redesigned. So we find written views on the citizenship issue stating that: "at the end of the process, the Noumea Accord would cease to have effect and, in particular, a constitutional basis for New Caledonian citizenship as defined by the Organic Law would no longer exist".[16] Likewise "Following the self-determination referendum, whatever the outcome, a new system as regards the electoral roll would need to be determined. This is the logical consequence of the transitional nature of Title XIII of the Constitution. Either the right to vote will be tied to New Caledonian nationality in the event of accession to full sovereignty. Or it should be redefined in the light of New Caledonian citizenship if the vote goes to remaining within the French Republic."[17]

However, assuming the process has reached completion (through independence, remaining within France or any other negotiated solution), while some people will argue that all cards could be reshuffled, some reversals will be difficult to introduce. Indeed, there are achievements which are not simply gained because an instrument, regardless of how high it ranks in rule of law hierarchy, proclaims them as gained, but because they are rooted in the collective legal consciousness, because they are considered as the very foundation of the legal and institutional system concerned, in the same way as the general principles of law or values upholding public order. Further, although the guarantee of irreversibility provided for in the Noumea Accord assumes the continuing legal force of the Accord, the new political structure resulting from these referendums, which make the Accord obsolete, cannot, without disavowing its very origins, refute these fundamental achievements the irreversibility of which was once guaranteed. These irreversible achievements, or at least some of them, will remain irreversible even on the "day after". From this perspective, it appears that the existence of a citizenship intrinsic to New Caledonia, whatever the assumption entertained for the "day after", is integral to these achievements, even though differences as to terms of accession to citizenship, and thence the scope of the guarantee of irreversibility, remain more profound here than they do elsewhere.

B. The scope of the guarantee of irreversibility

After having demonstrated that the guarantee of irreversibility varies in scope (a), we should apply the distinction as regards types of citizenship (b).

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15 Cons. const., 15 March 1999, no. 99-410 DC, consid. no. 33.

16 *Mission d'écoute et de conseil sur l'avenir institutionnel de la Nouvelle-Calédonie*, A. Christnacht, Y. Dassonville, R. Fraisse, F. Garde, B. Lombrière, J.-F. Merle, report, October 2016, p. 19.

17 D. Quentin above-mentioned report. p. 44.

1. Absolute or relative irreversibility

We shall posit that the guarantee of irreversibility, once it is shown as applying to a given issue, can vary in scope. The guarantee is absolute when it affects the principle of an achievement as much as its related legal system, in that nothing can be modified. The scope of the guarantee is relative when it only affects the principle of an achievement under the Accord, but its related legal system and the terms and conditions of its implementation may vary insofar as such modifications do not call into question the principle of the achievement and insofar as they "comply with the guidelines established by the Accord and the terms and conditions for its implementation"[18].

This distinction derives, in particular, from the transfer of powers. Article 77 paragraph 2 of the Constitution provides that the Organic Law shall determine "the French government powers which will be definitively transferred to the institutions of New Caledonia, the timing and terms and conditions of such transfers, and breakdown of costs resulting therefrom". While the principle of transfer from France to New Caledonia may be irreversibly acquired, conversely, how such powers are to be shared between the institutions of New Caledonia does not appear likely to be set in stone, allowing, for example, Congress to play a changing role through an extension of its legislative powers in all aspects relating to the "country"[19]. We do not consider that the guarantee of irreversibility as applied to the transfers should preclude this kind of internal transfer of powers, as long as this transfer does not call into question the balanced division of powers between New Caledonia's institutions, in particular at a provincial level. Similarly, with the existence of Congress and its autonomous legislative power a given, the direct election of its members is arguably a legitimate reform.

2. Application to types of citizenship

While the principle of a citizenship intrinsic to New Caledonia, accession to which is restricted, may be an irreversible achievement, we consider that changes to its legal system appear legitimate. However, we should draw a distinction between citizenship as defined by Article 188 and referendum citizenship as defined by Article 218 of Law no. 99-209.

As long as the referendum process under the Noumea Accord has not been finalized, referendum citizenship will remain an absolute irreversible acquisition. The conditions for registration on the special electoral roll for the first referendum (liste électorale spéciale à la première consultation - LESC) are not subject to change, even the condition relating to twenty years of residence in New Caledonia prior to 31 December 2014.[20] This could not be otherwise as it would amount to a denial of the balance aimed at in negotiating the Noumea Accord, which provided the grounds for creating an electorate distinct from citizenship of New Caledonia, solely for the purposes of the exit referendum.

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18 Art. 77 para. 1 of the Constitution.

19 For instance, as regards environmental legislation, currently under the jurisdiction of the provinces: É. Cornut, "Le pluralisme juridique en Nouvelle-Calédonie. Assimilationisme ou différentialisme pour la sortie de l'accord de Nouméa", *in L'avenir institutionnel de la Nouvelle-Calédonie*, *op. cit.*, p. 125 ff., spec. p. 139-140.

20 Art. 218 f) of Law no. 99-209.

However, citizenship as provided for by Articles 4 and 188 of Law no. 99-209 enjoys a guarantee of relative irreversibility. While the constitutional reform of 23 February 2007 fixed the conditions for access for the ten-year period of residence, and some people view the reform as a simple interpretation of the Accord's intentions, this restrictive citizenship was designed to be for a limited period which cannot be that – potentially indefinite – of the "political structure" resulting from the Accord. By creating a citizenship, and indeed a restricted citizenship, intrinsic to New Caledonia, the intention of the Accord was to create a community with a common destiny, a sense of belonging transcending diversity within the community and building towards a new future. It is therefore easy to understand the original restriction: the purpose was to define this community of common destiny as being formed from the start around a "hard core" comprising a mix of communities and identities. The institutions as intended by the Noumea Accord could then be set up – members, roles and exercise of powers – only by this "hard core".

But twenty years after the Accord, with these institutions now well established, and the instruments for creating and developing standards specific to New Caledonia having been created *via* the powers transferred to such institutions, with this set of rights and obligations, as yet imperfect and incomplete but applying or designed to apply to these citizens, and also to people settled permanently in New Caledonia, taking definite shape, to perpetuate this initial design, so restricted in both personal and material terms, appears increasingly meaningless, given the challenges the concept is henceforth faced with. Insofar as referendum citizenship is retained as long as the referendum process lasts, the decolonization purpose is preserved. Seen from this point of view, this "hard core" of citizens must be capable of expanding beyond its natural growth, even if access to it must remain restricted since such restriction is, as a principle, constitutionally guaranteed.

A transformation of New Caledonian citizenship is therefore essential, but requires very careful management.

II. THE TRANSFORMATION OF CITIZENSHIP DEPENDING ON THE OUTCOME OF THE REFERENDUM PROCESS

Transformation of citizenship will depend on the outcome of the referendum process mandated and regulated by the Nouméa Accord. Article 5 of the Accord provides that "The referendum process will concern the transfer to New Caledonia of sovereign powers, access to an international status entailing full responsibility and the organization of citizenship into nationality". Citizenship will become nationality if New Caledonia accedes to full sovereignty (1). Should independence be rejected, a managed recasting of citizenship would appear necessary (2).

A. In the event of access to full sovereignty

Transforming citizenship into nationality (a) raises the issue of its perpetuation (b).

1. Transformation of citizenship into New Caledonian nationality

"Nationality is generally defined as an individual belonging in legal and political terms to the population constituting a state".[21] Nationality thus conveys a "dual dimension": vertical by creating a political bond of allegiance between the individual and the state, horizontal by making each national a member of the population constituting such state.[22] "Viewed solely from a legal perspective, the bond of nationality rests on a close relationship between the individual and the state. Each state is responsible for deciding how to determine who are nationals of that state, according to a range of criteria linked to the state's own historical traditions and political requirements. "[23]

The right to acquire nationality, on the "day before" falls within the sole jurisdiction of the French Republic. This is set forth in section 6-2, paragraph 2, 4° of Law No. 99-209 of 19 March 1999 submitting such rules to the principle of legislative unity: the right to acquire nationality applicable in New Caledonia is the same as that applicable in France, unaffected by any special legislative status. This is reiterated by Article 21.I, 1° of Law No. 99-209, justifying the exclusion of the right to acquire nationality from the transfer of legislative competency in matters of civil law and civil status regulations[24], even though the Civil Code encompasses all regulations relating to the granting, acquisition and loss of French nationality (C. civ., art. 17 to 33-2). Although this principle of legislative unity is fully endorsed today, this has not always been the case and, until 1973, the right to acquire nationality applicable in New Caledonia, as in other overseas territories, was subject to a special procedure. Furthermore, local New Caledonian law, written as customary, can apply tangentially in the process of implementing the right to acquire nationality.[25]In the event of New Caledonia acceding to full sovereignty, citizenship will mutate into New Caledonian nationality, thereby underlining the bond between a new state and its constituent nation. The right to grant nationality, as a mark of sovereignty, is included in the so-called sovereign powers which will be transferred, along with currency, defence and justice. The "community of common destiny" which this citizenship is considered to represent on the "day before" will form the foundation of the New Caledonian nation on the "day after". The issue, typically associated with one state succeeding another, will be twofold:[26] who will accede to New Caledonian nationality? who may retain their French nationality?

On the day their country accedes to full sovereignty, New Caledonian citizens will become, on that day and automatically, New Caledonian nationals. The letter of the Accord is confined to this one constitutionally guaranteed achievement. Nevertheless the intent of the Accord does not appear to exclude from this founding nation the members of the "New Caledonian population" who may be non-citizens: people of customary status and people with referendum citizenship who would not also qualify as New Caledonian citizens.

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21 P. Lagarde, 2011, *La nationalité française*, 4th ed. Dalloz, no. 00.02.

22 *Ibidem*.

23 H. Fulchiron, Synthèse 60: "Nationalité", J.-Cl. inter., 2017, no. 4.

24 Country Law no. 2012-2 of 20 January 2012: *JONC*, 26 January 2012, p. 571.

25 É. Cornut, "Le droit de la nationalité française en Nouvelle-Calédonie": *Cahiers du Larje*, 2018-6, p. 19-26.

26 As regards all such issues: É. Cornut, "Citoyenneté, nationalité et accès de la Nouvelle-Calédonie à la pleine souveraineté", *Revue du droit public*, 2019-6, p. 1485-1526.

Conversely, French residents of New Caledonia who do not have New Caledonian citizenship should also be assured of retaining their French nationality, to avoid any risk of statelessness, prohibited by international law and French law on the right of nationality. The Noumea Accord implicitly provides for this. However, maintaining French nationality for New Caledonian nationals is guaranteed neither by international law nor by French law nor by the Noumea Accord. The criteria for citizenship and Kanak customary status could be employed in approaching these highly complex and politically sensitive issues. That New Caledonian nationals should not automatically retain French nationality is not only consistent with international law[27] but also represents an obligation for France under Article 1, § 3 of the New York Covenant.[28]This approach is also in line with the thinking enshrined in the Noumea Accord. The effect this would give citizenship and customary status with regard to French nationality, may appear as the logical outcome of the institutional transition process. Has Kanak customary status not been acknowledged as the legal recognition of Kanak identity and the Kanak people? Has not citizenship, from the outset, been designed as the identity marker of the emerging New Caledonian community of common destiny? Namely, this community which, because potential independence was fully approved in 1998 by *all* New Caledonia's parties through their signing of the Accord and the moral and legal force of the commitment thus made, could constitute the "original New Caledonian people" brought together by shared values? Taken literally, the Noumea Accord preamble makes the same point in alluding to "the gradual acknowledgement of a New Caledonian citizenship which should reflect the chosen community of common destiny which can, at the end of the period, become a nationality, if that is what is decided". If the acquisition of New Caledonian nationality, in itself restricted by citizenship criteria, does not entail the corresponding loss of French nationality, it is easy to see how the members of the New Caledonian people would become a minority in their own country.

2. Maintaining a citizenship disconnected from New Caledonian nationality?

In parallel to this transformation of citizenship into nationality, one can raise the issue of the elimination or, conversely, the conservation of an autonomous New Caledonian citizenship. The classic notion of citizenship is tied to the status of being a national: a citizen is a national of the State. An independent New Caledonia could enshrine this concept which, with a few reservations[29], is that of French law. However, in view of two foreseen developments, we can consider the scenario of disconnecting the two notions, and therefore maintaining a

27 International Covenant on Civil and Political Rights - New York, 19 December 1966; International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965; Convention on the Rights of the Child, New York, 20 November 1989, together with the general rules and principles of international public law and the texts relating to succession of States: Council of Europe Convention on the avoidance of statelessness in relation to State succession, 19 May 1966; European Convention on Nationality, 6 November 1997, art. 18 to 20; Venice Commission Declaration on the Consequences of State Succession for the Nationality of Natural Persons, 13-14 September 1996. *Adde* The Draft Articles on Nationality of Natural Persons in relation to the Succession of States, adopted by the International Law Commission at its fifty-first session, in 1999 (Yearbook of the ILC, 1999, vol. II (2), p. 24 ff.).

28 According to P. Lagarde, footnote to Cass. Civ. 1st, 19 Feb. 2002, *Rev. crit. DIP* 2003, pp. 77 ff., which states: "Article 1, § 3 of the Covenant, which obliges States Parties, including those having administered non-self-governing Territories, to facilitate the right of peoples to self-determination, which may include assisting them to establish a national self-governing population."

29 Minors, convicted criminals deprived of their civil rights, French nationals excluded from New Caledonian citizenship, in particular.

separate New Caledonian citizenship. On the one hand, new concepts of citizenship are emerging, "new citizenship" or "post-national citizenship", which no longer accept as dogma that nationality and citizenship are one and the same.[30] On the other hand, the example of European citizenship, which establishes a supranational community of common destiny which bestows rights, demonstrates the advantage of a disconnect of this kind, which in no way affects the reality of national ties. In the context of a redefined citizenship, which would confer electoral, economic and social rights, several considerations provide grounds for raising the issue in the context of an independent New Caledonia.

Firstly as regards individuals, the retention of autonomous citizenship status arises as much in respect of New Caledonian nationals as French nationals (now foreigners) allowed to maintain their right of residence. In the case of the former, the right to waive the New Caledonian nationality they have automatically acquired must necessarily be acknowledged, subject to a few conditions. However, can renouncing New Caledonian nationality be equated with giving up New Caledonian citizenship? The individual concerned may indeed wish to hold onto his/her New Caledonian citizenship without acquiring a nationality which might lead to the loss of his/her French nationality and, consequently, European citizenship. Would there not be also an acquired right to New Caledonian citizenship, whereas the nationality of the new State could not be enforced?

In the case of the latter, a French resident who has not automatically acquired New Caledonian nationality: international texts on Succession of States grant him/her the right to remain in the new State and to be treated in terms of social and economic rights on the same footing as nationals of the successor State.[31] Assuredly, the directive does not concern citizenship as it is commonly understood. However, within the context of a redefined autonomous citizenship, offering this French resident the opportunity of acquiring such citizenship regardless of whether he/she ultimately chooses to take New Caledonian nationality[32], would serve as an acknowledgement of the bond the person in question, who has become a foreigner in the country which, in spite of everything, they could still consider as their own, has formed with New Caledonia.

Furthermore, as regards the States, possible independence is highly unlikely to entail a dramatic break between France and New Caledonia. Bearing in mind their shared history, culture and language, and also geostrategic and socio-economic circumstances, ties will be maintained at an institutional level, taking the form, for example, of associated States or partnerships. This special relationship may in fact lead the States to negotiate a "multiple citizenship". In this way, economic, social and even electoral rights may be granted to New

30 D. Schnapper, "Nationalité et citoyenneté", *Pouvoirs* 2017/1 (no. 160), p. 61-71.

31 Art. 14 ILC Draft Articles, 1999, cited above; Art. 20.1. Eur. Conv. of 6 November 1997.

32 If New Caledonia should become independent, the right to acquire New Caledonian nationality should indeed allow the acquisition of that nationality to extend beyond former New Caledonian citizens who would automatically acquire it.

Caledonian nationals in France[33] and French nationals in New Caledonia[34], rights that are special and preferential compared to rights granted to other foreigners.

B. In the event of remaining within France

Given this assumption, as long as the referendum process is still ongoing and, over and above this process, as long as a new political structure has not been determined, the state of affairs arising from the Noumea Accord will continue to exist, along with the guarantee of irreversibility thereto attached[35]. In other words, New Caledonia with its current political arrangements can carry on for an indefinite period. Nevertheless, while the absolute inviolability of referendum citizenship may be a given since it is a guarantee of the decolonization Accord, on the other hand, citizenship would appear to require being reformulated as a citizenship which could be described as "statutory" (a), with access still subject to restrictions but more open (b).

1. A statutory citizenship

Despite the constitutional guarantee of irreversibility, the intention of the Accord is not to set in stone *ad vitam aeternam* the institutional structure of New Caledonia which it brought into being. To the extent of this guarantee of irreversibility and taking into account the guidelines established by the Accord, moving forwards with institutional transition should also involve a redefinition of citizenship as it currently stands, limited in both personal and material terms, towards a more open concept in terms of rights and obligations and therefore people. The objective is to arrive at a citizenship of belonging, not granted solely in accordance with a temporary aim but conceived as the symbol of a lasting sense of belonging to a territory, a history, a multi-faceted culture, shared values as well as a shared future. This sense of belonging should give rise to rights and obligations sourced in New Caledonia, which should go beyond the rights currently attaching to citizenship alone.

All may still be left to the imagination, but at least a consensus seems to have been achieved. The fact-finding mission on New Caledonia's institutional future undertaken in 2016 noted that "Only very incidentally did some groups raise the possibility of other rights conferred by New Caledonian citizenship (land acquisition or shares in local companies). All groups expressed the wish that duties be attached to this citizenship and that citizenship should be conferred in ceremonies held with solemnity and reflecting the sense of belonging to the community of common destiny."[36] The "Charter of New Caledonian Values" is a step forwards in the process of endowing citizenship with a new dimension by defining common values.[37]Most importantly, New Caledonia now possesses very broad regulatory powers.

33 For example, by allowing New Caledonians access to government/civil service jobs open only to French nationals, thereby providing opportunities for young graduates with a view to the ultimate establishment of a New Caledonian senior civil service. New Caledonians having lost their French nationality could, like European citizens (which they would no longer be either), regain the right to vote in local elections.

34 For example, advantages conferred under local employment regulations, application of New Caledonian rules and standards in private law and, possibly, the right to vote in local elections.

35 Noumea Accord, Art. 5 para. 4-5; State Council, notice no. 395203 of 4 September 2018.

36 Above-mentioned report. p. 21.

37 The Charter, presented on 27 July 2018 by the "Committee of Dialogue for the Future", but which in itself has no

With the transfer of jurisdiction in matters of civil and commercial law, on top of regulatory powers already acquired in the areas of labour law, taxation and insurance, almost all issues of private law now fall under the jurisdiction of Congress. The fund of New Caledonia-sourced rights and obligations, to be enjoyed and respected by people with strong ties to New Caledonia, is right there. But to whom, for example, does New Caledonian civil law apply? In the absence of rules governing conflicting internal regulations, the situation remains uncertain.[38] And while citizenship could be considered as a criterion for the application of New Caledonian civil law[39], it cannot fully play this role in its current limited form.[40] It could only do so if it is reshaped and transformed into a statutory citizenship. However, people settled and residing permanently in New Caledonia should be able to enjoy the rights and be accountable to the obligations laid down by New Caledonian legislation and therefore to also take part in choosing the elected representatives who pass such legislation.

2. Opening up access to statutory citizenship

From an institutional and political standpoint, the real stumbling block will undoubtedly be defining the precise outlines of the scenarios for acceding to this statutory citizenship. If consolidating the current base appears as beyond dispute (the citizens of today will be the citizens of tomorrow); if the principle of expanding that base seems to be shared by all the New Caledonian parties (the citizens of tomorrow could be today's non-citizens), the difficulty will arise in defining the extent of such expansion.

The attribution and acquisition of French nationality could readily serve as a template. If attribution of citizenship by right of blood - descendants of a citizen, people with customary status - does not give rise to debate, citizenship by birthright needs to be reviewed, particularly as regards assessment of the strength and duration of ties binding people to New Caledonia. The current set periods of 10 and 20 years are too long for statutory citizenship, just as, in this context, the setting of a precise date of arrival in the territory as a condition for acceding to citizenship cannot continue. Without exhausting all the options, three example cases should provide access to statutory citizenship.

The first case should enable spouses and partners of a New Caledonian citizen to qualify for Caledonian citizenship. Conditions could be debated: automatic acquisition or by declaration; a set period of marriage/partnership; subject to the marriage/partnership being valid and in existence at the date the declaration is made, or even during a period subsequent to acquisition of citizenship. Measures to monitor fraud could be considered, to prevent marriages/partnerships solely for purposes of obtaining legal citizenship. The question of

legal or even political validity, is posted on the website of the French High Commission in New Caledonia: http://www.nouvelle-caledonie.gouv.fr

38 Regarding this issue and proposed solutions, see É. Cornut, "Les conflits de normes internes en Nouvelle-Calédonie. – Perspectives et enjeux du pluralisme juridique calédonien ouverts par le transfert de la compétence normative du droit civil", JDI, 2014, doctr. 3, p. 51 ff.; V. Parisot, S. Sana-Chaillé de Néré, "La méthode conflictuelle, une méthode de résolution du conflit de normes adaptée à l'intégration de la coutume dans le corpus juridique calédonien", *in* É. Cornut, P. Deumier (eds.), 2018, *La coutume kanak dans le pluralisme juridique calédonien*, Nouméa, Presses Universitaires de la Nouvelle-Calédonie, PUNC, p. 404 ff.

39 S. Sana-Chaillé de Néré, "Les conflits de normes internes issus du transfert à la Nouvelle-Calédonie de la compétence normative en droit civil", *JDI*, 2014, p. 33 ff., spec., no. 6 ff.

40 É. Cornut, "L'identité comme socle du pluralisme juridique calédonien", art. cited above.

spouses or partners of New Caledonian citizens has long been a subject of debate, particularly insofar as access to local employment is involved.[41] The issue is important because, for a citizen of New Caledonia, "marital capillarity" represents their only real hope of enjoying a peaceful private and family life in New Caledonia, through the socio-economic integration of their spouse or partner.[42]The second case should allow people born in New Caledonia, whose parents are not citizens, to acquire New Caledonian citizenship.[43] Conditions may vary, particularly to prevent ius soli (right of birthplace) becoming a gateway to unconditional automatic citizenship: automatic or statement of intent; minimum duration of residence in New Caledonia, whether or not based on a specific period of time[44]; residence in New Caledonia at the date of application or at the date at which citizenship would automatically be acquired.

The third case should allow people not born in New Caledonia, neither of whose parents is a New Caledonian citizen, to acquire citizenship. In this case, automatic acquisition of citizenship would seem ruled out, and a statement of intent would be the only basis for citizenship, in the same way as French nationality is acquired through naturalization. The conditions could also include a period of residence, to be defined; integration requirements, such as an appreciation of New Caledonia's moral and material interests and a knowledge of New Caledonian culture, history and society, all of which could be verified. The people concerned are mainly those who are currently the main focus of negative attention. Once their possible accession to citizenship is admitted, the trickiest aspect will probably be stipulating the minimum period during which they would need to have been in New Caledonia. The "sufficient period of residence" required for non-citizen residents before they are granted priority access to local employment could serve as a basis[45]. Indeed, the periods laid down by law should be redefined accordingly.[46] The four-year period sometimes cited, corresponding to the typical length of stay of a French government employee, is too short, precisely because retaining it would effectively allow people residing in New Caledonia on a temporary basis and intending to return to France to accede to New Caledonian citizenship. The period should be at least five years of continuous residence in New Caledonia.[47] In terms of fundamental rights, the maximum period should probably be ten years.

Some conditions could relate to a common right to acquire citizenship, such as having no convictions for some types of crime.[48] A welcoming ceremony could also be held for new citizens, when, for example, they would be presented with the Charter of New Caledonian Values, the Charter of the Kanak People and a booklet on the rights and duties of citizens of

41 Const. Council, 30 July 2009, no. 2009-857 DC, consid. nos. 18-19.

42 Art. Lp. 451-2-1 para. 1 of Lab. Code NC.

43 In a *contra legem* interpretation of Article 188 I. c) of Law no. 99-209, the Court of Cassation went down that road by allowing people born in New Caledonia but having no New Caledonian ancestry to be entered on the LESP electoral roll: Cass. civ. 2, 3 November 2011, no. 11-60376.

44 Comp. art. 21-7, Civ. Code. This condition ensures that the individual concerned has spent a significant part of his/her childhood and schooling in New Caledonia, establishing the elements of his/her bond to the country.

45 Art. Lp. 451, Lab. Code NC.

46 In this regard, see art. Lp. 451-2, Lab. Code NC.

47 A five-year period is typically set as a requirement for the granting of French nationality, the same applies to naturalisation by decision of the French authorities, art. 21-17 Civ. Code.

48 Comp. art. 21-27 § 1, Civ. Code.

New Caledonia.[49] Far from being symbolic, such a welcoming ceremony and presentation of documents serves as an outward expression of the concept that endowing citizenship with a new dimension is not simply about redefining the conditions for acceding to citizenship, or in any case that this aspect of the issue can no longer constitute the only focus for debate. First and foremost, it is about defining new rights and duties bound up with New Caledonian citizenship and rooted in the legal framework being built in New Caledonia, that of a common destiny shared and open to others.

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49 Comp. art. 21-28, Civ. Code.

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Given the diversity and abundance of its subsoil mineral resources (nickel, cobalt, gold, copper, chromium, iron, manganese…), New Caledonia can qualify as a "mining country". However, these resources vary greatly in terms of quantity and value, and only cobalt and nickel are currently mined. Thanks to New Caledonia's nickel reserves, this small French Pacific country is the world's fourth-largest nickel producer, with mining an ever-present topic of interest. New Caledonia's Main Island contains around 25% of world nickel reserves and boasts three world-class ore processing plants. The political, economic and environmental issues linked to the nickel sector are hence of vital importance for a country acknowledged as a key global biodiversity hotspot whose entire surface area extends over just 18,000 km^2. The ancestral tie-to-the-land invoked by New Caledonia's Kanak population also adds a social dimension to mining issues.

Mining has also played a major role in the country's history as a French colony. New Caledonia was annexed by France in 1853 and the first concession for coal mining was granted in 1858. From the 1860s onwards, numerous other mineral resources were identified, including nickel, later known as New Caledonia's "green gold", discovered by mining engineer Jules Garnier in 1864.

Over the years and in line with recurrent changes in New Caledonia's status, there have been significant developments in the complex division of legal responsibilities for mining. Currently, except for substances used in atomic energy production, which remain under French government jurisdiction, all other substances fall under local authority jurisdiction.

Today, mining law in New Caledonia remains somewhat fragmented in terms of both division of responsibilities and of applicable law (I.). As a result, the legal system regulating mining in New Caledonia varies depending on the substances mined. Nevertheless, nickel and cobalt – the materials currently mined – are regulated by recent legislation requiring sustainable management of mining operations (II.).

I. A LEGAL SYSTEM DISPERSED BETWEEN VARIOUS STAKEHOLDERS AND SOURCES OF LAW

New Caledonia's mining law can be described as fragmented insofar as legislative and management jurisdiction is divided between various local and French government authorities depending on the type of materials concerned (A). And the fragmented nature of mining law is also reflected in the diverse sources of applicable law, which also vary according to the authorities having jurisdiction to establish such sources (B).

A. A body of law distributed between various competent authorities

The division of jurisdiction currently applicable, deriving from New Caledonia's institutional history, necessitates prior consideration of the historic assignment of responsibilities in the area of mining.

1. Historic division of mining responsibilities

As part of French government policy on the emancipation of New Caledonia in compliance with the provisions of the 1988 Matignon Accords and the 1998 Noumea Accord, the French government has gradually relinquished almost all its mining responsibilities, and currently only retains jurisdiction over the substances used to produce atomic energy. Apart from a short period of New Caledonian jurisdiction, France retained, for a considerable number of years, the sole right to regulate and control mining operations in the country. There have always been close links between New Caledonia's mining history and its colonial history and emancipation. Following French annexation in 1853, New Caledonia's long mining history began with the discovery of a variety of mineral deposits: coal, gold, copper, chromium and, in 1864, nickel. The 1810 Napoleonic mining law was enacted in New Caledonia in 1859. Many piecemeal reforms were implemented, targeting in turn mining title validity periods, categories of substances, the scope of mining titles... The adoption of new mining regulations under "Decree No. 54-1110 of 13 November 1954 on the reform of the mineral substances regime in the Overseas Territories" marked a real turning point in New Caledonia's mining history. For the first time, this decree gave New Caledonia broad administrative autonomy regarding all mineral substances, including nickel, except for a few substances such as those required to produce atomic energy, hydrocarbons and potash salts, which remained in the hands of the French government.

Armed with this new authority, the New Caledonian Territorial Assembly passed Mining Resolution no.128 of 22/08/1959 laying down the terms and conditions for application of the 1954 decree. A local government council "mining minister" henceforth assigned all licences to prospect and concessions. But this decentralization of mining responsibility was short-lived because in 1969, in the midst of the world nickel boom (1967-1972), the French government removed administrative authority for nickel, chromium and cobalt from New Caledonia (so-called Billote laws), taking back all control. Nevertheless, this period of localized authority played a crucial role since texts adopted at the time remain the source of applicable law for some mineral substances.

The upsurge in Kanak demands for independence and the period of near-civil war in the 1980s finally led to the 1988 signing of the Matignon Accord, which provided for the restoration of decentralized powers, particularly in the area of mining. New Caledonia's new status saw the country divided into three provinces with a view to implementing the political and economic rebalancing seen as fundamental to social peace (the mainly loyalist South Province – home to the capital Noumea – is significantly more developed than the predominantly pro-independence North and Loyalty Islands Provinces.) Mineral resource management was central to this economic rebalancing process, and Referendum Act No. 88-1028 of 9 November 1988 gave the three provinces broad jurisdiction over mining issues, transferring to them responsibility for setting terms and conditions for the application of French government regulations, including substances used to produce atomic energy, nickel, chromium, cobalt and hydrocarbons (regulation thereof remaining under French government control), and for

the regulation of other substances and of quarries. As from 1990, the Assemblies of the South and North Provinces adapted the form, without changing the substance, of the original 1950s mining regulations to bring them into line with their new scope of authority.

The Noumea Accord of 5 May 1998, implemented by the Organic Law of 19 March 1999, heralded the transfer by the French government of almost all its mining responsibilities to New Caledonia.

2. Current distribution of mining responsibilities between stakeholders

First and foremost, a distinction must be drawn, in terms of local law, between the mining law applicable to so-called assignable substances and that applicable to quarries since, as in France, they are covered by different legal regimes. This dual system dates back a considerable time; it is referenced in regulations going back to 1883, and explicitly confirmed by the 1954 decree which states that natural deposits of mineral substances are classified, in legal regime terms, as quarries and mines. This decree provides that deposits of building materials and soil conditioning materials for farming, together with other similar substances, with the exception of phosphates, nitrates, alkaline salts and other associated salts found in the same deposits, are considered quarries. Deposits of substances not classified as quarries are then classified as mines. There has always been this distinction between mining law and quarry law and, under the current status, the provinces have sole jurisdiction over the regulation and administration of quarries, such regulations being included in each province's environmental code. There is a wider range of relevant players in the mining sector.

The current division of mining responsibilities derives from the 1998 Noumea Accord, which provides for the transfer to New Caledonia of jurisdiction over hydrocarbons, nickel, chromium and cobalt, previously the exclusive remit of the French government, and for New Caledonia to have jurisdiction for establishing regulations and the Provinces for the implementation thereof. This was the basis for the division of mining responsibilities between relevant stakeholders under Organic Law No. 99-209 of 19 March 1999 relating to the status of New Caledonia: French government, New Caledonia and Provinces.

Under the Organic Law, the French government retained sole authority for establishing mining regulations applicable to substances used to produce atomic energy (as specified in Article 19 (1) of the 1954 Decree). Responsibility for all other substances was transferred either to New Caledonia or to the Provinces by virtue of their powers under common law.

Thereafter, the Congress of New Caledonia had sole authority to determine, via a Country Law, legislative measures relating to hydrocarbons, nickel, chromium, cobalt and, since 2013, rare earth elements.

The Provincial Assemblies then meet to decide on the implementation of such legislation and are therefore responsible for granting mining titles such as licences to prospect and mining concessions. However, they call on the New Caledonia Mines Directorate (Direction de l'Industrie, des Mines et de l'Énergie de la Nouvelle-Calédonie – DIMENC) to investigate various applications for mining permits and authorizations and for field checks carried out by mine inspectors...; this procedure ensures a degree of consistency in mining administration and management. Mines policing is the responsibility of each Provincial Assembly President.

The Provinces also have authority to enact and implement mining regulations for substances which do not fall under the jurisdiction of New Caledonia or the French government. These include jade, iron, gold, aluminium, copper, lead, zinc and manganese, with the Provinces also granting mining titles for such substances. Mining regulations provide that advice be sought from ad hoc bodies. Consequently, Provincial Assembly decisions to grant mining titles for nickel, cobalt and chromium are only implemented after advice has been sought from the Mines Advisory Committee (Comité consultatif des mines – CCM) and the Mines Council (Conseil des mines - CM) and, in the case of other substances, by order of the President of the Province concerned following advice from the CCM alone.

The CCM is made up of representatives from local authorities, both Provincial and New Caledonian, from the Customary Senate and the French government, together with representatives from relevant professional and trade union organizations and environmental protection associations. This broadly constituted base helps to ensure, at the very least, a country-wide and not just province-based perspective, and even a degree of administrative consistency at national level. The CCM issues an opinion which, if appropriate, is forwarded to the CM, whose advice is sought on proposed and draft country laws and on draft decisions by Provincial Assemblies relating to hydrocarbons, nickel, chromium, cobalt and rare earth elements. The CM comprises members of the New Caledonian and Provincial executive bodies and the High Commissioner, who chairs the Council, convenes meetings and sets the agenda but is not entitled to vote. The fact that mining is a sensitive subject in New Caledonia provides good grounds for reaching consensus decisions where the mining sector is concerned. Consequently, the procedure applicable to mining-related decisions is particularly complex, and the French government has a very specific role insofar as, while not having a vote, it may request a second reading of submitted texts, and in the event of an unfavourable opinion, send back the text to local government, which can definitively suspend a procedure on which there is no consensus.

B. Legal disparities vis-à-vis various substances

1. The Mining Blueprint, a general framework

The fact that mining law derives from different sources has resulted in a fragmentation of the legal system governing mining, with applicable competencies and regulations varying according to mineral substance types. Nevertheless and in accordance with the Organic Law, the Congress (New Caledonia's deliberative assembly) adopted, in March 2009, a Mineral Resources Development Blueprint (Schéma de mise en valeur des richesses minières – SMVRM) applicable to mining as a whole. This Blueprint, the result of lengthy discussions between key representatives of institutions and the mining sector, sets out broad guidelines for mining operations in New Caledonia. The primary objective of the Blueprint is to encourage the growth of New Caledonia's mining and mineral ore processing industry by focusing on local development of resources and environmental conservation, and by using a portion of profits to benefit local communities. It sets out guidelines for the industrial growth required to ensure the responsible mining of mineral resources with sustainable development in mind, together with the principles governing mining products export policy. The Blueprint serves as a reference for all mining sector players and for New Caledonia's partner countries. Mining-related measures adopted by local authorities must be in compliance with the principles of the SMVRM, which is enforceable against individual decisions taken within the context of mining regulations.

2. The law applicable to substances under French government jurisdiction

As previously mentioned, the French government is responsible for establishing the law applicable to substances used to produce atomic energy. In practice, this means the French Mining Code, as regards the provisions therein stated as applicable to New Caledonia (under Article L681-1; the investigation, exploration and mining of such substances being governed by the provisions of Sections I (legal regime for mines), IV (mining titles) and V (rights and obligations relating to mining operations). Under the principle of legislative speciality applicable in New Caledonia, French law applies only if explicitly stated as applicable. In geographical terms, these provisions apply to the territory of New Caledonia and its exclusive economic zone (EEZ).

The French government is also responsible for establishing the mining regulations applicable to the exploration and mining of the continental shelf extending beyond the EEZ over a surface area of 76,000 km^2, as determined by Decree No. 2015-1182 of 25 September 2015 defining the outer limits of the continental shelf stretching south-west of New Caledonia's coasts. The French Continental Shelf is subject to the provisions of Law No. 2016-1687 of 8 December 2016 on maritime areas under the sovereignty or jurisdiction of the French Republic. Mineral substances located in such areas are assimilated to deposits belonging to the mines category; investigation, exploration and mining operations (aggregates, hydrocarbons...) are therefore also governed by French Mining Code rules as applicable in New Caledonia. However, France's rights over these zones concern only the seabed and marine subsoil and not the water column, which remains in the international domain.

3. The law applicable to substances under Provincial jurisdiction

The law applicable to substances under Provincial jurisdiction, such as iron, gold, aluminium, copper, lead, zinc, manganese... (all substances not subject to French or New Caledonian jurisdiction) still derives from the 1954 Decree on the reform of the mineral substances regime in the Overseas Territories, as amended by various subsequent reforms.

Since 1988, the Provinces have been empowered to pass new regulations but, for the time being, each Province has merely made minor modifications to existing texts, mainly to bring them into line with the Province's areas of responsibility (Resolution No. 13/90/APS of 24 January 1990 for the South Province and No. 100/90 of 26 February 1990 for the North Province; mining being of little concern to the Loyalty Islands Province, it waited until 2001 to modify the law under Resolution No. 2001-20/API of 12 November 2001). In 2009, the SMVRM had planned for the codification of all regulations but to date this has only been done for nickel, chromium and cobalt.

This legal regime applies within the geographical limits of each of the Provinces, i.e. covering the territory of the municipalities which make up each Province, the inland sea (lagoon, estuaries) and the territorial sea (extending 12 nautical miles from the coastal baseline). New Caledonia has jurisdiction for all substances, apart from those that are radioactive, beyond the territorial sea, including over the EEZ.

4. The law applicable to substances under the jurisdiction of New Caledonia

The legislative section of a New Caledonian Mining Code applying to nickel, chromium and cobalt, all substances vital to the local mining industry, was adopted under Country Law

No. 2009-6 of 16 April 2009. The regulatory provisions were adopted under Decree No. 2009-2205/GNC of 28 April 2009 establishing the regulations section of the mining code. The three provinces are responsible for implementing decisions, i.e. the administration of mining operations, issuance of mining titles, and mining permits. This Code enforced the principles set out in the SMVRM and established a modern and rigorous regulatory framework for New Caledonia's key nickel mining industry. It specifies (article LP. 111-7 of the New Caledonia Mining Code) that all individual decisions in pursuance of mining regulations must comply with the principles and guidelines of the Mineral Resources Development Blueprint (SMVRM). The geographic scope for mining code application is defined as the Provincial territories (municipalities, inland sea and territorial sea).

Under a 2013 amendment to the statutory Organic Law, the Congress was empowered to adopt regulations governing rare earth elements, a set of metallic elements which include the fifteen lanthanides on the periodic table plus scandium and yttrium. Pursuant to amended article 40 of the Organic Law, Provincial Assembly resolutions govern decisions on the implementation of such regulations. Decree No. 54-1110 of 13 November 1954 and the texts adopted in application thereof, apply in the event of no Country Law being adopted. In this instance, the geographic scope of New Caledonia's jurisdiction is also defined as the territories of the Provinces.

Similarly, the 1954 Decree and its implementing texts apply to all substances located in the EEZ and in the islands outside Provincial territories (Chesterfield Islands, Huon and Surprise Islands, Walpole Island…), with the exception of radioactive substances under French government jurisdiction. In point of fact, the Organic Law of 1999 provides for New Caledonia having jurisdiction (Art 22, 10°) over the regulation and exercise of rights for the purpose of exploring and exploiting, conserving and managing living and non-living natural resources in the exclusive economic zone; however, these regulations have not been adopted by the Congress. Under section LP 111-5 of the Mining Code, the regulations relating to nickel, chromium and cobalt apply only to the Provinces.

II. A DIVERSIFIED LEGAL REGIME GOVERNING MINING OPERATIONS

Mining operations in New Caledonia are governed by a diversified legal regime which varies according to the substances concerned. The regime covering substances currently being mined derives from the 2009 Mining Code for nickel, chromium and cobalt, which laid the foundations for an updated law implementing a number of principles and values set out in the SMVRM. In accordance with the provisions thereof, New Caledonia's Mining Code provided, as part of major reforms to the legal regime governing mining operations, that exploration and mining operations would be subject to authorization, in addition to requirements for the prior acquisition of mining titles. As regards other substances, granting of mining titles is the only requirement for mining operations, no additional authorization being required.

A. Mining titles requirement

Under local mining law, three types of mining titles granted by Provincial Assemblies are a prerequisite for mining operations. Mining titles for nickel, cobalt and chromium require prior consultation with the CCM and the CM; mining titles for other substances are granted by order of the President of the Province concerned.

1. Personal Mining Permits

Personal Mining Permits (Autorisation Personnelle Minière – APM) are specific to local law, which provides that only holders of such permits may apply for exploration permits (PR) or concessions, or become the lessee of a mining lease. An APM, valid for five years and renewable, grants an exploration right to carry out surface investigations, alongside other holders of APMs granted by the Province concerned. APMs give the competent authorities an opportunity to pick and choose potential mining operators by monitoring their technical, financial and environmental capabilities; scope of operations can then be matched to capabilities since APMs are assigned per substance or group of substances and per surface areas of 100 ha. In this way, an APM represents a kind of customized entrance ticket to New Caledonia's mining sector. APMs can be withdrawn or restricted for various reasons: loss of technical and financial capability, serious breaches of mines policing, safety or hygiene regulations.

Once an AMP has been issued, the holder may apply for an exploration permit or concession or become a mining lease lessee.

b. Exploration permits

An exploration permit gives the holder an exclusive right to carry out surface and subsoil mineral exploration, within the boundaries of the area covered by the permit, for the purpose of identifying a workable ore deposit; a concession will only be granted if a workable ore deposit is identified. Exploration permits for nickel, cobalt and chromium require the Provincial Assembly to issue a decision valid for a maximum period of three years (renewable twice); exploration permits for other substances are granted by order of the President of the Province concerned for a maximum renewable period of 5 years. Permits are issued following a 45 day competitive process based on submission of a work schedule, and subject to financial commitments covering the scheduled work.

c. Concessions

A concession is the mining title conferring the exclusive right to undertake mining operations. A concession is automatically granted on request to any holder of an exploration permit who provides evidence of the existence of a workable ore deposit. Concessions are granted for a maximum period of 50 years, renewable for periods of up to 25 years.

The holder of a concession has a property right; although mortgageable, it is distinctive and independent from surface rights. In point of fact, neither New Caledonian nor French mining law confers surface rights on holders of mining titles. In mining, there is a distinction between surface and mineral rights.

Surface rights require an additional permit known as a land use permit, which allows the mining operator to use privately owned, state or customary land, subject to prior agreement and possible compensation (in an amount agreed between the respective holders of the mineral rights and the surface rights or set by the competent court). A land use permit allows mining title holders to occupy and use the land required for their operations (quarries, miscellaneous works…) and related industries (power plants, washing facilities, mechanical or metallurgical processing, waste storage, accommodation, conveyors…), and for haulage and communications… Land use permits are also issued by the Provincial Authorities.

Exploration permits and concessions, plus a straightforward declaration to the competent authorities, are all that is required for the exploration and mining of substances other than nickel, chromium and cobalt; these three substances are governed by the more rigorous provisions of the Mining Code. In pursuance of the 1954 Decree and the 1959 Resolution, a system for reporting drilling and mining work to the administrative authorities was established. Mine operators are nevertheless required to keep municipal mining commissions – chaired by the mayor and comprising administrative and customary authority representatives – informed about technical facilities and procedures used for mining and the impacts of mining on the municipality's natural environment.

By way of contrast, the procedure laid down by the Mining Code for the exploitation of nickel, chromium, and cobalt is considerably more rigorous and restrictive, and requires operators to apply for additional permits issued by Provincial Assembly Presidents. Obtaining exploration permits and concessions is not enough, and additional permits issued by provincial administrative authorities are required before proceeding with any exploration or mining work.

B. Strict supervision of nickel, chromium and cobalt mining

The Provinces are responsible for implementation of Mining Code rules on the mining of nickel, chromium and cobalt. Both exploration permits authorizing drilling and mine operating permits are granted by order of the President of the Provincial Assembly. Extensive documentation detailing all work planned by mine operators is required before any permit is granted. Each application file submitted for review by the DIMENC must meet rigorous permit requirements.

1. Compulsory permits – from mineral exploration to mine development

Exploration and mining work can only be commenced after the President of the Assembly of the relevant Province has granted a permit setting out requirements for the prevention of mining-related damage or pollution.

A personal mining permit (APM) or a mining title is the only prerequisite for exploration work for surface investigations designed to identify mineral ore deposits. An official permit is not required for exploration but the DIMENC must be informed before any geophysical survey is carried out.

Exploration permit or mining title holders are authorized to undertake drilling work designed to establish the existence of assignable or licensable mineral deposits, and to analyse the conditions attending the mining and industrial use of such deposits. A provincial permit granted by order of the President of the Assembly of the relevant province is required before any actual mining can begin.

Applicants need to compile very comprehensive documentation to get a permit for exploration work. An impact study including a baseline analysis, an analysis of direct and indirect impacts on fauna and flora (list of protected or endangered species…), water, air and archaeological and cultural heritage conservation… must all be included. The file must also detail the measures the applicant commits to implementing to mitigate, eliminate, reduce and, where possible, compensate for any harmful effects, and must also include a plan

dealing with the management and protection of surface and groundwater. A rehabilitation schedule describing the measures planned for the remediation and rehabilitation of the areas impacted by exploration work must also be included, along with a reclamation and closure plan detailing the redevelopment and revegetation methods retained.

The application is reviewed by the relevant services and municipalities. The advice of the Municipal Mining Commission is also always sought. The President of the Provincial Assembly must issue an order within one month after the conclusion of the period of administrative scrutiny.

As regards mine operation, mining permits are granted by order of the Provincial Assembly President for a maximum period of 25 years, following an administrative inquiry, a public inquiry and the advice of the Municipal Mining Commission based on the application file. The application must include a report on the financial resources and reserves of the applicant company, together with a general guidelines document covering the overall duration of the project. It must also include an impact study analyzing the likely environmental impacts of planned work, facilities and structures; a socio-economic impact study; a water management plan; and a health and safety plan. A rehabilitation program must set out the principles and measures planned to ensure the remediation and rehabilitation of areas impacted by mining operations, to be implemented over the course and on conclusion of such operations, together with the amount of rehabilitation costs. The operator must provide financial guarantees corresponding to the costs required for the remediation and rehabilitation of the areas impacted by mining operations. A detailed schedule for the first five years of mine operations must be provided.

Once operations have commenced, the operator must provide a five-yearly report for review by the administrative authorities; in the event of significant modification to the project, a new order may need to be granted.

In addition to these Mining Code requirements, the provisions of the Environmental Code also apply to any mining operations involving land clearing, threats to protected species or areas (endemic, rare or endangered species, nature reserves, valuable and unique natural ecosystems). Taken as a whole, these requirements ensure the strict regulation of any environmental threats resulting from mining operations. Administrative penalties can be imposed under the Provincial Environmental Codes and also the Mining Code; the toughening of the mines policing system was one of the major reforms enshrined in the Code in 2009. Violations of the Mining Code are currently sanctioned by both financial and criminal penalties, including a prison sentence of up to two years for non-compliance with mining requirements.

2. Mine closure and post-mining management

Extensive environmental damage has been caused in the past by mining operations in New Caledonia; the 2009 Mining Code therefore incorporated rigorous requirements applying to mining operators. New Caledonian Mining Law henceforth targets, in addition to eco-sustainable standards for mining, excellence in post-mining management, now also closely regulated and monitored. The cessation of mine operations must be declared six months prior to the scheduled deadline to enable the public authorities to check on plans for the practical implementation of remediation commitments. To forestall environmental damage

arising from careless or disorderly termination of mine operations, the significant financial guarantees the operator is required provide could be used to ensure the remediation and rehabilitation of the areas damaged by mine operations. The setting up of financial guaranties prior to commencement of operations ensures that essential rehabilitation work can be carried out by the operator or, should the operator default, by the public authorities. Planned supervision of mine projects now extends from start of operations right up to site rehabilitation.

3. Export procedures

Mining products export procedures fall within the jurisdiction of New Caledonia and not the Provinces. To ensure the protection of New Caledonia's mineral resources and promote local processing of minerals, the Mining Code provides for different export procedures for mineral raw materials and processed mineral materials. A simple declaration is required for processed products, whereas raw products (not processed locally) require an export order issued by the local government. Furthermore, to ensure that New Caledonia's rich mineral resources are mined sustainably, metal content cannot exceed a limit set by decree.

CONCLUSION

Nearly all mining titles currently in force in New Caledonia (almost 98%) concern nickel, cobalt and chromium. The fragmented character of mining law in New Caledonia resides in the fact that competent authorities and sources of applicable law differ according to the substances and locations at issue. As regards substances used to produce atomic energy, reference should be made to the body of French regulations as applicable in New Caledonia.

The law applying to all substances other than those under French government control, and rare earth elements not yet covered by New Caledonia Congress legislation, is an old law dating back to the 50s and necessarily includes outdated elements, particularly as regards requirements for the more rigorous supervision of mining operations and, importantly, environmental controls. However, the substances concerned have not been mined for a long time.

In contrast, the regulations applicable to substances currently mined, including nickel and cobalt, were substantially updated in 2009 with the adoption of the Mining Code implementing the principles set out in the SMVRM (Mineral Resources Development Blueprint). The basic requirement to be in possession of a mining title has been reinforced by a system requiring mining permits granted by order of the Provincial Authorities, thereby ensuring stringent supervision of all mining operations. Strict environmental regulations have also been added to requirements. Overall, local regulatory requirements form the basis for a legal system capable of ensuring the sustainable exploitation of New Caledonia's mineral resources and constituting a cutting-edge legislative system on a par with those developed by the world's major mining countries.

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New Caledonia possesses a vast 1.3 million km² maritime zone extending from 12 nautical miles beyond the barrier reef to a maximum boundary of 200 nautical miles, and an additional 76,000 km² area of continental shelf approved in 2015.[1]

The Noumea Accord[2] proposes "beginning a new phase of [...] shared sovereignty with France, on the path towards full sovereignty". Thus "the sharing of powers between the French government and New Caledonia shall signify shared sovereignty". Regardless of the area concerned, every aspect of governance in New Caledonia is imbued with this ethos of autonomy on the brink on independence.

Consequently, New Caledonia enjoys very extensive rights over maritime areas, either by virtue of territorial jurisdiction or by virtue of jurisdiction *ratione materiae*, and these rights form part of the process of gradual transfer of all French government powers except the sovereign powers which, if transferred, would confer full sovereignty.

It should be noted the United Nations Convention on the Law of the Sea (UNCLOS) of 10 December 1982, also known as the Law of the Sea Convention or the Law of the Sea Treaty[3], defines various maritime areas in accordance with the rights thereto attached, such rights being themselves subject to coastal proximity. The sovereignty of a coastal State extends over the territorial sea, covering a breadth of 24 nautical miles from coastal baselines, and inland waters. The breadth of the two areas located beyond the territorial sea, the EEZ and the continental shelf, is measured from the baselines, not exceeding 200 nautical miles, and even 350 nautical miles as regards the second, in the event of UN recognition of an extension of the continental shelf; the coastal State has jurisdiction over both areas. Article 56 of the UNCLOS recognizes that, in the EEZ, the coastal State has :

> *Sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds.*[4]

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1 For New Caledonia's maritime zone boundaries, see the French National Maritime Boundaries website, URL: https://limitesmaritimes.gouv.fr (Fr/Eng)

2 Noumea Accord of 5 May 1998.

3 United Nations Convention on the Law of the Sea, signed at Montego Bay, Jamaica, 10 December 1982, URL: https://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf

4 UNCLOS, Article 56 1.a.

The coastal State also has jurisdiction with regard to the establishment and use of artificial islands, installations and structures, marine scientific research, and the protection and preservation of the marine environment. The continental shelf comprises "the seabed and subsoil of the submarine areas that extend beyond (the coastal State's) territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin" or up to 200 nautical miles, 350 miles if extended.[5] The applicable legal regime is also geared towards the exploration and exploitation of natural resources.[6] Under article 81 of the Convention, the coastal State has the exclusive right to authorize and regulate drilling on the continental shelf.

In terms of French law, under the provisions of Ordinance no. 2016-1687 of 8 December 2016 on maritime areas under the sovereignty or jurisdiction of the French Republic, the definition and boundaries of maritime areas are specified and their status made consistent by bringing up to date the legal regime applying to them. Concerned to ensure compliance with the powers conferred on New Caledonia under organic legislation, the French Government was mindful of the need for precision in the wording of this text designed to serve as the national model for implementing UNCLOS stipulations. Accordingly, the following do not apply in New Caledonia: the legal regime for authorization of various activities carried out on the continental shelf or in the EEZ (Chapter II), regulations applying to underwater cables and pipelines (Chapter III), conditions for the establishment of safety zones around artificial islands and other installations on the continental shelf or in the EEZ (Chapter IV) and the ability to take automatic action in the event of operator deficiency (Chapter VIII), customs and tax provisions (Chapter V), rules relating to transport market access and specific provisions regarding ships' crews (Chapter VI), rules on mortgages (Chapter VII), and finally the oversight of research at sea (Title III).

Conversely, the provisions relating to the EEZ, the ecological protection zone and the continental shelf (Articles 12 to 15) are applicable, with the proviso that the French government exercises sovereign rights in such areas, subject to the powers transferred to territorial/provincial authorities. Similarly, the scope of criminal law provisions and the rules of criminal proceedings (recording of infringements) is extended, subject to the criminal jurisdiction recognized under the statute as pertaining to such authorities where infringements of regulations they have established by law are concerned.

While France clearly retains sovereign rights over New Caledonia's maritime areas, in terms of internal structure, the exercise of such rights has, to a large extent, been irreversibly transferred to the New Caledonian authorities. The relevant powers transferred under the Statutory Organic Law of 19 March 1999 should therefore be identified.[7] Notwithstanding, this division and implementation of powers appears in many respects far from obvious (I). The protection of maritime areas is underpinned by a strict legal framework and by management and monitoring missions, which also form part of the regional cooperation policy embraced by the French Government and the Government of New Caledonia (II).

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5 UNCLOS Article 76.

6 Article 77 1. Article 77 4. specifies that this concerns " […] mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil".

7 Organic Law no. 99-209 of 19 March 1999 relating to New Caledonia.

I. THE EXERCISE OF SOVEREIGNTY OVER A GEOGRAPHICAL SPACE

A. A complex apportionment of powers

Within New Caledonia's quasi-federal internal structure, the country's three provinces represent the regional authorities vested with common law jurisdiction. Their areas of action are therefore shaped by a negative reading of the powers held by the French government and New Caledonia and, with specific reference to maritime areas, by articles 45 and 46 of the Statutory Organic Law establishing the public maritime domain of the provinces. This includes "the area known as the fifty geometric steps, the seashore, the land reclaimed from the sea, the bed and subsoil of inland waters, including harbours and lagoons, as defined by international conventions, together with the bed and subsoil of territorial waters" and, as regards all such areas, the provinces "regulate and exercise rights for the purpose of exploring and exploiting, managing and conserving living and non-living natural resources in inland waters, including harbours and lagoons, the bed and subsoil thereof, and the waters superjacent to the seabed, the seabed and subsoil of the territorial sea".

New Caledonia, as the authority holding legislative power throughout the territory, the executive branch of which is the collegial government, has jurisdiction over the "regulation and exercise of rights for the purpose of exploration, exploitation, management and conservation of living and non-living natural resources in the exclusive economic zone" and the "regulation of hydrocarbons, nickel, chromium, cobalt and rare earth elements"[8], materials which fall within the scope of the law (Article 99 OL). Since 1st January 2014, New Caledonia has also been responsible for public safety.[9]

Meanwhile, the French government is responsible for "the exercise, outside territorial waters, of the powers conferred by international conventions, subject to the provisions of 10° of Article 22 relating to the resources of the exclusive economic zone", determines the "status of ships", regulates "substances used in atomic energy research and products"[10] and is responsible for the policing and safety of sea traffic, with the exception of sea traffic "between any point or points in New Caledonia" and not including "the safety of life at sea in territorial waters"[11], both areas of jurisdiction transferred in 2011.[12]

Consequently, *ratione materiae* jurisdiction is supplemented by *ratione loci* jurisdiction over maritime areas, presenting operational and regulatory officialdom with an exacting task. All legislation involving maritime issues introduced since the Noumea Accord and the Statutory Law of 1999 endeavours to take these specificities into account and to avoid any encroachment on delegated, shared or definitively transferred powers and jurisdictions. The continental shelf, a major omission from this regulatory web, poses an apparent problem.

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8 Article 22 10° and 11° of the aforementioned amended Organic Law no 99-209.

9 See above.

10 Decree no. 54-1110 of 13 November 1954 *on the reform of the mineral substances regime in the Overseas Territories, and the facilities making use of them*, Article 19 1°.

11 See article 21 of amended Organic Law no. 99-209 Law of 19 March 1999 *relating to New Caledonia*.

12 Under Country Law no. 2009-10 of 28 December 2009 on the transfer to New Caledonia of French government jurisdiction over the policing and safety of sea traffic between any and all points in New Caledonia, and the safety of human life at sea in territorial waters.

The Statutory Organic Law makes no reference to the continental shelf or even to the seabed and subsoil of the EEZ. Given that there is no question of any claim or exercise of sovereignty, the rights accorded to States in respect of the continental shelf derive from codified international conventions. So, given this ambiguity in the organic legislation wording, should we not incline to the view that the French government alone is entitled to exercise UNCLOS defined rights in respect of the continental shelf? Of course, the intent of the 1999 Organic Law was to link superjacent waters and the continental shelf in terms of the EEZ, and this was why the above-mentioned 2016 Ordinance did not include New Caledonia in the legal regime for seabed mining. Nevertheless, the 1999 Organic Law's lack of clarity raises doubts about the division of jurisdiction in New Caledonia, and jurisdiction ratione materiae (regulations governing hydrocarbons, nickel, chromium, cobalt and rare earth elements) hardly seems suited to the task of legitimizing New Caledonia's jurisdiction when it comes to French government prerogatives (sovereign rights) regarding areas outside the sovereign territorial area, prerogatives derived directly from international law. On the contrary, the fact that bed and subsoil rights for inland and territorial waters were explicitly transferred to the provinces does not constitute an argument for any implicit reading granting New Caledonia the same rights over the EEZ as those enjoyed by the provinces over the territorial sea.

Reaching an understanding of the legal regimes applying to the EEZ and the continental shelf is made more difficult by adding the extended continental shelf to the mix. While the rationale of rights to the EEZ embodying rights to the underlying continental shelf is admissible, this cannot be applied to the extended continental shelf if the superjacent waters are not included in the EEZ. UNCLOS is the only source offering a definition of rights to the extended continental shelf, and including the UNCLOS definition in the 2016 Ordinance on Maritime Areas does not help in clarifying how to apply such rights in national legislation.[13] Consequently, the French government, responsible in New Caledonia for "exercising, outside territorial waters, the powers derived from international conventions, subject to the provisions of Article 22, 10°, relating to resources in the exclusive economic zone" would appear to be the only authority with jurisdiction to exercise the rights provided for in Article 77 of UNCLOS, at least as concerns the part of the continental shelf lying beyond the EEZ.

B. Implementation dependent on stakeholder capacity for coordination

In line with French administrative structure, the government delegate for (French) State action at sea, in each maritime area, acts as the direct representative of the Prime Minister and members of the (French) Government.[14] In New Caledonia, the High Commissioner of the French Republic[15] assumes this role, with the support of the Maritime Domain Commander. New Caledonia's maritime domain[16] is unusual in that it comprises France's

13 This is hardly surprising given that organic legislation is the only means of determining the division of jurisdiction between the French government and overseas regional and local authorities.

14 Decree 2005-1514 of 6 December 2005 on the overseas organization of (French) State action at sea. Re. powers, see above. I.

15 In New Caledonia, the French High Commissioner, as representative of the French government, represents each member of the French government, and is the depositary of French government powers.

16 See Table 2 above.

third Pacific territory – Wallis and Futuna, which also enjoys special status, thereby adding a further component to an already complex situation.

Although State action at sea is generally undertaken in compliance with powers devolved to regional and local authorities and requires coordination between multiple stakeholders[17], in New Caledonia, French government services are themselves placed in the position of acting on behalf of the regional authority (New Caledonia). In point of fact, transferring jurisdiction over public safety[18], together with jurisdiction over safety of life at sea, actually adds up to transferring every element of the ORSEC maritime plan[19] (search and rescue; maritime pollution; assistance to vessels in distress; sea traffic management in the event of disruption), where operations are carried out in territorial waters. Accordingly, in territorial waters, the President of the New Caledonia government acts as Director of Relief Operations (Directeur des Opérations de Secours – DOS) and the French High Commissioner takes over the role in the rest of the maritime area. When the Maritime Rescue Coordination Centre (MRCC) operates in territorial waters, it becomes accountable to the Government of New Caledonia, from whom it receives instructions and to whom it reports. When MRCC operations take place or continue outside territorial waters, the MRCC acts on behalf of the French government.

The Joint (New Caledonian) Department of Maritime Affairs is in charge of all powers held by the French government and by New Caledonia in matters of navigation (vessels, transport, crew members) and fisheries. In operational terms, the French government remains responsible for fisheries law enforcement and must comply with provincial law (three different sets of regulations) in inland and territorial waters, and with New Caledonian regulations when operating in the EEZ.

II PROTECTION OF MARITIME AREAS

A. A rigorous legal framework

New Caledonia and the provinces share jurisdiction over the exploration, exploitation and conservation of maritime areas, and have set in place very strict legal regimes to cover fisheries and shipping activity. Resolution no. 50/CP of 20 April 2011 relating to New Caledonia's fisheries policy requires any fishing vessel flying a foreign flag to ensure local authorities are informed of entry to and exit from New Caledonia's maritime area, and of any stop off or transshipment at a port. Any fishing vessel operating in the maritime area must have a fishing license issued by the Government of New Caledonia and be fitted with a satellite tracking device. New Caledonia has issued no fishing licenses to foreign vessels. To date, only 18 New Caledonian vessels have fishing licenses to operate in the EEZ. As regards territorial waters,

17 See: Orders dated 25 October 2016 establishing the list of missions at sea for which the French government is responsible in the maritime area of New Caledonia and in the maritime area of French Polynesia.

18 Country Law no. 2012-1 of 20 January 2012 on the transfer to New Caledonia of French government jurisdiction over public safety.

19 The ORSEC plan (Organisation de la Réponse de Sécurité Civile) is the French generic emergency plan in case of disaster. The plan comprises procedures for the mobilization, implementation and coordination of actions allocated to any public and private individual involved in the general protection of populations.

the provinces rigorously regulate activities, including fishing, by requiring all operators to hold a professional fishing license and by monitoring fishing vessels and equipment, stipulating a minimum catch size and closed seasons for the fishing of some species.

Moreover, New Caledonia has declared its entire maritime area a sanctuary for the Mysticeti suborder of the cetacean group and sperm whales.[20] It is prohibited to fish, catch, injure, kill, trap, poison or intoxicate sea turtles of any species, alive or dead, their eggs and, where applicable, any part of such animals or any product obtained from such animals.[21] The same ban applies to sharks.[22]

Drawing on French Navy marine and air resources and TRIMARAN analysis[23] (satellite imagery), maritime space monitoring and supervision of fisheries enforcement operations are coordinated by the Joint Staff Operations Centre (COIA), under the operational control of the Commanding General of the FANC (French armed forces in New Caledonia) or the CZM (Commander of the Maritime Area), and under the supervision of the High Commissioner. New Caledonia has been the target of attempted illegal fishing by foreign fleets. No evidence of illegal fishing has been observed since 2017 but high surveillance is maintained, with over 72 "Gardian" aircraft maritime surveillance missions (i.e. 310 flight hours) and 212 days at sea notched up in 2019 to ensure non-stop monitoring of the New Caledonia and Wallis and Futuna maritime areas. In 2017, New Caledonia, along with other Pacific States, was faced with the challenge posed by Vietnamese "blue boats" attracted, in particular, by the prospect of rich fishing for sea cucumbers, mainly in and around the Entrecasteaux island group, the Great Northern Lagoon and the Chesterfield islands. Following the re-routing of three vessels and strong diplomatic pressure exerted by France on Vietnam, interest in New Caledonian waters appears to have vanished.

In 2014, with marine resource conservation in view, the New Caledonia government established the Coral Sea Natural Park[24], a protected marine area covering the whole of New Caledonia's EEZ. The Order establishing the Park states that "this area includes the seabed and subsoil of the maritime area and the water body mass covering them". The Order identifies four categories of protected areas (strict nature reserve, nature reserve, sustainable resources management area, natural park) involving varying degrees of protection and allowing or excluding human activity. Given the crucial coordination required between the regional authority having jurisdiction and the French government possessing the material, human and legal resources to ensure monitoring of specified marine protection requirements, the New Caledonia government provided for two people to serve as chairs of the Park Management Committee (the committee is co-chaired by the President of the NC government and the French High Commissioner).

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20 Deliberation no. 397 of 13 August 2003 on the establishment of a whale sanctuary.

21 Resolution no. 344 of 4 January 2008 on the protection of marine turtles.

22 Order no. 2013-1027/CNG of 23 April 2013 on shark fishing in the maritime area of New Caledonia.

23 On the TRIMARAN partnership, see: Airbus website: Airbus Defence and Space and Telespazio France selected to provide satellite-based maritime surveillance service for the French Navy, 2 June 2016, URL: https://www.airbus.com/newsroom/news/en/2016/06/airbus-defence-and-space-and-telespazio-france-selected-to-provide-satellite-based-maritime-surveillance-service-for-the-french-navy.html

24 Order no. 2014-1063/CNG of 23 April 2014 establishing the Natural Park of the Coral Sea; *JONC*, 1st May 2014 p. 42-45, adopted pursuant to Resolution no. 51/CP of 20 April 2011 on the definition of protected areas in New Caledonia's maritime area and on islands in the public domain thereof.

The Coral Sea Natural Park management plan, agreed in 2018, sets 40 goals. Under the plan, strict nature reserves and nature reserves have been established around Chesterfield, Bellona, Entrecasteaux, Pétrie and Astrolabe reefs. All types of activity in the Natural Park are subject to New Caledonia government authorization. All professional cruise ships running tours for tourists must obtain a tourism permit or a tourism stop-off permit. Research work involving foreign vessels or organizations must be processed through diplomatic channels, with the Minister for Foreign Affairs responsible for granting authorization, following consultation with the relevant ministries.[25] The reason behind this procedure lies in the fact that New Caledonia's international powers are not sovereign powers.

At the time of writing, the entire body of regulations governing the Park is under revision, following the decision by the Paris Administrative Court of Appeal to annul part of the requirements (set for the Park) on the grounds that the principles relating to public land and restrictions on economic activities in certain reserves should have been adopted by Congress under a Country Law and not by way of regulation alone.[26]

As far as seabed and subsoil resources are concerned, given the lack of mining projects, neither New Caledonia (subject to confirmation of jurisdiction) nor the provinces have adopted a specific legal regime. The Natural Park of the Coral Sea website states that "there is a very low level of mineral resource and hydrocarbon exploration and assessment in New Caledonia. Given the region's geological context, the vast exclusive economic zone should have potential. Potential deep-sea resources are assumed to comprise hydrocarbons, phosphates, manganese crusts, polymetallic nodules and hydrothermal sulphide deposits" and "before the reality of such potential resources and pressures can be asserted, an inventory of existing geological and biological data and samples relating to mineral and hydrocarbon resources shall be established in order to assess environmental risks".[27]

To safeguard New Caledonia's jurisdiction over natural resources, the French law putting an end to the exploration and mining of hydrocarbon deposits and containing sundry provisions relating to energy and the environment, passed in December 2017, with the aim of ensuring "[…] consistency of the policy on management of hydrocarbons in French subsoil with the Paris Climate Agreement…"[28] was not made applicable to the territory. This law, which includes amendments to the mining code and the environment code, provides for hydrocarbon mining to come to a gradual end by 2040 by banning all prospecting for new deposits and placing restrictions on remaining concessions.[29] It also prohibits the exploration and mining of

25 Decree no. 2017-956 of 10 May 2017 setting out the terms and conditions for application of Articles L. 251-1 and following of the Research Code, relating to marine scientific research, which came into force on 1st January 2018, *JORF*, no. 0110 of 11 May 2017, text no. 42.

26 Paris Administrative Court of Appeal, no. 19PA02568 of 1st October 2020, SARL Joara.

27 Natural Park of the Coral Sea, under the heading "mieux connaître les enjeux", URL: https://mer-de-corail.gouv.nc/fr/mission-du-parc-valoriser/mieux-connaitre-les-enjeux (& English site) https://mer-de-corail.gouv.nc/en/management-plan/parks-management-plan

28 Law no. 2017-1839 of 30 December 2017 ceasing the exploration and exploitation of hydrocarbon deposits and containing sundry provisions relating to energy and the environment, explanatory memorandum.

29 See articles 111-6 and 111-7 of the Mining Code for details. Extensions of exploration and mining permits for deposits identified under previously issued exploration permits remain possible (tag-along right).

unconventional resources ("shale gas"). However, extending this law to New Caledonia could have been contemplated, to include at least the extended part of the continental shelf.

B. Necessary regional cooperation

It is worth noting that the project to establish a large-scale marine protected area was first announced by the President of the New Caledonia government at the 43rd Pacific Islands Forum in September 2012.[30] The Park was thus originally envisioned as an international outreach project underpinning New Caledonia's regional integration policy; it therefore comes as no surprise that the Management Committee is open to regional and international representation with an advisory role.

Building on its jurisdiction over external relations, New Caledonia has signed a marine reserve sister-sites agreement (with the Cook Islands) and initiated cooperative agreements with States sharing maritime boundaries with the Coral Sea Natural Park: Australia, New Zealand, the Solomon Islands, Fiji and Vanuatu.

It should be noted that the prospects for genuine coordination with Vanuatu are hampered by the continuing dispute with France regarding the Matthew and Hunter Islands, over which Vanuatu claims sovereignty.[31] This complication also has political repercussions within New Caledonia's collegial government – the Coral Sea Natural Park regulatory authority – due to the FLNKS (Kanak and Socialist Liberation Front) having recognized the validity of Vanuatu's claims at a meeting of the Melanesian Spearhead Group[32] in July 2009 (Keamu Declaration signed by the FLNKS and the Prime Minister of Vanuatu). More recently, in a press release dated 7 March 2019, the FLNKS reiterated its position on the issue, i.e. that the two uninhabited high islands form part of the "natural heritage of the Republic of Vanuatu". The FLNKS committed "to making its voice heard on the subject in future discussions relating to the end of the Noumea Accord process and, in particular, regarding the delimitation of Kanaky-New Caledonia's maritime boundaries".[33]

In more general terms, the legal securitization of area boundaries is an essential precondition to ensuring efficient control. The external boundaries of the EEZ were set unilaterally by France[34] or were negotiated with neighbouring States. Agreements have been signed with

30 The Pacific Islands Forum was set up in 1971 as a regional organization bringing together heads of government from all independent or autonomous States in the region. The Forum's focus is on political and economic policy.

31 For information on border disputes with Vanuatu, see: Report no. 430 (2013-2014) "Les zones économiques exclusives ultra-marines : le moment de vérité", by J.-É. Antoinette, J. Guerriau and R. Tuheiava, on behalf of the French Senate Delegation for Overseas Territories, tabled on 9 April 2014, and also references already cited in note 32.

32 The Melanesian Spearhead Group is a sub-regional political organization established in 1988, with priorities including opposition to nuclear tests in the Pacific and support for the independence movement in New Caledonia. The MSG comprises Papua New Guinea, Fiji, the Solomon Islands and Vanuatu. The FLNKS became a full member of the organization in 1999.

33 https://la1ere.francetvinfo.fr/nouvellecaledonie/quand-question-matthew-hunter-refait-surface-688488.html.

34 Decree no. 78-142 of 3 February 1978 establishing, pursuant to the Law of 16 July 1976, an economic zone off the coasts of the territory of New Caledonia and dependencies, JORF, 11 February 1978.

the Solomon Islands[35], Australia[36] and Fiji.[37] These various boundaries were communicated to the United Nations on 28 June 2011 and did not meet with any official challenge. Decree no. 2015-1182 of 25 September 2015 established the extension of the continental shelf to the south-west of the NC EEZ, representing an area of 76,000 km², in the wake of recommendations by the United Nations Commission on the Limits of the Continental Shelf dated 2 September 2009. Accordingly, there is still no legal securitization of the areas corresponding to the territorial dispute with Vanuatu regarding the Matthew and Hunter Islands or of the delimitation of the respective EEZs to the east, in respect of which discussions are under way.[38] These disputes have significant implications since Vanuatu grants fishing licenses for areas which France has declared as forming part of its EEZ. When the Chinese fishing vessel Hu Yu 911 was arrested by the French Navy in 2013 and charged with trespassing and fishing illegally in French maritime waters, the case gave rise not only to significant legal repercussions, requiring involvement of the Court of Cassation[39], the highest court in the French judiciary, to buttress France's right of jurisdiction, but also to sensitive diplomatic sequels, due to a Ni-Vanuatu observer being on board the vessel.

The FANC (French Armed Forces in New Caledonia) also have multi-level involvement in maritime-related cooperation initiatives. The Quadrilateral Security Dialogue (Quad) plays a leading role in coordinating actions taken by France, Australia, New Zealand and the United States in terms of security and EEZ protection.[40] Moreover, the Search and Rescue (SAR) area comprises Vanuatu. In consequence, the Noumea MRCC (Maritime Rescue Coordination Centre) is responsible for search and rescue operations in the Vanuatu EEZ, and is the Search and Rescue Point of Contact (SPOC) for vessels flying the Ni-Vanuatu flag. The FANC also take part in the annual Kurukuru Operations organized by the Forum Fisheries Agency (FFA).[41] One of the largest maritime surveillance operations in the world (covering 21.3 million square kilometres), the Kurukuru Operation involves international cooperation

35 Decree no. 90-1261 of 31 December 1990 publishing the Maritime Delimitation Agreement between the Government of the French Republic and the Government of the Solomon Islands (entire schedule), signed in Honiara on 12 November 1990, *JORF,* no. 4 dated 5 January 1991.

36 Decree no. 83-99 of 9 February 1983 publishing the Maritime Delimitation Agreement between the Government of the French Republic and the Government of Australia, signed in Melbourne on 4 January 1982. JORF dated 15 February 1983.

37 Decree no. 91-156 of 8 February 1991 publishing the amendment to the Agreement of 19 January 1983 between the Government of the French Republic and the Government of Fiji relating to the Delimitation of their Economic Zone, signed in Suva on 8 November 1990. JORF no. 0036 dated 10 February 1991.

38 Following specification of the list of geographical coordinates defining its baselines (by Ministerial Decree dated 29 July 2009), Vanuatu passed Act no. 6 of 18 June 2010 establishing an EEZ extending over a distance of up to 200 nautical miles and providing that any overlaps would be settled by agreement. The dispute concerns application of the equidistance principle.

39 Court of Cassation, Criminal, Criminal Chamber, 13 January 2016, 14-85.743, Published in the official bulletin, URL: https://www.legifrance.gouv.fr/juri/id/JURITEXT000031861677/

40 The Quad was established in 1992 and has held regular meetings since 1995. France has had observer status since 1998 and became a member in 2002. The Quad area of interest stretches from Micronesia in the north to New Zealand in the south, and from Australia in the west to French Polynesia in the east. The annual senior official-level meeting takes place concurrently with a semi-annual operations working group (OWG) type session with the goal of putting the strategy and guidelines set by senior Quad officials into practice.

41 The Pacific Islands Forum Fisheries Agency was established by Pacific Islands Forum member states in 1979, tasked with the management, monitoring, protection and development of their marine resources, particularly migratory species (tuna). Via the Regional Fisheries Surveillance Centre (RFSC), the FFA uses Vessel Monitoring Systems (VMS) to ensure ongoing monitoring, control and surveillance (MCS) of fishing fleets.

using aircraft, ships, satellite surveillance, and national organisations to target illegal, unregulated and unreported (IUU) fishing in the Pacific. Quad member states resources are heavily mobilized to that end and five French Navy vessels took part in the 2020 Kurukuru Operation.[42]

Finally, the Western and Central Pacific Fisheries Commission (WCPFC), established by the Convention for the Conservation and Management of Highly Migratory Fish Stocks (particularly tuna) in the Western and Central Pacific Ocean, which entered into force on 19 June 2004, of which France is a member, allows New Caledonia, as a participating territory without the right to vote, to contribute to efforts to ensure the regional management of resources shared by the region, and to safeguard resource access privileges for its tuna fleet.

The legal framework for maritime areas gives the New Caledonian authorities broad powers over living and non-living natural resources and they have decided on a proactive policy of exclusive protection and exploitation. Notwithstanding, they remain dependent on French government resources to monitor implementation of this policy. Moreover, where sovereignty rights based on international law are concerned, any breach of binding treaty provisions by local authorities entails the international responsibility of the French government.[43]

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42 FFA website: Enormous Fisheries Surveillance Effort by FFA and Members, 28 October 2020, URL: https://www.ffa.int/node/2495

43 Article 27 of the Vienna Convention on the Laws of Treaties.

KANAK CUSTOM – LEGAL OVERVIEW

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New Caledonia, a *sui generis* Overseas collectivity governed by Heading XIII of the French Constitution of 4 October 1958, is characterized by complex legal pluralism where local rules, both written and oral, coexist with an increasingly reduced number of rules deriving from the French legal system. Excepting foreign laws which have jurisdiction under the rules of private international law, three differently-sourced categories of rules apply in New Caledonia, depending on the issue under consideration and/or the personal status of the person concerned. First, State law *(jus publicum)*, having jurisdiction either by virtue of a principle of legislative identity for rules of immediate application, public order or territorial application, or by virtue of the principle of legislative speciality for matters of private law not falling within the above categories and not having been transferred to New Caledonia (e.g. criminal law). Next, New Caledonian written law for matters where regulatory jurisdiction has been transferred from France to New Caledonia and which are governed by Country Laws passed by the Congress and resolutions adopted by the Congress and the Provincial Assemblies (e.g. civil, commercial, labour laws). Finally, Kanak custom, which has jurisdiction in matters of civil law as regards individuals with Kanak customary status.

The coexistence of different personal statuses represents one of New Caledonia's particularities, a distinction shared, within the French Republic, with Wallis and Futuna and now, to a very limited extent, with Mayotte. In pursuance of Article 75 of the (French) Constitution and of the Noumea Accord of 5 May 1998, the Kanak may retain or even claim a special personal status: Kanak customary status. They are not assimilated to the common law personal status linked to French citizenship, even though they are French citizens. Kanak identity is a key theme and even the principal *leitmotif* running through the Noumea Accord. Customary status is an expression of this, grounded in the respect accorded to the innate cultural identity of a group of people, considered as having greater importance than the common identity which this group shares with the rest of the French population. As reaffirmed by the Noumea Accord, this group qualifies, on these grounds, for a special system less restrictive than the classic provisions set out in Article 75 of the Constitution regarding special personal statuses.

Kanak custom has regulatory authority over the civil relations of Kanak with customary personal status and over customary lands; it is an integral part of New Caledonia's legal pluralism[1], in the same way as written law, French law or New Caledonian law (II). Before defining the legal scope of custom, an understanding of the sources of customary law is necessary (I).

1 É. Cornut, P. Deumier, *La coutume kanak dans le pluralisme juridique calédonien*, publ. PUNC, coll. Larje, 2018, p. 331 ff., freely available https://unc.nc/la-coutume-kanak-dans-le-pluralisme-juridique-caledonien/

I. THE SOURCES OF CUSTOMARY LAW

Many stakeholders play a role in reviewing, understanding, implementing, interpreting and applying customary law: authorities (clan, chiefdom) and customary institutions (customary councils, Customary Senate), New Caledonia (Directorate General for the Regulation of Customary Affairs, customary public officials, customary registry of births, marriages and deaths), the French government (customary hearings and courts, Rural and Land Development Agency). This sometimes gives rise to legal contradictions or oppositions. Traditional oral custom as practised by clans and families is not written custom as defined by the Kanak People's Charter, by customary laws and as interpreted by customary councils (1). Nor is it custom as interpreted by the customary courts responsible for applying it (2). Even less is it custom as construed by regulative written sources issued by New Caledonia's deliberative authorities, Congress and Provincial Assemblies (3).

A. Customary sources

Custom is first and foremost an oral tradition (a), even though there is now a move towards writing it down (b).

1. Kanak oral custom

Custom is integral to customary society itself. Several definitions have been put forward. The Kanak People's Charter defines it *through* the concept of "Parole" (the Word as a sacred concept) (Article 36): "The power of orality in custom stems from the constant and repeated pronouncement of customary speeches at ceremonies, as well as tales, lullabies, "Aé, Aé" songs and dances. Orality plays an important role in customary rituals, which perpetually shape ways of thinking and practices from generation to generation". The Customary Council of the Territory of New Caledonia (forerunner to the current Customary Senate) defined it as "rules of social organization, of mythical origin, of various purposes, passed from father to son within a clan".[2] According to the Customary Senate, "custom means customary practices (principles, procedure, and terms) whose purpose is to be self-perpetuating and to be constantly reformulated, with the Kanak People's Charter as their foundation".[3] Finally, in the words of J.-M. Tjibaou: "Custom is less an interpersonal relationship than a relationship between groups, communities. [...] Custom, for us, is the gesture which, at every moment, at every meeting, brings this relationship to mind. [...] For us, the generic term "custom" really means the law, the way we live, all of the institutions which govern us".[4]

These are broad definitions and, wherever Organic Law No. 99-209 of 19 March 1999 gives legal effect or makes reference to custom, the successive terms used are "custom"[5], "customs", "practices recognized by custom", or "customary practices".[5]

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2 Customary Council of the Territory of New Caledonia, "Les règles coutumières en Nouvelle-Calédonie", *in* P. de Deckker (ed.), 1995, *Coutume autochtone en évolution du droit dans le Pacifique sud*, publ. L'Harmattan, p. 80.

3 "Exposé sur la philosophie juridique de l'approche du Sénat coutumier", address given by the Customary Senate before the Plenary Committee of the Congress of New Caledonia, 12 October 2015, unpublished.

4 "Jean-Marie Tjibaou, une parole qui voyage", *Mwà Véé – Revue culturelle kanak*, ADCK, no. 64, June 2009, p. 6.

5 Art. 18. – Art. 7 & 189 II – Art. 137 – Art. 46 al. 2.

These definitions testify to a reality: in addition to its oral nature, its diversity, the fact that it is part of the customary communities themselves, Kanak custom has a much greater compass than that given it by the Organic Law. Custom is a whole, whereas the Organic Law limits its legal status to "civil law" (taken as deriving from common law) aspects of custom.

Kanak custom cannot be reduced to the meaning accorded to custom by the general theory of sources of law. It cannot be defined as a single protracted practice which has acquired binding power in the minds of the community or in the territory where it is rooted, the legal status of which would be an inherent component. Kanak custom is something else. While it may share with legal practice the fact of being a usage repeated over time by a community or in a territory, not only can it not be reduced to this aspect alone, but neither does it need to be granted legal status to qualify as custom. From this viewpoint, Kanak custom is not always law, but it is also law.

2. Written representations of custom

A written approach to traditional custom has been developing over the last few years and takes two forms.

The first is the Customary Public Act, provided for in the Country Law of 15 January 2007, drafted by the customary public officials as from 1st September 2008. The Customary Act is defined by law as a "contractual juridical act characterized by a concurrence of interdependent wills which determine the elements and effects thereof. It may be individual or collective in scope" (art. 3 para. 1). It transcribes the customary decision adopted following a customary debate, defined as a "discussion organized in accordance with the practices of Kanak custom" (art. 1), under the authority of the clan chief, the chief of the tribe or the great chief or, failing that, the president of the council of clan chiefs (art. 2). Recourse to the Customary Act is optional or rendered compulsory by law[6] or by the judge pursuant to the customary prerequisite[7]. Over ten thousand acts have been drafted, dealing with matters ranging from entirely anecdotal and everyday to highly significant in terms of customary and/or economic issues. They go to the very heart of Kanak identity, covering the whole gamut of individual or family, clan and customary land issues. The decisions and exchanges of words recorded in the Customary Act can provide a revelation of custom as it is lived and experienced. However, reference to the reasons behind the decision recorded in the Customary Act is not required under penalty of nullity[8]. Consequently, customary acts often disclose only the decision taken without disclosing the substance of the custom underpinning such decision. This absence of rationale for the decision may appear surprising but springs from the oral nature of custom: spoken by customary sages, custom is not to be made known to outsiders. It can then remain secret. Custom is, above all, spoken, it requires no explanation or justification. The customary solution is an expression of a given. Nevertheless, although the reasons (for a decision) can be transcribed or obtained through an appeal for interpretation of the act brought before

6 This is true, for example, in the case of the Country Law of 2018 relating to customary inheritance.

7 Thus, legal proceedings to dissolve a customary marriage are admissible only if there is a Customary Act stating that the clans agree, disagree or refuse to meet. The issue is one of an absolute bar to proceedings: CA Noumea, 30 October 2014, RG no. 2013/225.

8 Art. 7 & 8 of the Country Law of 15 January 2007.

the Customary Council of the area concerned, it remains clear that rendering compulsory a statement of the rationale would pave the way to better knowledge and understanding of custom and, as a result, would facilitate its integration. This is indeed the aim of a reform of the Country Law proposed by the Customary Senate[9].

The second representation of written custom is more direct and fundamental and involves setting down customs, more or less accurately, in written form. The principal document is the Kanak People's Charter, proclaimed on 26 April 2014 by the Kanak People's Assembly (comprising the eight customary areas) under the aegis of the Customary Senate[10]. The Charter, which has no legal force as such, lays out a common set of Kanak values and principles, a "foundation" for the diverse customs followed and performed by clans and in customary areas. The Charter sets out a series of values in the form of articles which reveal shared customary principles on a wide range of issues fundamental to clan and family identity, relationships, and customary words and gestures. The values set out are sometimes very precise, almost tangible. Although the Charter itself has no legal regulatory value, it does possess an undeniable moral value, and customary courts have no qualms about using it as a potentially authoritative guide to the interpretation of customary rules[11].

Should we go further and codify custom or customs? Although the issue of committing customs to written form has long been debated, even within customary institutions, and although attempts have been made, there is no doubt that any such move to create a written version of customs would be inappropriate. It would be so for several reasons to do with when the writing is done, who does it, the method used and the nature of the custom, given that it will necessarily be rewritten and not simply transcribed, and that customs will disappear; and to do with the consequences of writing customs down. This will inevitably spell the end of the customary courts and thereafter the end of traditional custom insofar as it possesses legal force[12]. Nonetheless, written rules do exist but they are no longer customary.

B. Regulatory sources

Article 99, 5° of Law no. 99-209 provides that Congress may pass Country Laws relating to "customary personal status, customary land tenure and customary debates". Only three such Country Laws have been adopted: one in 2007 on customary laws, two in 2018 on customary inheritance and on leave (from work) to carry out customary responsibilities. However, these are not standards for substantive customary law. Country Laws cannot intervene in the customary sphere to say what custom is. Rather, this is a question of "customary law", namely a set of rules relating to power and distribution, like so-called "secondary" rules in general law theory, which do not provide a structural response to a given problem but are designed to determine in which cases custom should apply or the customary practices taken into account, and the conditions ruling such taking into account. This is true, for example, of the Country

9 Resolution no. 07-2015/SC of 30 June 2015 proposing a Country Law amending the Country Law no. 2006-15 of 15 January 2007, JONC of 4 August 2015, p. 6831.

10 Resolution no. 06-2014/SC of 15 July 2014, JONC of 5 August 2014, p. 6815 ff.

11 D. Rodriguez, "Juger en Kanaky", *in La coutume kanak dans le pluralisme juridique calédonien*, *op. cit.*, p. 331 ff.

12 É. Cornut, "La non-codification de la coutume kanak", *in* C. David & N. Meyer (ed.), *L'intégration de la coutume dans l'élaboration de la norme environnementale*, publ. Bruylant, 2012, p. 137 ff.

Law relating to customary acts, which merely defines the extent to which the customary decision resulting from a customary debate would give rise to guaranteed and enforceable rights. Similarly, the Country Law on customary inheritance does not establish who the heirs are, nor does it determine their respective shares in the inheritance. It merely provides a framework, a procedure and a timeframe for the settlement of customary inheritance issues, and sets up the customary act of inheritance as an indispensable factor in such settlement. The same is true of resolutions taken by the Provincial Assemblies, like the three provincial environmental codes which include provisions designed to take custom into account but having no power to transform it.

C. Sources of judicial precedent

The civil customary courts, responsible for the application of custom, add a litigation and legal process-based dimension thereto. This "judicial custom"[13], now both widely accessible[14] and consistent, reveals a structured "customary law" providing a legal picture of Kanak custom even if, seen in the light of legal disputes, the picture is somewhat distorted. There follows an overview of these courts (a) and the way in which this source of judicial precedent for custom is being shaped (b).

1. Customary courts

Article 19 paragraph 1 of Law no. 99-209 provides that "the civil court of common law shall have sole jurisdiction for the hearing of disputes and claims relating to customary civil status or customary lands. The court is then supplemented by customary assessors under the conditions laid down by law". When all the conditions of Article 7 of this Law are met, i.e. the parties have Kanak customary status and the matter is covered by civil law, custom and not civil law applies in regulating the legal relationship in question. Customary assessors assist the professional judge in the precise disclosure and interpretation of such custom, the application of which is mandatory.

Customary assessors were introduced by Order no. 82-877 of 15 October 1982 but were not really set in place until 1990, following the establishment of detached branches of the Noumea District Court, in Koné and Wé, right in the heart of Kanak majority areas. Custom had long been relegated to the sidelines of New Caledonia's legal system. The judges refused to give rulings, declaring they had no jurisdiction where all parties possessed special status and referring such parties to the customary authorities. The Court of Cassation twice acted to resolve the issue and to remind judges of the obligation to bring in customary assessors[15]. Article 19 of Law no. 99-209 now sets out this obligation as possessing exclusive jurisdiction. The implementation thereof is provided for in Articles L. 562-19 to L. 562-24 of the Code de l'organisation judiciaire (Judicial system code – COJ).

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13 R. Lafargue, *La coutume face à son destin. Réflexions sur la coutume judiciaire en Nouvelle-Calédonie et la résilience des ordres juridiques infra-étatiques*, LGDJ, 2010.

14 Thanks to the "Droit coutumier en Nouvelle-Calédonie" website, hosted by the University of New Caledonia: http://coutumier.univ-nc.nc/

15 Cass. civ. 2nd, 6 February 1991, Bull. civ. II, no. 44; Cass. civ. 1st, 13 October 1992, Bull. civ. I, no. 248.

Customary assessors are citizens having customary status, aged at least 25 and possessed of guarantees of competence and impartiality; they are proposed by the customary areas and appointed by the General Assembly of the Court of Appeal for a period of two years (renewable) and are entitled to vote in the same way as the professional magistrate. Before taking office, they are sworn in on the same terms as magistrates. Assessors are selected, in even numbers, to take part in the composition of the court to ensure representation of the customary area of each of the parties. A customary court composition can sit in all district and appeal civil courts but only in these courts (not in commercial, social, criminal or administrative courts), and only in district and appeal civil courts located within the territory of New Caledonia (not in such courts located in France or the other French Overseas territories or departments), even if a legal relationship directly or indirectly involving custom is brought before such courts[16].

However, the parties may waive their right to have customary assessors present and request the court to rule in common law composition; this only applies to proceedings in district courts[17]. Since 2013, for the purpose of re-establishing the unity of criminal and civil proceedings as regards civil issues, Article 19 paragraph 2 of Law no. 99-209 authorizes criminal courts to rule on civil issues when all parties have customary status, provided that no party objects to this. In both cases, the common law court must nevertheless act in application of custom, as the Constitutional Council has rightly pointed out[18].

2. A dialogue between judges and customary representatives, between law and custom

This associating of a professional magistrate trained in French law with customary assessors paints a picture of a "bi-cultural court system" paving the way for a "process establishing customary law, resulting from a dialogue undertaken within an inter-ethnic court system"[19]. This, actually many-sided, dialogue also stems from a flexible procedure. Given that custom is oral, that it is mastered neither by the parties nor by their legal advisors, it is when a ruling must be reached that the customary assessors will reveal to the judge which customary rule should be applied. To resolve this problem, a specific two-step judicial procedure has been developed.

The first phase is about throwing light on and explaining the applicable rule. The customary assessors indicate the custom applicable to the case submitted to the judge, the customary procedure to be complied with (such as organizing a debate, obtaining the advice of the clan or such and such a customary authority). The judge renders an interlocutory decision designed to clarify, in terms of form and substance, the gist of the customary principles which will govern the case brought before him/her. The second phase is classic: like the public prosecutor, each party can put forward his/her arguments in fact and law when the matters of the case are set against custom. This phase leads to a final judgement on the merits. Other arrangements also contribute to this dialogue, such as the customary parenthesis or the presence of more than two customary assessors (not disallowed by law).

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16 For example, the administrative court has jurisdiction for all litigation relating to the appointment of customary authorities.

17 Art. L. 562-24 of the COJ. (Legal Organizational Code)

18 Cons. Constit., 14 November 2013 no. 2013-678 DC (consid. no. 37).

19 R. Lafargue, *La « voie » néo-calédonienne pour sortir de « l'enchevêtrement normatif » : jeu d'ombres et de lumière sur la Coutume*, *in* Mondes océaniens, Études en l'honneur de P. de Deckker, L'Harmattan, 2010, p. 57 ff., esp. p. 66.

These procedural arrangements enable a dialogue between several spheres: judge/assessors; civil law/custom; custom/custom; court system/customary authorities. Their impact in legitimizing customary courts both vis-à-vis people seeking justice – therefore more inclined to take issues to the court rather than the customary chief – and the customary authorities themselves – more willing to work in tandem with the court – thereby establishing a justice system which fosters social bonding, gives them even more significance. "Inherent in this concept of justice is the idea not of something external and imposed upon the parties, but a therapy wished for and accepted by them. It is less a question of who is right or wrong, by virtue of higher rule, but rather a question of "putting things back together" and bringing concordance, less for the parties themselves than for their home environment which should be spared injury by their squabbles".[20] Operating in this way, the customary court is a vector for social harmony and cohesion, in the same sense as the founding basis of customary society: exchanges and the maintaining or consolidation of customary ties and, when such ties are broken, a means of seeking customary forgiveness. Finally, such dialogues encourage the emergence of a customary legal system which, while no longer quite being custom as such, is directly inspired by custom, albeit necessarily transformed by and through the lens of litigation and the take a court has on this oral tradition.

II. THE LEGAL SCOPE OF KANAK CUSTOM

Unlike French law, which on principle applies to the whole territory and to the whole New Caledonian population, Kanak custom, with the status of a specific rule or standard, has a necessarily more limited scope. Several articles of Organic Law No. 99-209 define the legal status of custom. Article 7 sets out the general framework for its scope of application. According to this article, "persons whose personal status, within the meaning of Article 75 of the Constitution, is the Kanak customary civil status as defined by this Law shall be governed, in civil law matters, by their customs". Regarding customary lands, Article 18, paragraph 1 provides that "customary lands and property thereon belonging to persons with customary civil status shall be governed by custom". Based on these articles, it is evident that Kanak custom applies only to persons having "customary civil status" and to customary lands. Three criteria are set out: a personal criterion based on the fact of having customary civil status (1); a spatial criterion delineating customary lands (2); and a material criterion defining the issues subject to custom (3).

A. Personal scope

According to Article 7 of Law no. 99-209, custom applies to persons having "Kanak customary civil status". Firstly, such persons should be clearly identified (a) and, secondly, the legal relationship between persons having different personal statuses should be made plain (b).

1. Kanak personal customary status

Personal status as set out by Article 75 of the Constitution, by the Noumea Accord and by the Organic Law, only concerns natural persons. However, the issue of legal persons also arises.

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20 R. Lafargue, *La coutume face à son destin, op. cit.*, p. 319.

Natural persons – While custom has its origin in the existence and recognition of the Kanak people within the French Republic, of an "overseas population" (Constit., art. 72-3 para. 1), the criterion used is not based on ethnicity: custom does not apply to a person belonging to the Kanak community because he or she is a member of that community, it applies to a person having "Kanak customary civil status". The reasoning behind this is the difficulty of defining the scope of a criterion based on ethnicity: apart from posing the potential risk of differentiation within New Caledonian society by setting up separate communities, there is also the issue of the rightful place of people of mixed-heritage. This specific personal status, established by article 75 of the Constitution, does not concern only New Caledonia but also Wallis and Futuna and Mayotte. It is a constant of colonial law, providing for a legal distinction between settlers and indigenous peoples, with a view to ensuring that each community is governed by its own set of laws.

The civil status of a person who is, by definition, French should therefore be determined. This is relatively easy as regards Kanak customary status, the conditions for granting and acceding to such status being precisely defined by Law no. 99-209 in articles 10 to 16 thereof. Proof of status should be provided by a customary civil status record (art. 8). The Organic Law lays down the principle that a person has customary status if both his or her parents have such status (art. 10), thereby attributing civil law status to children born to a mixed-ethnicity couple. Notwithstanding Article 75 of the Constitution which unilaterally permits a person to renounce specific personal status to take on common law status, irrevocably and with no possibility of reversing the decision, Law no. 99-209, in Articles 12 and 13 thereof, provides for several cases in which personal status may be changed by acceding, after birth, to customary status. However, the conditions include provisos, including the stipulation that the person concerned must be related to at least one person having customary status and meet conditions in terms of age and being part of a customary community. Overriding these restrictions laid down by law, an action to establish claim to customary status has nevertheless been instituted on the basis of case law, under Article 15 of Law no. 99-209, on the sole criterion of possessing customary identity, i.e. Kanak identity personally vouched for by the person concerned and collectively acknowledged by the clan by naming such person[21]. Acceding to customary status is possible provided that the person making the request "possesses a customary identity" which "is inferred from a single key fact, which in fact encompasses and summarizes all others: the fact of belonging to a clan, which infers clan ancestry, and above all an identity reflecting a social reality"[22]. This action could, if admitted by custom, allow a non-Kanak person, i.e. someone without any Kanak ancestry, to accede to customary status. For example, acceding to customary status by marriage could become possible.

Legal entities – two entities are concerned here: clans and Local Private Law Groups (Groupements de Droit Particulier Local - GDPL).

Clans represent the traditional customary authority, recognized as such by the Kanak People's Charter and judicial custom. A clan "encompasses all lineages claiming a common ancestor

21 Cass. civ. 1st, 26 June 2013, no. 12-30.154: JCP G. 2013, 986, note É. Cornut; JDI 2014, comm. 8, note S. Sana-Chaillé de Néré.

22 CA Noumea, 19 April 2012, RG no. 11/384: *RJPENC* 2012/2, no. 20, p. 80, 2nd esp., obs. É. Cornut.

spirit" (Charter, art. 28), under the authority of a clan chief (chief). New Caledonia is believed to have about 2,400 clans. Although Kanak clans are central to every customary decision, existing legislation does not recognize them as having a legal personality. Legal recognition of the clan – the mainstay of customary society – has long been a subject of dispute but, in recent years, decisive progress was made when the Noumea Court recognized that the clan has a legal personality, and therefore full legal capacity.[23] Recognizing the legal personality of a customary authority that had no such legal personality under the law represents a form of recognition of indigenous society. Such personality establishes entitlement to ancestral land rights. It also means, for example, that a customary authority can bring court proceedings to seek damages in pursuance of custom, invoking specific harm to community values[24]. Going further in the recognition of Kanak identity, a clan could, in the same way as a Local Private Law Group (GDPL), be deemed to be a legal person of customary status within the meaning of Article 7 of Law no. 99-209, even though it cannot be equated with the "citizen" provided for by such Article. As a result of such recognition, a clan would be legally governed by custom in civil matters regarding relationships with another clan, a Local Private Law Group or a natural person having customary status.

A Local Private Law Group – GDPL, established by Order no. 82-880 of 15 October 1982, now repealed, is a legal entity whose legal personality is recognized by Article 95 of Law no. 88-1028 of 9 November 1988, which remains in force[25]. Many and diverse GDPLs exist, set up by one or more clans with the aim of developing economic activities, possibly on customary land. GDPLs were originally intended to compensate for the fact that clans could claim no legal personality. Although clans have now acquired a legal personality, GDPLs continue to be useful, in the same way as a company, in building an asset base specific to the activity concerned. However, there is a lack of regulations covering GDPLs. For a long time, GDPLs were only seen as private legal entities, accorded no customary personality since under Article 75 of the Constitution, "customary civil status applies only to natural persons and a group, even of a customary nature, cannot lay claim to it"[26]. Notwithstanding, GDPLs are made up of customary representatives, individuals with customary status linked by family ties within a clan, tribe or several clans. The purpose of a GDPL is to provide a way to acquire ownership of customary land in order to develop an economic project on such land. Based on this, the Noumea Court of Appeal recognized that a GDPL possesses all the attributes of a customary legal personality and that "is therefore answerable to the common law which subjects persons having Kanak customary status to customary law in cases of legal dispute with other persons having Kanak customary status".[27] Over and above the internal functioning of a GDPL, it follows that legal relations established by a GDPL fall within the purview of custom and customary courts in the same way as legal relations between natural persons.

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23 CA Noumea, 22 August 2011, RG no. 10/531 & no. 10/532.

24 CA Noumea, 26 March 2015, RG no. 14/24. On this issue, see É. Cornut, "Un contentieux coutumier émergent : les intérêts civils », *in La coutume dans le pluralisme juridique calédonien, op. cit.*, p. 144 ff., esp. p. 178 ff.

25 Art. 233, 5° of the Organic Law of 19 March 1999.

26 CA Noumea, 21 May 2008, Order no. 07/476.

27 CA Noumea, 13 August 2012, RG no. 12/242.

2. Internal conflicts, mixed relationships

While custom applies to disputes between parties having customary status, what happens if the parties do not have the same personal status? Article 9 of Law no. 99-209 resolves such mixed legal relationships by according jurisdiction to civil law rather than customary law. As a result, to cite an example, conditions and outcomes such as the dissolution of a marriage between a person having customary status and another having civil status, are governed by civil law and not by customary law. The same applies to marriages between two persons with different special statuses (between a Kanak and someone from Wallis and Futuna), unless, in this instance, the individuals concerned "expressly provide otherwise" (Art. 9 para. 2), which is unlikely. Similarly, civil law, not customary law, will apply in matters of civil liability, and a common law court will have sole jurisdiction in cases where one of the parties – offender or victim – does not have customary status.

The thinking behind existing legislation in this area is one of assimilation, deriving from historic colonial law, according ascendancy to civil status on the one hand, and to civil law on the other. Similarly influenced legislation is also in force in Mayotte and Wallis and Futuna. In any event, such rules "do not constitute a real solution to the interpersonal conflict of laws, but seem instead to shy away from any attempt at resolving it".[28] They comply neither with the Noumea Accord, which acknowledges equality between common and customary personal status, nor with the legal force of Kanak custom. Customary courts sometimes attempt to curtail the effect of such rules by a division of the dispute before the court. Where the civil liability of a person with customary status vis-à-vis a victim with the same status is at issue in legal proceedings, and where a victim support association subject to civil law has joined the proceedings as a plaintiff, there is a possibility of separating judgement of the case between the parties of customary status – subject to a customary court and custom – from the case between the offender with customary status and the plaintiff with civil status – subject to a common law court and civil law – without breaching Article 9 of Law no. 99-209, provided that the dispute is by nature divisible.[29]

This process is based on a distributive application of rules, respectful of the nature of the legal relationship concerned, the identity of the parties and their personal status. It is the primary procedure used in private international law which should be that adopted in any development of the rules governing internal conflicts of legal standards. Such development, made necessary by the increase in transfers of legislative powers, must be rooted in a more distributive rationale, based on the equality of identities, and on the personal statuses and rights which are the expression of such identities.[30] Though this equality cannot be advanced as dogma insofar as, firstly, written law is intended to set the legal principle and, secondly, custom in particular cannot, for reasons relating to its very nature and its rules, always apply to people who might not be Kanak; it remains nevertheless true that "this application of civil law must be held as an exception and not a principle. Aspects inherent in custom itself – and

28 V. Parisot, *Les conflits internes de lois*, IRJS, 2013, no. 747.

29 CA Noumea, 18 June 2013, RG no. 13/38, appeal dismissed by the Court of Cassation (criminal division), 3 September 2014, no. 13-85031. Regarding this issue, see É. Cornut, "Un contentieux coutumier émergent : les intérêts civils", see above, p. 154 ff.

30 On these issues, see É. Cornut, "Intégration directe ou indirecte de la coutume dans le corpus normatif de la Nouvelle-Calédonie", *in La coutume kanak dans le pluralisme juridique calédonien, op. cit.,* p. 536 and refs. cited.

not any congenital inferiority – are the factors which prevent custom from being designated as an applicable legal standard."[31]

B. Customary territories

Custom holds sway not only over persons having customary status but also over customary lands (a). Although custom logically extends over the territory of New Caledonia and over persons within that territory who have customary status, the applicability of custom does not depend on such persons being present in New Caledonia, raising the issue of the legal status of custom beyond the borders of New Caledonia (b).

1. Customary territories in New Caledonia

Representing over 27% New Caledonia's surface area, i.e. around 500,000 hectares, customary lands are "made up of reservations, lands allocated to Local Private Law Groups, and lands which were or are allocated by territorial authorities or public land agencies, in response to demands made under and by virtue of ties to the land." (Art. 18 of Law no. 99-209). First and foremost, customary lands are based on geographical demarcation. This concerns lands established as reservations during the colonial period (including all of the Loyalty Islands, Bélep and the Isle of Pines), and then in 1970 and 1978, extensions of reservation lands[32]. These lands represent an area of around 395,000 hectares, i.e. 77.2% of customary lands. Private or public land may also become customary land, depending on the competency of the allottee thereof. Since the Rural and Land Development Agency (Agence de développement rural et d'aménagement foncier – ADRAF) was set up in 1988, and in line with the Noumea Accord, customary land has gradually expanded as a result of lands being allocated, through ADRAF and its "land stocks", to clans asserting "ties to the land" or to clan or inter-clan GDPLs as part of economic development projects. Approximately 100,000 hectares of land have already been allocated in this way.

Customary lands are subject to a special legal regime set out in Article 18, paragraph 2, of Law no. 99-209: they are "inalienable, non-negotiable, non-transferable and unseizable" *(inaliénables, incessibles, incommutables et insaisissables*). This "4 i" rule ensures that customary land is "res extra commercium": such lands cannot be sold, gifted, or transferred by inheritance. This status, envisaged during the colonial era as a way of depriving Kanak of their rights to the reservations of which they were the "owners", now appears as a route towards conserving these lands. While this status is sometimes perceived as obstructing economic development (for example, by preventing a mortgage from being taken out on customary land as surety against a loan), in fact the opposite is true: a lot of projects are being set in train on such land with the help of appropriate legal instruments like long-term leases and *ad hoc* guarantee funds.

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31 V. Parisot, S. Sana-Chaillé de Néré, "La méthode conflictuelle, une méthode de résolution du conflit de normes adaptée à l'intégration de la coutume dans le corpus juridique calédonien", *in La coutume kanak dans le pluralisme juridique calédonien, op. cit.,* p. 484.

32 Documents and maps relating to customary lands can be consulted on the website of the Agence de développement rural et d'aménagement foncier (Rural and Land Development Agency): www.adraf.nc

This is why the term "customary property" used by Law no. 99-209 does not adequately describe the ties between rights holders and customary lands. It would be more fitting to speak of a "guardian" and a trust relationship: the clan, as true holder of customary land rights, is not the owner of the land as defined by civil property law. It is the guardian of a place of memory, of a human, social, cultural and intangible heritage, which it holds on behalf of the ancestors and which it must preserve in order to pass these tangible and intangible riches on to future generations. The tie to the land may not be an "actual" right but it reflects a personal and interpersonal tie between a natural space (not necessarily on the surface, see below), the location of the clan's ancestral "mound", the place where ties are formed within the clan and with other clans. As Régis Lafargue writes: "according to Kanak custom, the "tie-to-the-land" invoked by the clans determines clan organization, family relationships, and the status of people, including children's status. Custom thus charts a triangular land/clans/individuals relationship within which a man is "invested" with an identity, then a status and a social role linked to this Land – he identifies with the land rather than owning it."[33] This is the concept of ownership found throughout Oceania: "the Oceanian concept of ownership does not derive, in principle, from possession – something which legitimizes nothing since it only recognizes ownership of tangible property – but from an identity-conferring "relationship". In Oceania, talking about individual or family identity is tantamount to talking about the Land. He who has no land has neither ancestor nor totem. He knows neither from whence he comes nor who he is. He is no-one".[34]

This also explains why customary land, in the customary sense of the term, is not confined to land masses. While the legal definition of customary lands is that set out in Article 6 of Law no. 99-209 which designates this (emerged) land mass, in customary eyes, customary lands also stretch into the sea and the submerged areas of the territory, extending customary lands actually on dry land. From a customary viewpoint, the "customary sphere of influence" stretches further than that defined by the Organic Law and New Caledonia's written rules and regulations[35]. Importantly, this concept provides the basis for tie-to-the-land claims made by the coastal clans, who deem marine areas to be dry land covered by water. More generally, this concept of customary land, which goes beyond the more limited one given by Law no. 99-209, raises the issue of the preservation of Kanak land rights over their ancestral lands, and thus their claim to such lands.[36]

2. Customary territories outside New Caledonia

While custom applies in civil matters throughout the territory of New Caledonia to persons with customary status, conversely it is unlikely that customary law would be applied by

33 R. Lafargue, "La « terre-personne » en Océanie : Le Droit de la Terre analysé comme un droit moral et un devoir fiduciaire sur un patrimoine transgénérationnel", in S. Vanuxem & C. Guibet Lafaye (ed.), *Repenser la propriété, un essai de politique écologique*, PUAM, 2015, p. 23.

34 *Ibid.* p. 23. *Adde* on the concept of "property" in Oceania: S. Farran & D. Paterson (ed.), *South Pacific Land Systems*, USP Press, 2013.

35 Kanak People's Charter, pt. 81 and pt. 101.

36 On the issue under discussion, see R. Lafargue, "Terres de mémoires : Les Terres coutumières, une question d'identité et d'obligations fiduciaires", *in La coutume kanak dans le pluralisme juridique calédonien, op. cit.*, p. 104 ff.; G. Otis, "On a oublié les promesses premières": les droits des kanak sur la terre ancestrale: *Revue de la Recherche Juridique*, no. 2018-3, p. 1352 ff.; A. Leca, "Souviens-toi d'oublier". Reply to a recent article by Prof. G. Otis on the theory of the Kanak "ancestral right" outside customary lands in New Caledonia: Revue de la Recherche Juridique, no. 2019-2, p. 497 ff.; G. Murphy, M. Chauchat, É. Cornut, P. Godin, *La délimitation des territoires des tribus kanak*, report for the Customary Senate, August 2019.

a French court outside New Caledonia if a civil law dispute concerning two Kanak with customary status was brought before such court. Nevertheless, customary law should be applied by that court. There is in fact a direct link between the Kanak customary legal system outside New Caledonia and the personal or territorial nature of the statuses as set out in article 75 of the Constitution. Although there is an undeniable link between the special status and the territory from which the special status-holding community springs, no legal text makes the residence of an individual in that territory a condition for the application of customary law to that individual. From this point of view, while there is an undeniable link between special personal status and territory, this is only a link based on origin: the special personal status is recognized because this territory is home to a group of people the survival of whose ancestral social and cultural identity is acknowledged and accepted by the French government. Insofar as the recognition of customary status is enshrined in Article 75 of the Constitution, the nature of such status is personal and not solely territorial. Like common law personal status, it is universal in intent: this status follows an individual wherever he or she travels, at the very least when he or she is in a part of the territory of the State which recognizes that status.

This is what is provided for in Article 9 paragraph 2 of Law no. 99-209 when it authorizes parties with different special personal statuses to bring their legal relationship before a law other than civil law. This other law can only be a customary law, in particular Kanak or Wallisian-Futunan, the latter being therefore directly recognized as applicable in New Caledonia, i.e. beyond its natural territorial limits. Consequently, Kanak with customary status retain this status in all French territories, mainland France as well as all Overseas territories and therefore remain subject everywhere to custom in civil law matters[37]. The identity underlying the holding of customary personal status transcends the boundaries of the place from which it sprang.

Be that as it may, a judge sitting in a French court outside New Caledonia has no customary assessors to assist in the application of Kanak custom. The judge cannot give a ruling before a customary court composition, since there is no provision for this type of court hearing outside New Caledonia. Nonetheless, as a full-fledged rule, custom is automatically applicable; like any judge in New Caledonia, the judge must elicit the content thereof and may have no secondary or additional recourse to civil law. One solution would be to raise a "question for preliminary customary ruling".[38] Customary courts have exclusive jurisdiction, both by attribution and territorially, to rule on civil law disputes concerning persons having customary status (Art. 19 para. 1 of Law no. 99- 209). In such instances, French judges would be empowered to decide whether the case before the court is or is not a customary matter. Such competency in no way implies implementation of substantive law, simply the recognition that all parties have customary status and that the case concerned is one of civil law. The role of a customary court would be to rule, as rapidly as possible, on the substance of the matter through the application of customary rules, and to communicate such ruling to the French court directly from court registry to court registry. The French court would then

37 On this issue as a whole, see esp. É. Cornut, "Le conflit de normes internes en Nouvelle-Calédonie – Perspectives et enjeux du pluralisme juridique calédonien ouverts par le transfert de la compétence normative du droit civil", JDI 2014, doctr. 3, p. 51 ff.; C. Bidaud, "Le statut coutumier kanak au-delà du territoire de la Nouvelle-Calédonie", *in* G. Giraudeau (ed.), 2021, *Les enjeux territoriaux du pacifique*, Presses Universitaires de la Nouvelle-Calédonie, PUNC.

38 É. Cornut, prev. art. no. 93 ff.

be bound by the customary ruling and precluded from dismissing it, unless there is just cause for throwing out application of such customary ruling outside New Caledonia.

C. Scope of disciplinary action

Article 7 of Law no. 99-299 provides that custom governs legal relationships between persons of customary status "in civil matters" (a). While customary law encompasses all civil law, it does not, in theory, apply to issues which are not covered by civil law (b).

1. The application of customary rules to the entire body of civil law

Customary jurisdiction to rule on civil law matters is now accepted and well established. Despite long being a subject of dispute and restricted to personal and family law, the Court of Cassation intervened to state that it "is set out in Article 7 of Organic Law No. 99-209 of 19 March 1999 that persons having Kanak customary civil status are governed, *as regards the entire body of civil law*, by their customs".[39] Despite a few years of resistance regarding the issue of civil interests, an issue now resolved, the jurisdiction of Kanak custom no longer appears open to dispute. Both the Court of Cassation and the Constitutional Council oversee compliance with the scope of customary applicability.[40] In fact, rulings given by customary courts cover the entire field of civil law, both typical legal proceedings concerning family issues (marriage and dissolution of marriage, kinship/lineage, parental authority, maintenance obligations) and customary property, and more recent litigation cases regarding civil interests.[41] Such rulings show that custom offers solutions which, while being at times out of step with those of civil law, are both inherently consistent and consistent with other customary sources, particularly the Kanak People's Charter. Two examples amongst others may be cited.

Marriage between individuals having customary status, and the conditions and effects thereof, falls within the scope of civil matters and is governed by custom. Similarly, the dissolution of marriages also falls within the scope of civil matters, as regards both the causes and conditions thereof, and also all related consequences and procedural terms and conditions. The clans who contracted the marriage have sole jurisdiction to dissolve it and determine the consequences thereof, as pertaining to the clans, the spouses and any children born of the union. Dissolution of the marriage is removed from the legal realm, and requires only to be recorded in a customary act by a customary public official and then to be declared to the customary registrar. Nevertheless, neither opposition by the clans to dissolving the interpersonal relationship, nor the indissoluble nature of the inter-clan relationship, prevents one or both spouses from appealing to the judge to rule on the application to dissolve the marriage.[42]

Secondly, the issue of civil interests bears witness to efficient interaction between civil law and customary rules. Although research and recommendations concluded that it was

39 Notice of 16 December 2005, BICC, no. 637 of 1st April 2006.

40 For example, see. Cons. Constit., 14 November 2013 no. 2013-678 DC (consid. no. 37).

41 On all of these issues, see R. Lafargue, *La coutume face à son destin, op. cit.*; É. Cornut, P. Deumier (ed.), *La coutume kanak dans le pluralisme juridique calédonien, op. cit.*, first part of the work; A. Leca, *Précis de droit civil coutumier kanak*, 4th ed., PUAM-PUNC, 2020.

42 Regarding the issue as a whole, see É. Cornut, "La dissolution du mariage coutumier kanak", *in* V. Egea (dir.), ed. Mare & Martin, to be published.

difficult for custom to establish principles defining victim status, to determine concepts of offence and injury or to attribute individual compensation, case law, on the contrary, confirms that there has been a gradual development of valid legal provisions on customary liability, very considerably inspired by provisions covering civil liability, but restructured to take into account customary values and customary society. Although customary law recognizes individual reparation under almost the same conditions as civil law, penalizing all types of offence and provide reparation for all types of injury, this does not preclude basing the concepts of victim, offence and reparation on customary values. This approach means that the clan of the direct victim can be considered as an indirect victim possessing all corresponding rights, and that reparation can be awarded for collective injury to customary values. For example, in accordance with custom, a maternal uncle has a vested right to reparation for the loss of his nephew or niece over and above any consideration as to the existence of actual ties of affection; furthermore, the amount of such reparation is assessed as equal to compensation granted to the father and mother of the victim, whereas in civil law the amount of such reparation depends on existing ties of affection and, even if such ties are recognized, the amount is never equivalent to that granted to direct ascendants or descendants.[43]

2. The influence of customary rules outside of civil law

By providing for customary jurisdiction only over "civil law", by designating Kanak special personal status as "customary *civil* status", Article 7 of the Organic Law in principle rules out any customary intervention in other legal matters. Such exclusion covers all non-civil private law. This applies to labour law litigation, the Court of Cassation having ruled that custom possesses no jurisdiction over an otherwise entirely customary relationship between a GDPL employing a person with customary status working on customary land[44]. This also applies to all matters of criminal law, which remain under the primary jurisdiction of the French government (art. 21 II 5° LO 1999), even though New Caledonia has ancillary jurisdiction in this legal sphere. This exclusion of customary intervention is based on the unitary and territorial principles of criminal law, and on the fact that criminal matters are linked to the precept of French sovereignty having responsibility for protecting society and maintaining public order. French criminal law applies to all territories making up the French Republic, including New Caledonia, together with all persons present in such territories and committing offences in such territories. Whatever his/her status, customary or not, the perpetrator of an offence falls under the jurisdiction of France's national courts and penal system.[45] It therefore follows, in principle, that custom is not recognized as a legal standard of criminal law empowered to establish an offence, as it is *a priori* not taken into consideration as regards the interpretation of criminal provisions. As a result, the customary authorities have no "jurisdiction to issue and impose sentences or damages, even on persons having customary civil status" and such customary authorities enjoy no judicial or regulatory immunity.[46]

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43 É. Cornut, "Un contentieux coutumier émergent : les intérêts civils", prev. art.

44 Court of Cassation (Social Division), 10 February 2010, no. 08-70084, Bull. civ., V, no. 37.

45 Court of Cassation (Criminal Division), 30 October 1995, no. 95-84322, unpublished.

46 Court of Cassation (Criminal Division), 10 October 2000, appeal no. 00-81.959, unpublished. *Adde*, regarding the customary dignitaries and royal families of Wallis and Futuna: TPI Mata'Utu, ch. corr., 25 August 2014, RG no. 2012/80.

But a division of this kind cannot reflect reality, and Kanak custom cannot function if it is restricted solely to civil law matters, nor can other fields of law ignore it entirely. The legal force of Kanak custom needs to be recognized in other spheres of private law because recognition and respect for the Kanak identity cannot be demonstrated by confining it to what French law – from a position outside custom – deems to fall within the category of civil law. Indeed, the basic principles of legal order – notions of open texture or contracts, for example – already allow for custom to be so considered –[47] in the areas of commercial law, labour law, or even criminal law. The identity of common destiny can, by law, officially open up this restricted legal sphere to custom and customary law.

In the area of labour law, this is what Country Law No. 2018-3 of 28 May 2018 does, in highly rudimentary fashion, by providing for leave (from work) to carry out customary responsibilities, but such provision could go further by designating custom as one of the rules governing an employment contract[48]. In criminal law, which nonetheless concerns public order and requires strict interpretation, customary aspects could be taken into consideration in order, for example, to assess the elements constituting an offence (fault, gravity, causes of non responsibility) in relation to customary status and the customary context in which an offence was committed.[49] In characterizing a "faute simple d'imprudence" (unintentional failure to observe an obligation of due care or precaution), which implies assessment of an individual's behaviour, it "is perfectly in keeping with the assessment required to establish such 'faute' to take into account the person's customary status as an element of the context in which he or she committed such offence. Consequently, such behaviour, which might seem harmless and not involving fault from the viewpoint of common law, could be considered particularly serious in the light of customary obligations, and vice versa".[50] A topical case would be the attempted murder of an elderly person by a young person, or setting fire to a traditional Kanak hut. Placing such actions in their customary context in order to assess their seriousness leads to a completely different reading of the offence than that arrived at through an analysis based solely on the tenets of common criminal law. The legal system appears, albeit cautiously, to be moving in this direction. The Code de la justice pénale des mineurs (French penal code for juveniles)[51] allows the competent juvenile court to hear evidence, subject to conditions, "from any person representing customary law bodies [...] if their presence in court appears to be of use in reaching an understanding of the juvenile's circumstances or his/her educational and social care" (art. L. 721-3) or "prior to issuing a reparation order or community service order" (art. L. 721-4). Similarly, approved customary institutions and tribes can now implement community sentences[52]. Taking custom into account in this way in criminal law matters is crucial, but we need to go even further and extend the substantive and even personal scope of customary status and custom. This is what New Caledonia's legal pluralism is really all about.[53]

47 É. Cornut, "Intégration directe ou indirecte de la coutume dans le corpus normatif de la Nouvelle-Calédonie", cited above., p. 495 ff., and p. 517 ff.

48 N. Meyer, "Droit du travail et coutume kanak : vers une imprégnation réciproque", in *La coutume dans le pluralisme juridique calédonien, op. cit*., p. 245 ff.

49 V. Malabat, "La prise en compte de la coutume kanak en droit pénal", and É. Duraffour, "Pour que le châtiment soit un honneur", *in La coutume dans le pluralisme juridique calédonien, op. cit.,* p. 214 ff., p. 235 ff.

50 V. Malabat, prev. art., p. 229.

51 This code, deriving from Order no. 2019-950 of 11 September 2019, comes into force on 31 March 2021.

52 Art. D. 712-9 of the Penal Code, deriving from Decree no. 2019-1217 of 21 November 2019.

53 Regarding this extension, see É. Cornut, P. Deumier (ed.), *La coutume dans le pluralisme juridique calédonien, op. cit.,* particularly the second part and the general report.

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PART VI

ECONOMIC SITUATION

NEW CALEDONIA: A KIND OF ECONOMIC TIME CAPSULE

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New Caledonia is one of the 27 Oceanian Island countries[1] and its geographical characteristics therefore place specific constraints on economic development. The Oceanian Island countries share similar challenges in terms of economic development; these challenges include vulnerability to natural disasters and to the effects of climate change, technology transfer gaps, limited infrastructure, small domestic markets and only limited scope for economies of scale. Moreover, due to the territorial fragmentation of archipelagos and their remoteness from major foreign markets, transport costs are high. The Oceanian Island countries depend heavily upon imports, with tariffs on imports accounting for a major share of tax revenue. As for their very limited range of exports, these are heavily exposed to commodity price fluctuations and shifts in international demand. The Oceanian Island countries also share a high dependency on trade, aid, remittances, and migration flows (Poirine, 1995, Browne, 2006, Ro'i & Sénégas, 2012).

Nevertheless, New Caledonia stands out as unusual amongst Oceanian Island countries. Compared to other Oceanian Island countries, it is somewhat isolated and protectionist, comparatively wealthy, and beleaguered by grave disparities between rich and poor.

Firstly, New Caledonia tends to look inwards, and four factors ensure it is better shielded from international economic competition than other Oceanian Island countries: New Caledonia is protected by its natural geography and protected by its production structure, the latter being relatively diversified and mainly domestic market-oriented; it has a highly protectionist trade policy which puts a limit on imports; it is characterized by a strong currency and very high prices, which constitute a barrier to competitiveness and exports.

Moreover, New Caledonia is the richest of the Oceanian Island countries, with Gross Domestic Product (GDP) per capita approaching that of a large country such as New Zealand, and a growth rate comparable to that of Australia or New Zealand, and exceeding that of France. Given such prosperity, New Caledonia's infrastructure, healthcare system and educational system are far better developed than in any other Oceanian Island Country, putting New Caledonia 50th on the Human Development Index (AFD, 2012).

1 Oceania includes Australia, New Zealand and twenty-seven Oceanian Island countries: American Samoa, the Cook Islands, East Timor, the Federated States of Micronesia, Fiji, French Polynesia, Guam, Hawaii, Kiribati, the Marshall Islands, Nauru, New Caledonia, Niue, Norfolk Island, the Northern Mariana Islands, Palau, Papua New Guinea, the Pitcairn Islands, Rapa Nui, Samoa, the Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu, Wallis and Futuna, and West Papua.

However, despite New Caledonia's stellar record in economic growth and human development, the country is dogged by acute and persistent socioeconomic inequality, which aligns with ethnic disparities in access to education and employment (see Lagadec and Ris in this volume).

In at least two regards, New Caledonia's path of development is characterized by paradoxical divergence. Firstly, despite a level of wealth and financial assets worthy of a large progressive country, there are enduring and profound inequalities and disparities in income. Secondly, although the country enjoys significant assets in terms of infrastructure, education and research, the production structure is lethargic and badly in need of innovation. The result is a very limited economic autonomy, which casts doubt on the sustainability of New Caledonia's development model.

New Caledonia's particular "bubble" status was created and is kept in place by constant underlying forces (Part 1). The contemporary dynamics of wealth creation and distribution place New Caledonia in an awkward position where various forms of bias work towards perpetuating this "*économie sous serre*" – cosseted economy – despite many calls for greater autonomy (Part 2). Assuming that public policies could play a decisive role in New Caledonia's path towards development, a few avenues for reform are set out (Part 3).

I. WHERE DO WE COME FROM?

The French presence in New Caledonia reflects strategic interests: the advantages of a physical and military presence in the Pacific, a vibrant regional centre for world economic growth, and financial and scientific benefits deriving from the specific resources New Caledonia has to offer.

In the 1970s, Pierre Messmer, then Prime Minister, wrote to the Secretary of State for Overseas Territories[2] to say that "all the conditions were in place to enable, within the next twenty years, New Caledonia to become a small prosperous French territory similar to Luxembourg but representing, in the vastness of the Pacific, much more than Luxembourg represents in Europe" (Messmer, 1972). Almost five decades later, French President Emmanuel Macron (2018) stated that:

> *France would lose some of its beauty without New Caledonia, because it is part of the concept of a global France, a France that exists tens of thousands of kilometres away from Paris but that is central to France's role of reaching out across all continents and all oceans.* [...] *France is a great Indo-Pacific power, it is a great Indo-Pacific power by virtue of all these territories, New Caledonia, Wallis and Futuna, French Polynesia and also Mayotte, Reunion Island and*

2 "Overseas France" comprises 13 former French colonies in the Atlantic Ocean, the Indian Ocean, and the Pacific Ocean. These are French-administered territories outside Europe with various statuses and levels of autonomy. There is currently one overseas state private property (Clipperton Island), one overseas territory (the French Southern and Antarctic Lands), four overseas departments and regions (French Guiana, Guadeloupe, Martinique, and Reunion Island), six overseas "*collectivités*" – regional authorities – (French Polynesia, Mayotte, Saint Barthelemy, Saint Martin, Saint Pierre and Miquelon, Wallis and Futuna) and New Caledonia, which has a special *sui generis* status and substantial political autonomy.

the Southern and Antarctic Lands, all of which underpin this strategy, all these territories of France stretching across the oceans, they represent a France which surpasses its own boundaries.

In terms of defence, New Caledonia is ideally located, as demonstrated by the US army decision to make the country one of its bases during the Second World War. Its location and physical geography make it a natural aircraft carrier, with the capacity to station a million soldiers.

> *The Pacific is an absolutely strategic region for the world and France must be present there, especially at a time when world orders are being disrupted.* [...] *France's human and material means of defence in the Pacific, based on its three territories (New Caledonia, French Polynesia, Wallis and Futuna) are stable, but the senators have expressed the desire to see the region benefit from redeployment*. (Chevènement, 2012)

New Caledonia is therefore the cornerstone of French military presence in the Pacific, employing around 1,700 women and men (including 220 civilians) and with an annual budget estimated at 160 million euros (French High Commission in New Caledonia, 2015). The armed forces in New Caledonia are responsible for the territories, the territorial waters and the air space of New Caledonia and Wallis and Futuna. They carry out operations in the region in cooperation with Australia, Fiji, New Zealand, Papua New Guinea, the Solomon Islands, Tonga, the USA and Vanuatu (Ministry of Defence, 2016).

Moreover, France attaches value to the technological potential of New Caledonia, which can lay claim to established mineral and fishing resources and promising research and development opportunities. New Caledonia's seafloor also has potential resources in terms of energy and specific metals which are needed in cutting-edge industrial development and predicted to become scarce (French Senate, 2014a).

Ranked 5th in global nickel production and 4th in global nickel reserves[3], and with four major ore processing plants, one of which is located offshore in South Korea, New Caledonia (and behind it the French group Eramet) is a major player in the global nickel marketplace (see Gorohouna in this volume).

New Caledonia is also endowed with a 1.4 million square kilometre exclusive economic zone and an outstanding level of plant and wildlife endemism due to its isolation, specific climate and the geological processes which created its landforms. These natural assets make New Caledonia both a precious reservoir of marine renewable energies and food supply (specifically through fishing and aquaculture), and an Eldorado for cosmetic, agribusiness, pharmaceutical and chemical industry research and development.

To cite just one example: the research undertaken on phytoplankton in New Caledonia's lagoon and the anti-oxidant, anti-UV, antibiotic, pesticidal and antifungal properties thereof,

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3 In 2015, according to the U.S Geological Survey (2017, p. 115), the top-ranked global nickel production countries were the Philippines (24.3%), Russia (11.8%), Canada (10.3%), Australia (9.7%), New Caledonia (8.1%) and Brazil (7.0%). The top-ranked countries for world nickel reserves were Australia (24.2%), Brazil (12.8%), Russia (9.7%), New Caledonia (8.6%) and Cuba (7.0%).

with applications foreseen in marine spirulina or biofuel production, not to mention in the cosmetic, agribusiness and pharmaceutical industries. Hyperaccumulator plants represent another promising example. They are capable of absorbing toxic heavy metals and therefore have great potential in soil decontamination (old mines, dumps, industrial sites) and as eco-catalysts (replacing chemical catalysts). New Caledonia's current resource potential includes hydrocarbons (oil, gas) and deep-seabed mineral resources such as rare metals and rare earth elements present in cobaltiferous crusts and seafloor sulphide deposits (Ifremer Delegation of New Caledonia, 2012).

These research projects not only have potential economic applications but also enhance French scientific prestige. Research in New Caledonia is therefore conducted by a wide variety of research agencies, coordinated since 2014 through the CRESICA (Consortium for Research, Higher Education and Innovation in New Caledonia).[4] Most CRESICA members are nominated by and report to French government ministries.

France's interest in maintaining its presence in New Caledonia is clear, given the country's abundance of natural assets and strong potential as a hub for research and development. Starting in the 1970s, however, demands for independence by the indigenous population began posing a threat to French interests in New Caledonia. To counter these and similar demands, the French government encouraged the massive immigration of French citizens from mainland France and other overseas regions, with a view to modifying the demographic balance between New Caledonia's various communities to the detriment of the native Oceanian population (Messmer, 1972).

This migratory policy came hand in hand with a boost in French government funding; these financial flows partially fund New Caledonian public spending, together with wages and various compensation benefits granted to French public employees assigned to posts in New Caledonia, and military expenditure in New Caledonia. Since the end of the 1980s, a series of public spending programs and a system of tax expenditures[5] have been implemented to boost investments in New Caledonia. The effectiveness of these policies and investments has been queried on the grounds of losses to public revenue and lack of transparency.

Socio-economic inequalities are a defining characteristic of New Caledonia and, since they reflect historical ethnic inequality, they were one of the main factors behind nationalist demands for independence. The diplomatic response of the French government, embodied in the Matignon-Oudinot Accords (1988) and then the Noumea Accord (1998), was to acknowledge the Kanak people as the original indigenous inhabitants of New Caledonia. The French government also offered an economic response by implementing a rebalancing policy, designed to stimulate economic investment and capacity-building in the mainly

4 The nine members of CRESICA are the Bureau of Geological and Mining Research (BRGM), the Centre for International Cooperation in Agricultural Research for Development (Cirad), the French National Institute for Ocean Science (Ifremer), the French National Centre for Scientific Research (CNRS), the New Caledonian Institute of Agronomy (IAC), the Pasteur Institute of New Caledonia (IPNC), the Institute for Research and Development (IRD), the New Caledonia Central Hospital Group (CHT) and the University of New Caledonia (UNC).

5 Tax expenditures refers to fiscal revenue losses attributable to tax law provisions granting special carve-outs, exemptions or deductions from gross income or providing a special credit, preferential rate of tax or deferral of tax liability.

Kanak, less populated and poorest North and Loyalty Islands Provinces. Although a good deal of progress has been made over the last thirty years, the rebalancing process is far from complete (see Lagadec and Ris in this volume). Failing a decisive tax redistribution policy (a measure within the jurisdiction of New Caledonia's institutions), the inequalities remain.

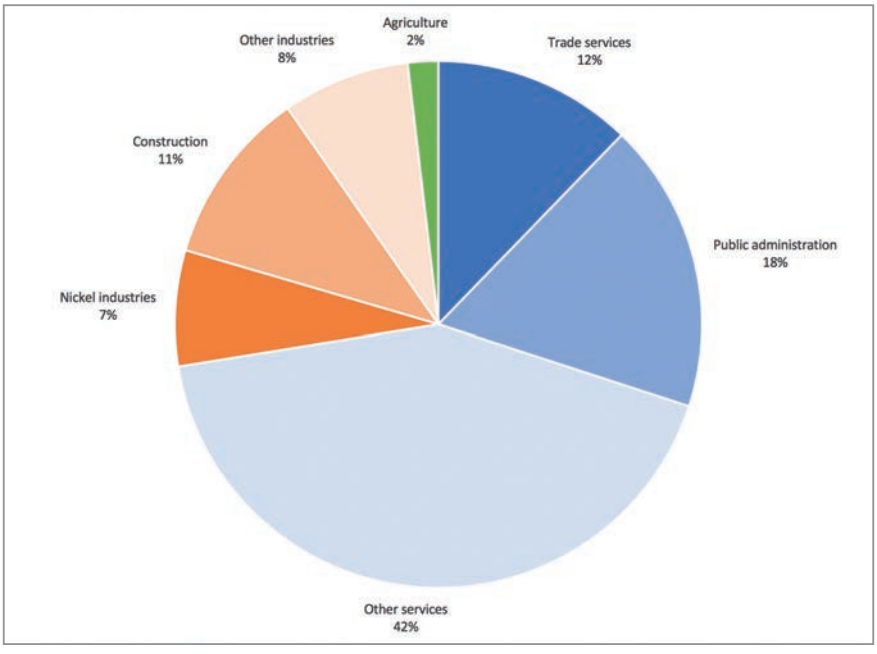
II. WHAT ARE WE?

Present day New Caledonia's economy is prosperous, inward-looking and diversified, showing both intensive and extensive growth. It could be described as a cosseted economy – économie sous serre (Naudet, 2019). It relies on domestic drivers: high household consumer expenditure and strong public and private investment, allied to modernized production methods and increased productivity due to a rise in local labour force skill levels. External factors also play a key role: French government funding and foreign direct investment to finance new ore processing projects. However, profound inequalities and disparities in income remain. The protectionist economic policy and oligopoly-based production structure encourage markups and inflate prices whilst reinforcing the inward-looking aspects of the economy.

A. A diversified economy

New Caledonia's economy is currently productive and diversified, with nickel the only significantly specialized sector; multiple products are produced on a very small scale and Services are the main sector of economic activity.

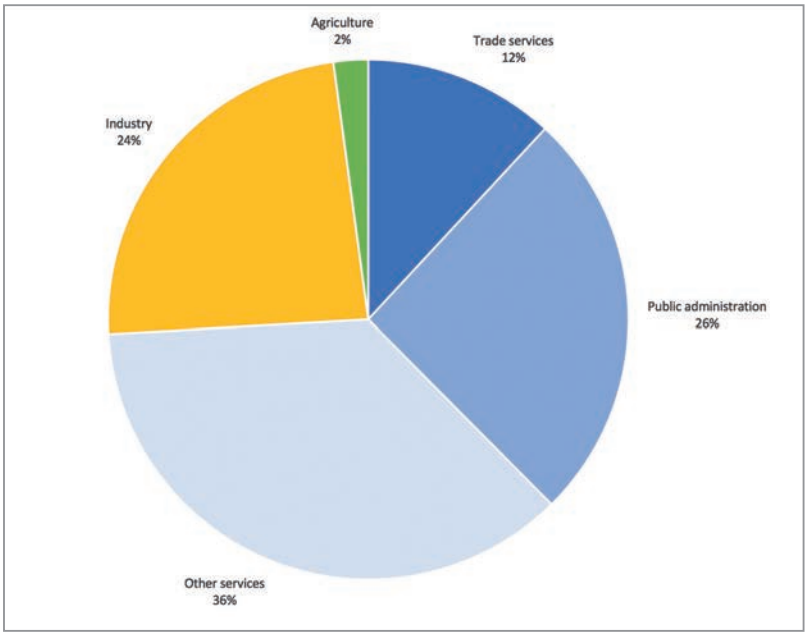
Figure 1: Contribution to Value Added for each sector in New Caledonia (1998-2017 average)



Source: ISEE

As shown in Figure 1, on average over the period from 1998 to 2017, services account for almost three quarters and industry for a quarter of Gross Value Added (GVA), while agriculture has only a marginal impact.

Figure 2. Contribution to wage employment for each sector in New Caledonia (2003-2019 average)



Source: ISEE

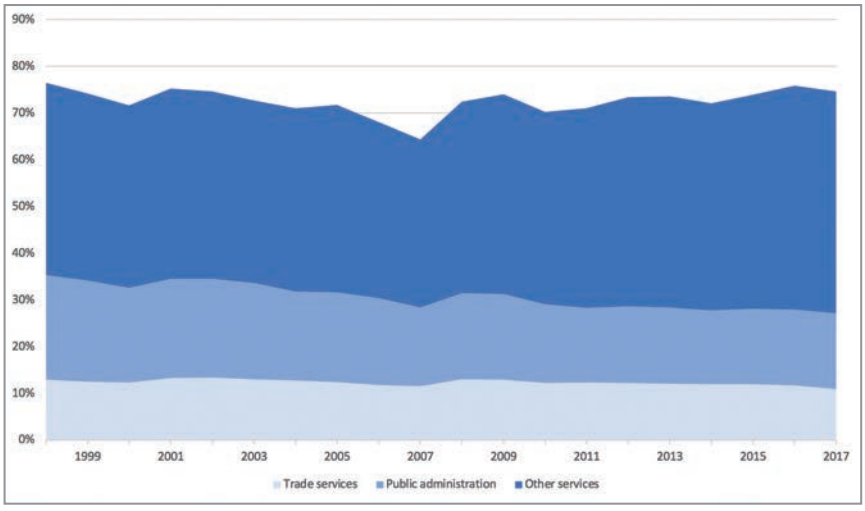
As shown in Figure 2, on average over the period from 2003 to 2019, the contribution of each sector to wage employment reflects the share of each sector in New Caledonia's GVA. The only exceptions are the services sector, where Public Administration accounts for 26% of total employment but only 18% of value added, while Other services accounts for 42% of value added but only 36% of total employment.

1. Services

Services are the main sector of economic activity in New Caledonia and are highly diversified, responding to demand from modern businesses and high-income households. Services are also the main employer, representing 76.7% of wage employment in 2019. On average over the last twenty years, Services accounted for 72% of value added (12% for Trade services, 18% for Public administration and 42% for Other services).

As shown in Figure 3, between 1998 and 2017, the value added share of Trade services remained stable at between 11 and 13%, whereas the share of Public administration dropped from 22% in 1998 to 16% in 2017, with Other services rising from 41% in 1998 to 48% in 2017.

Figure 3: Share of Services in New Caledonia's Gross Value Added (annual data from 1998 to 2017)



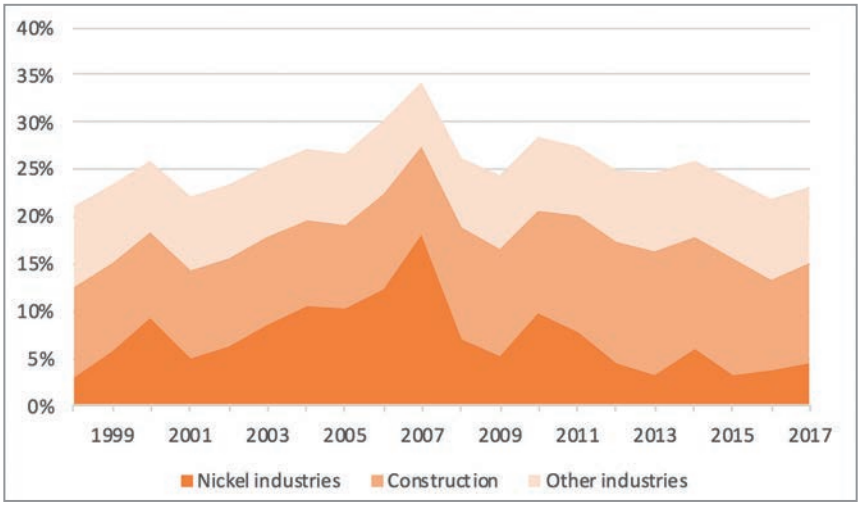
Source: ISEE

2. Industry

On average from 1998 to 2017, Industry accounted for 26% of GVA (7% for Nickel industries, 11% for Construction and 8% for Other industries). Industry also accounted for 21.7% of wage employment in 2019.

As shown in Figure 4, the industrial sector share in total value added in New Caledonia varies over time in line with nickel industry fluctuations, with that industry rising as high as 18% in 2007 and dropping to only 4% in 2017, due to the influence of nickel market prices.

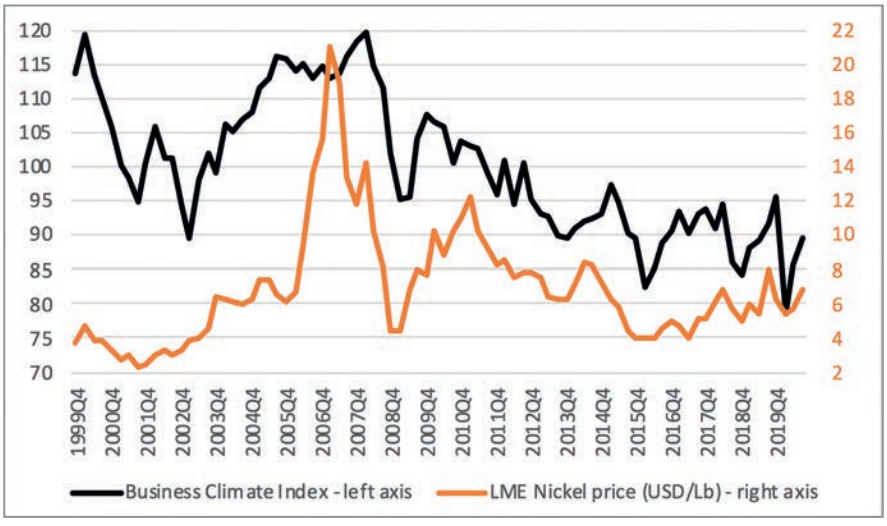
Figure 4: Share of Industry in New Caledonia's Gross Value Added (annual data from 1998 to 2017)



Source: ISEE

Although it is a key economic sector in New Caledonia, the nickel industry's contribution to economic growth, foreign currency earnings, fiscal resources and direct employment is limited. Nevertheless, the significant sector-related indirect and induced employment rate has an economic impact, and the nickel industry also influences the expectations of major players in New Caledonia's economy.

Figure 5: New Caledonia Business Climate Index and London Metal Exchange (LME) nickel prices



Sources: IEOM and ISEE

Overall, in terms of direct, indirect and induced employment[6], the nickel industry accounted for 1 out of 5 private sector jobs in 2012 (CEROM, 2015). Moreover, as shown in Figure 5, the New Caledonian Business Climate Index[7] trend line more or less echoes the London Metal Exchange nickel price trend line. This suggests that, even in non-nickel sectors, international nickel prices play a role in decisions on investment, consumption and savings taken by major local stakeholders.

Construction, also a major industry in New Caledonia, is highly dependent on public contracts and on investment boosted by tax incentives. Construction industry share in total value added is fairly stable, showing a slight upward trend from 9% in 1998 to 11% in 2017.

Apart from nickel and construction, the industrial sector is diversified, with a focus on minor product processing; over the last twenty years, it has totalled 7 to 9% of GVA.

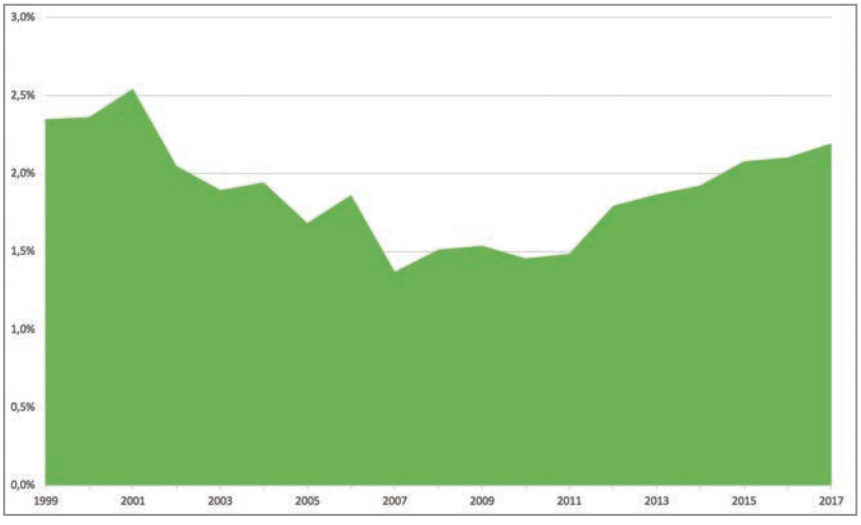
6 Direct employment concerns nickel industry employees, indirect employment concerns sub-contractors, and induced employment is generated by wages spent by direct and indirect employees.

7 The New Caledonia Business Climate Index is established by the Institut d'Emission d'Outre Mer (IEOM) based on a large sample of New Caledonian businesses drawn from all sectors, representing 50% of total employment.

3. Agriculture

Lastly, as shown in Figure 5, the agricultural sector, including hunting, forestry and fishing, represented only 1 to 2 % of GVA from 1998 to 2017. It also accounted for 1.6% of wage employment in 2019.

Figure 6: Share of Agriculture in New Caledonia's Gross Value Added (annual data from 1998 to 2017)



Source: ISEE

However, surveys conducted by the New Caledonian Institute of Agronomy in 2011 and 2013, targeting tribes all over New Caledonia, indicated that if market prices were used to assess the value of non-market agricultural, fishing and hunting produce, this would prove at least as high as the figure attributed to commercial agriculture (Guyard et al., 2014). The official share of GVA accruing to Agriculture may therefore downplay the real economic impact of the country's primary activities.

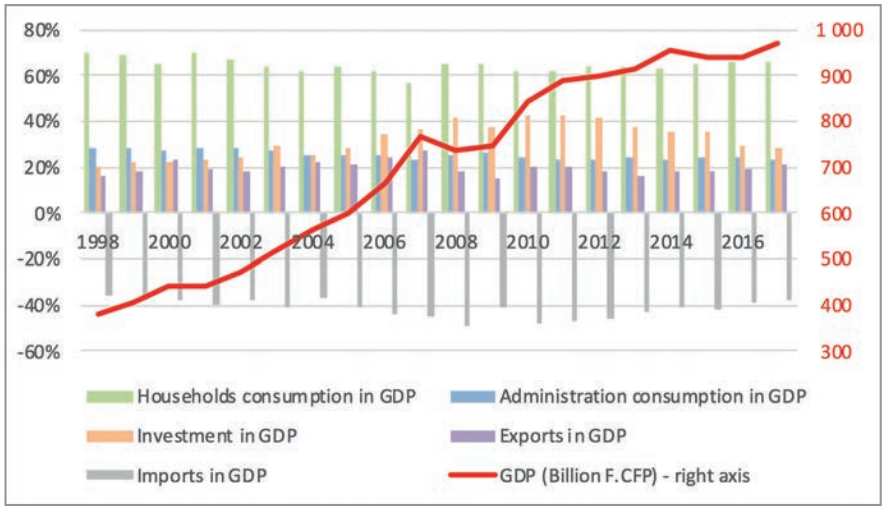
B. Domestic and external drivers of growth in New Caledonia

From a domestic demand perspective, New Caledonia's GDP is mainly driven by household consumption and private investment. However, two external factors also have an impact on New Caledonia's economy: French government funding and, more recently, foreign direct investment financing new ore processing projects.

1. Consumption and Investment

As shown in Figure 7, the share of household consumption in New Caledonia's GDP varies from 57 to 70% from 1998 to 2017, with an average of 64%. Public administration-related consumption used to be the second largest component of GDP but was overtaken in the mid 2000s by private investment, which ranges from 20 to 43% of GDP, with an average of 32%, and shows greater volatility compared to household consumption.

Figure 7: Gross Domestic Product (GDP) and its components in New Caledonia (annual data from 1998 to 2017)

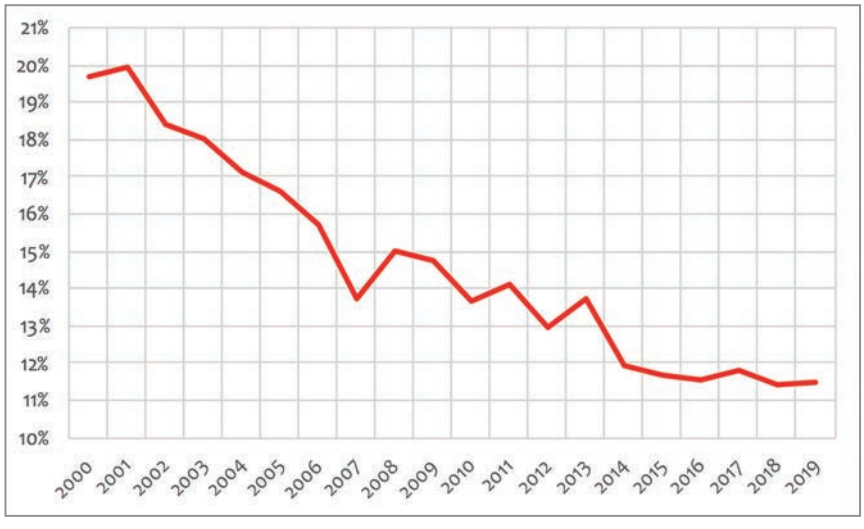


Source: ISEE

2. French government funding

New Caledonia's economy is also subject to two external factors. French government funding is the first factor. Although French funding has diminished over time, transfers of substantial amounts continue: from representing the equivalent of 35% of GDP in 1986, the figure had dropped to 20% by 2000. As shown in Figure 8, French government funding has steadily decreased and has totalled 11 to 12% of GDP since 2014.

Figure 8: Net French government funding as a share of Gross Domestic Product in New Caledonia (annual data from 2000 to 2019)



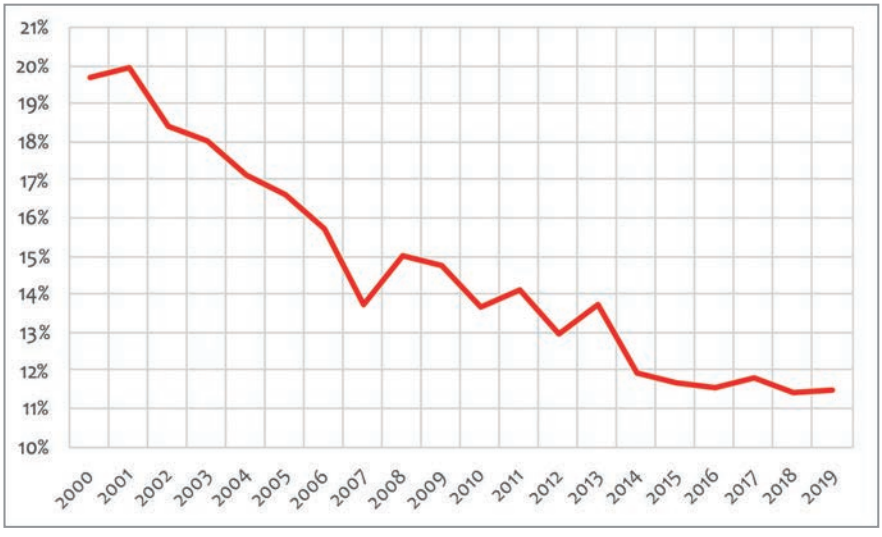
Source: IEOM

Freyss (1995) and Couharde et al. (2016) assessed the impact of French government funding on New Caledonia's economy for the periods 1983 to 1987 and 2006 to 2010. It was shown that such funding only partially stimulated local production since considerable amounts were diverted into savings (invested mostly outside of New Caledonia, mainly in France, and also in Australia and Asia) and into imports. According to Freyss (1997), New Caledonia's economic system, which he labels an "assisted economy", is not geared to generating wealth but to procuring public funding, its primary function being to convert public funds into private assets.

3. Foreign direct investment

A second external factor, much more recent and more ephemeral, also has an impact on economic growth in New Caledonia: since 2006, there has been an inflow of foreign direct investment linked to the construction of new ore processing plants.

Figure 9: Foreign direct investment as a share of Gross Domestic Product in New Caledonia (annual data from 1998 to 2019)



Source: IEOM and ISEE

As shown in Figure 9, foreign direct investment represented the equivalent of 15% of GDP on average between 2006 and 2015. Foreign direct investment acts as a greater stimulus on New Caledonia's economy than French government funding, particularly as regards the trade services and construction sectors (Couharde *and al*., 2016). However, these positive impacts are partially offset by the high import content of equipment and materials needed in ore processing plant construction.

C. An affluent country with marked wealth inequality

New Caledonia has the highest GDP of all France's Overseas Territories and all Oceanian Island countries. It even exceeds the GDP of all mainland France regions apart from Ile-de-France. The high living standards seen in New Caledonia are attributable to strong economic growth, at an average rate close to 4% per year over the period from 1965 to 2010.

Over the 1990 to 2010 period, GDP per capita grew by 2.3% on average per year despite the population growing at a annual rate of 1.8% since 1989. New Caledonia's per capita GDP is similar to that of France, twice that of other French Overseas Territories and ten to fifteen times higher than neighbouring Oceanian Island countries.

New Caledonia has also developed a modern healthcare system, leading to a marked improvement in life expectancy, which rose from 67 years in 1980 to 77 years in 2015, and a decrease in the child mortality rate, which fell from 30 deaths per 1,000 live births in 1980 to 4 deaths per 1,000 live births in 2015 (Mathieu et al., 2016). Finally, access to education also improved by an average of four years of extra schooling between 1990 and 2010 (AFD, 2012). It is fair to say that New Caledonia's economic growth went hand in hand with the development of human capital.

However, the level of perceived wealth in New Caledonia requires qualification, given the high cost of living. Inflation is relatively moderate but prices are very high compared to neighbouring economies, particularly in terms of food commodities. Research conducted by CEROM (2012, 2018) found that prices in New Caledonia were higher than prices in France. Based on the Fisher index, a comparison of prices in France and New Caledonia put the difference at +34% in 2010 and +33% in 2015. Some basic goods and services showed a particularly marked price difference: in 2015, foodstuffs cost 75% more, communications 64% more and housing, water and energy 37% more in New Caledonia. The impact of New Caledonia's high cost of living on the population varies in line with income level. According to household budget and spending surveys for 1981 and 1991, per capita income for Kanak communities living in tribes was seven times lower than per capita income for Europeans living in Noumea (Freyss, 1997). The most recent estimated income inter-decile ratio for New Caledonia dates back to 2012: the richest 10% had an income 7.9 times greater than the poorest 10%. The minimum wage is 30% lower than France's but public employees' salaries are double the salaries they would earn in France. Between 2013 and 2019, there was an overall increase in the purchasing power of wage-earners in New Caledonia but a decrease in the purchasing power of the lowest wage-earners, generating even greater wealth disparities (ISEE, 2020).

1. French government funding, the wealth gap and the high cost of living

French government funding to New Caledonia (excluding tax exemptions) has made up 11 to 12% of New Caledonia's GDP since 2014 (see Figure 8). Most of this funding goes to pay public employees' salaries (800 million euros in 2011), including public administration, healthcare and educational system employees. Over time, funding provided by the French government has cemented two features intrinsic to New Caledonia's economic development: firstly, the high cost of labour and secondly, the high cost of living.

Civil servants in New Caledonia enjoy bonus payments[8] to compensate for the difference in the cost of living between mainland France and New Caledonia, but also to cover expenses linked

8 For public employees in New Caledonia, these bonus payments have two components: a weighting component which ranges between 73% and 94% of salary depending on assignment location (Noumea, the "brousse" or the islands), and a "remoteness" bonus corresponding to ten months' salary for two years in New Caledonia. These bonus payments also exist for public employees assigned to other overseas territories, but with different rates. These measures are based on French legislation dating back to the 1950s.

to remoteness and to make posts in overseas locations more attractive (Cour des Comptes, 2015). Over time, such bonus payments have been partially extended to native New Caledonian public employees. To some degree, these increases in public sector salaries have contributed to an increase in private sector salaries. This has resulted in high labour costs, which render New Caledonian products less market competitive, and in even greater wealth inequality.

On the other hand, high salaries mean a proportion of the working population is highly solvent, a factor which has helped push up prices, especially in the construction and services sector. The high cost of living in New Caledonia is not only a barrier to any competitive pricing of New Caledonian products but also reduces the purchasing power of lower income households.

2. Oligopolies, the wealth gap and the high cost of living

The high cost of living in New Caledonia is also due to an oligopoly-based market structure. Economic power in the key sectors of activity is concentrated in the hands of a small number of dominant operators and stakeholders who are often close to political leaders. This sort of system offers few opportunities for outside competition and sustains high profit margins for local companies, thus increasing the wealth gap and keeping prices high.

High living costs are compounded by the situation in the distribution sector: the expansion of mass retailing means that profits are boosted by markups accumulated along value chains and market power is wielded by a select few operators (Dalmas & Losch, 2016).

3. Protectionism, the wealth gap and the high cost of living

New Caledonia's trade balance shows a structural deficit.[9] Much like other Oceanian Island countries, a wide range of consumer goods and intermediate goods[10] are imported while exports (outside of nickel) remain limited. Moreover, due to overvaluation of the Pacific Franc (XPF), New Caledonia has strong foreign purchasing power but is unable to price exports competitively.

On average over the 2000 to 2019 period, imports represented 30% of GDP and exports only 16%, resulting in a foreign trade coverage ratio[11] of around 50%.

As shown in Figure 10, over the last twenty years, imports represented 27 to 35% of GDP while exports represented 12 to 24% of GDP. The foreign trade coverage ratio was thus always less than 100% and fluctuated between 38 and 74%.

As a share of GDP, New Caledonia's degree of trade openness is very low. Naudet (2019) offers an international comparison of trade orientation levels based on the differential between the theoretical and observed rates of trade openness. According to this study, New Caledonia is the most inward-looking country in the world.

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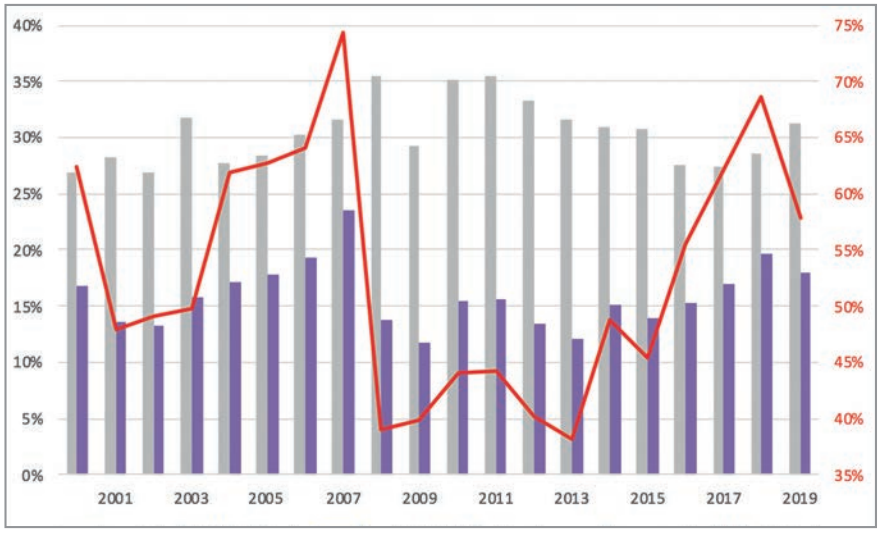
9 The trade balance is the difference between the value of exports and that of imports.

10 Intermediate goods are goods and services required to produce goods (for example, tools and machines, energy, and raw materials).

11 The foreign trade coverage ratio is the ratio between the value of exports and that of imports.

Figure 10: Imports and exports as a share of Gross Domestic Product (GDP) and foreign trade coverage ratio in New Caledonia (annual data from 2000 to 2019).



Source: ISEE

Apart from nickel, New Caledonia's only sectors of activity subject to foreign competition are agriculture, industry and tourism. However, agriculture and industry are shielded by a tariff-based protectionist policy, tax exemptions on raw materials imports, quantitative restrictions and financial aid packages, while tourism is of only marginal significance in New Caledonia's GDP. Economic growth therefore relies primarily on sectors of activity which are, by their nature, protected from outside competition (public sector, services and construction) or benefit from protectionism (agriculture and industry) (CEROM, 2017).

The protectionist economic policy and oligopoly-based production structure referred to above both play a role in jacking up markups and prices, increasing the wealth gap and thwarting competitive pricing whilst reinforcing the inward-looking aspects of the economy.

III. WHERE ARE WE GOING?

French government funding, oligopoly-based production structure and protectionist economic policy: all these features of New Caledonia's economy are legacies from the past and give the country the appearance of being "frozen in time", sheltered from foreign competition. New Caledonia can thereby successfully achieve the two-fold objective of ensuring revenue for the government, and protection and economic rents for local producers and interests. But the result is also a lethargic production structure badly in need of innovation, plus very limited autonomy which casts doubt on the sustainability of New Caledonia's development model.

The primary concern for all political parties in New Caledonia is the question of the country's institutional future; other issues of immediate and future benefit to the New Caledonian

people, whatever the institutional outcome, are being pushed into the long grass. Three issues are of vital importance: generating wealth outside of the nickel industry, the fair distribution of wealth, and financial independence from France.

First, regarding economic diversification outside of nickel: New Caledonia boasts educational facilities and infrastructure far superior to those possessed by her Oceanian neighbours. New Caledonia also possesses an outstanding abundance of natural assets and strong potential for research and development. The prospects for future growth can build on the specific character of natural assets and the quality of human capital, provided that partnerships are created to benefit the local population in terms of both employment and the transfer of skills. A tax incentive could help achieve this (Lieb, 2019).

Second, one of the fundamental imbalances in New Caledonia is linked to disparities which persist despite a steady rise in the economic growth rate. This raises the issue of social equity and places New Caledonia's social contract in jeopardy: inequalities could burst the New Caledonian bubble. Furthermore, the evidence shows that a country's long term economic growth is conditional on reducing income inequality. To this day, no truly redistributive fiscal policy has been implemented. Even more seriously, the current fiscal policy is weighted in favour of high incomes and facilitates capital flight.

Third, there is a discernible disconnect between the level of public spending (especially social benefits) and the level of tax revenue. Taxes covered only 55% of public spending in 2011 (Cour des Comptes, 2013). The difference was made up by French government funding. This raises the issue of financial independence from France (see Tirard in this volume).

These three issues are interlinked. Fiscal policy (which is already under the jurisdiction of New Caledonia's institutions) could be used as a lever to address these issues by introducing tax incentives and a predominantly redistributive fiscal policy. There are many well-documented proposals for fiscal reform (Lieb, 2010, 2011, Wasmer et al., 2012). Tax revenue could be increased without resorting to confiscatory taxes. The Cour des Comptes (2013) recommended a fiscal reform package for New Caledonia. The main measures included revising income tax rates, reviewing tax expenditures, higher capital taxation and higher taxes for the mining and ore processing sectors.

In 2011, taxation by local authorities represented 18% of GDP and revenue from social contributions (social security deductions) represented 15% of GDP – a combined direct tax revenue totalling 33% of GDP. By comparison, tax revenue in France for 2012 totalled 45%. The gap between French and New Caledonian tax revenue is basically linked to the difference in social security contributions, which are higher in France (Cour des Comptes, 2013). Given that public services are on a par with France, it could be assumed that New Caledonian and French tax rates would be similar. A rise in direct taxation rates appears an essential step: New Caledonia provides excellent healthcare facilities but is also struggling with social security funding, drawn primarily from payroll taxation.

As regards tax expenditures, Lieb (2011) considers that the overall deductible tax and tax credit apparatus serves to reduce income from individual taxation in New Caledonia by 25%. With respect to capital taxation, it is noteworthy that capital gains are not taxed in New Caledonia although most assets have appreciated in value over the past years. This represents one way of broadening the tax base.

Fiscal measures to prop up the economy, especially the nickel industry, have resulted in significant tax revenue losses. The nickel sector generates no tax revenue, except indirectly through employer/employee social security contributions.

The French Senate (2014b) and the Cour des Comptes (2015) have issued recommendations for reducing or doing away with bonuses paid to public employees posted to Overseas Territories. The financial savings could be used to fund projects promoting local development. Education is one of the key sectors in need of investment, with the focus on improving access to education, employment and income for marginalized populations.

Such fiscal reforms would help New Caledonia unlock some tax revenue, paving the way for implementation of a redistributive fiscal policy whilst increasing financial independence from France. The cornerstone of such fiscal reforms will be the quality and efficient production of local economic data.

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PUBLIC POLICIES FOR ECONOMIC AND SOCIAL REBALANCING

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Amongst the public policies implemented in New Caledonia over the past 40 years, the rebalancing policies aimed at reducing inequalities have perhaps had the most significant and structuring impact on the country. This is not only due to their duration – they have been ongoing since the end of the seventies –, but also to the diverse areas they target: politics, land, economy, education, health, transport, communication, etc.

The Matignon-Oudinot (1988) and Noumea (1998) Accords made rebalancing a means to attain the sharing of powers, wealth and knowledge. Measures to reduce geographical and political, identity and cultural inequality and to achieve economic and social balance were designed primarily with the Kanak community in mind. Defined, like the recognition of Kanak identity, as a prerequisite for building a common destiny, rebalancing to reduce inequality addresses the need for spatial, geographic and social justice and reflects the aspiration for balanced development in New Caledonia. Rebalancing thus raises the issue of the spatial/geographical distribution of economic development and the role of the public authorities in the dynamics of development.

Although "rebalancing" has been the term used since the 1988 Matignon Accords, policies of this kind have been implemented since the 1970s in response to clear evidence of differences in standards of living and income between the Kanak community and the rest of the population.

If the use of the term "rebalancing" to describe all such public policies is specific to New Caledonia, it corresponds exactly to what many countries around the world are implementing as part of policies aimed at "reducing inequality". However, the specific character of rebalancing policies in New Caledonia lies in their geographical and ethnic dimension, whereas elsewhere the social dimension is the only or main consideration. These concerns are what bring New Caledonia's policies closer to what has been achieved by our Australian and New Zealand neighbours since the late 20th century through their *Closing the Gap* strategies to reduce disparities between the indigenous population and the non-indigenous population.

Like its neighbours, New Caledonia has been a land of immigration (settlement), and recorded inequalities benefit immigrant communities to the detriment of the indigenous community, which is not are a "minority group" – the Kanak people representing 40% of New Caledonia's population.

Following a brief summary of the historical context behind the introduction of rebalancing policies in New Caledonia, this paper will focus on describing the challenges and measures implemented and go on to attempt an assessment of what has been achieved by 30 years of public initiatives aimed at reducing inequality.

I. HISTORICAL CONTEXT

To understand how socio-economic inequalities can be considered as one of the reasons for the events of the 1980s and how reducing such inequalities became a central issue of the subsequent political accords, a brief review of some aspects of the historical background is necessary (Gorohouna, 2018). In point of fact, unsustainable socio-economic inequalities were integral to economic conditions in New Caledonia from the 1960s to 1980, i.e. the period preceding the dramatic events of the 1980s. First and foremost, there was very marked geographical and spatial segregation, with Kanak living almost exclusively in "reserves" and non-Kanak in villages or urban areas; there was also segregation in schools, with schools for Europeans and non-Kanak and schools for Kanak (including mission schools), and a ban on the use of Kanak languages in schools. This was the context in which, in the late 1960s, the pro-independence movements developed, with land and traditional culture central to indigenous demands. At the first PALIKA Party Congress in 1976, it was therefore stated that "actions should result in the complete recovery of land stolen from the whole Kanak people". The land was argued to be a fundamental part of Kanak identity. From the 1970s onwards, the public authorities appeared to become more aware of the economic and social disparities between the Kanak and non-Kanak populations. In 1974, Jacques Iekawé's report to the Territorial Assembly focused on "Melanesian promotion", in which the education and training of Kanak people would pay a key role. Many other concerns were developed in the report: aid for rural development, setting up sales and distribution channels, training in business management, expanding the reserves "subject to this being supported by a program of (economic) development", promotion of Melanesian culture, with the focus on the project for a Festival of Melanesian Arts, which would take place the following year, and the idea of establishing an Institute of Melanesian Studies.

Between 1960 and 1980, many production sectors were introduced (sugar, coffee, niaouli, rum, etc.). The construction industry saw significant growth, mainly due to the nickel boom in the late 1960s (see also the chapter on nickel). Most sectors of economic activity showing strong growth at the time (particularly non nickel-related industry) were located in Greater Noumea. There was considerable creation of small and medium industries (SMI); over half of these were set up by incomers from France (27% by native non-Kanak New Caledonians). There were no SMIs set up or directed by Kanak. Over the same period, the primary sector showed little development. Agriculture was already in decline (12% of GDP in 1960, 4% in 1980), with stockbreeding the largest sector. A distinction should be drawn between European agriculture and Kanak agriculture, mostly destined for local and family consumption. In addition to leisure and small-scale fishing, the 1970s saw the introduction of prawn farming (*via* IFREMER and the St Vincent aquaculture centre). As for the development of the nickel sector, the mainstay of New Caledonia's entire economy at this time, mining companies first employed Kanak labourers, workers from Indochina, Java and Vanuatu and convict labourers, and later recruited workers from France (particularly after Governor Feuillet's measures to encourage free settlers). The nickel boom was supported by a policy of mass immigration. For example, in 1970, the French Prime Minister, eager to see "rapid measures to promote immigration", advocated the immigration of 10,000 workers. Pierre Messmer, then Prime Minister, stated: "In the long term, nationalist demands by indigenous peoples will only be forestalled if communities who are not from the South Pacific region represent a majority of the overall population". Estimates put immigration between 1970 and 1976 at 40,000 individuals, 20,000 of whom settled permanently in New Caledonia. This was to have implications for the Kanak share of the population, which stood at 50% of the population

in 1956 and was down to 45% by 1974. In 1963, Noumea accounted for 45% of the total population, by 1974 this had reached 57%. The nickel boom thus played a major role in centralizing people and business activities in and around Noumea, which reaped benefits from nickel's ripple effect on other business sectors. This led to urban housing/business estates being built in Noumea (Pierre Lenquette, Ducos, Saint-Quentin). The nickel boom attracted thousands of young Kanak to the mining centres and the capital.

However, the country's rapid growth from the late 1960 onwards, driven by the nickel boom, would not deliver the same benefits for all. Despite the boom, there was little increase in employment opportunities for Kanak. The Kanak labour force participation rate also showed little progress in comparison with economic growth in New Caledonia. In 1983, the labour force participation rate for Kanak was the same as in 1963: ¾ of Kanak were not in the labour force. In government/civil service departments, which at the time were the biggest employers of Kanak staff, the proportion of Kanak employed had not changed since 1956: 25%. As a reminder, Kanak then represented 44% of the New Caledonian population. Similarly, the proportion of Kanak among workers outside the public service sector was lower in 1983 (16%) than in 1963 (20%) (Gorohouna, 2018).

While the nickel boom brought the Kanak community far fewer benefits than the rest of the population, they were the first to be hit by the recession which followed in the 1970s and played a key role in driving Kanak back to their tribes. In 1989, over two thirds of Kanakswere living in tribal communities, a situation which aroused deep frustration with the existing system (Freyss 1995).

In 1969, cash income per person in the tribes was 9 times lower than that of Europeans living in Noumea. In 1980-1981, Kanak households earned, on average, an income of XPF770,000 a year, compared with XPF2.243 million for European households, almost 3 times higher (the guaranteed minimum wage was XPF40,000 in 1982). A comparison should also be drawn between urban Kanak households and tribal Kanak households: earned income for Kanak households in towns was XPF1.196 million a year, two times less than European households. Kanak households in tribes earned XPF570,000 a year, 4 times less than European households. A comparison of individual rather than household incomes shows that urban Kanak earned 2.5 times less than Europeans and tribal Kanak earned 7.5 times less than Europeans. 85% of the labour force was concentrated in the South, compared to 12% in the North and 3% in the Loyalty Islands.

As early as 1971, some Public Administration reports highlighted the way the Kanak community was being excluded from economic development, something which could have "far-reaching future repercussions" (Freyss 1995).

In the wake of the Iekawé report, the Fonds d'Aide au Développement pour l'Intérieur et les Îles (Development Aid Fund for the Interior and Islands – FADIL) was set up in 1975. Faced with clear evidence that the Melanesians were being "left behind", the French Government Department for Overseas Departments and Territories (DOM-TOM) instituted a scheme to benefit the Kanak population, designed to "improve living conditions, increase equality of opportunity, reduce economic inequality", "the exclusion of Kanaks from the mining sector is also seen as a key cause of inequality which must be remedied". The FADIL mainly devoted its efforts to helping cooperatives, focusing on individual initiative, a strategy challenged by some of the independence movements. The Dijoud Plan which followed this, drawn up

by Paul Dijoud, Secretary of State for the DOM-TOM 1978-1981, clearly stated the need for further measures to promote Melanesian rights and welfare, the implementation of tax reforms, the development of smallholdings to "rebalance production capacities between lands and ethnic groups", to provide Kanak living in tribes with cash incomes. The Plan also favoured land redistribution, which annoyed the Europeans but did not go far enough for the Kanak, particularly in terms of colonization issues; the Plan was rejected by the pro-independence UC party. A key aspect of the Plan was the implementation of an economic recovery policy, backed by funds transferred to New Caledonia by the French government. Noumea was the focus for these funds, intended to appease the European population, the main beneficiaries (Freyss 1995).

With the indigenous population thus marginalized politically, economically, and culturally, a surge in Kanak protest movements was predictable and probably foreseen by the French government, which set about encouraging extensive immigration in the 1970s. This situation of marginalization and profound inequality proved fertile ground for the radicalization of indigenous factions. Economically and demographically marginalized, the Kanak people were determined to reclaim their "rightful place" and to see a "rebalancing" of power and wealth.

The first attempt at "promoting Melanesian rights and welfare" probably came too late to reverse the trend toward radicalization. The many failed economic projects in unfavourable sectors such as coffee appear to have intensified resentment against the established system.

The Matignon Accords (1988) enshrined the truce which followed and signalled the end of the events of the 80s; they marked the introduction of policies to reduce inequalities prioritizing the North Province, the Loyalty Islands Province and the Kanak people. This rebalancing policy, clearly outlined in the Matignon Accords, was endorsed by and also central to the Noumea Accord (1998). It is the subject of an entire heading of the Organic Law of 19 March 1999, the legal expression of the Noumea Accord (Heading VIII: Rebalancing and Economic, Social and Cultural Development).

There are several reasons justifying government intervention to reduce inequality, over and above the fundamental argument for social justice. Indeed, it has been demonstrated that inequality has multidimensional consequences: political, social and economic (Wilkinson and Pickett, 2009, Stiglitz, 2012).

The main goal of policies aimed at reducing equality is thus a more equitable distribution of resources, opportunities and power, crucial to harmonious economic and social development.

II. IMPLEMENTATION OF REBALANCING POLICIES

The Matignon Accords (1988) provide for "the accomplishment of major projects to rebalance the economic development of the Territory and improve the daily lives of its inhabitants" by "improving infrastructure for increased accessibility, developing health and social welfare facilities, promoting Melanesian culture, developing productive economic sectors". The Accords also specify the resources required "to meet both the specific needs of each province and the objectives included in the principle of rebalancing, contracts will be concluded between the French government and the Provinces", and stipulate, further on, that "French government investment will be allocated to help achieve rebalancing (one-quarter

in the South, three-quarters in the North and the Islands)", "with the aim of rebalancing the apportionment of positions of responsibility, a major management training scheme, particularly for Melanesian executive staff, must be implemented" and "the main aims of development contracts will be the setting up of initial and ongoing training programs".

These principles were endorsed by the Noumea Accord (1998) which states that "The past was the time of colonization. The present is the time of sharing, through rebalancing. The future will be the time of identity, in a common destiny". The need for training programs is reiterated: "During this period, New Caledonians will be trained and involved in the exercise of responsibilities in these areas, with a view to rebalancing and preparing for this new stage"; thus:

> *The training programs should, in their content and methodology, be more attuned to local realities, the regional environment and rebalancing imperatives. A specific program, which will follow on from the "400 Managers" program and focus on secondary, higher and vocational education and training, will aim to advance the rebalancing process and the accession of Kanaks to positions of responsibility across all sectors of activity.*

Heading VIII of the Organic Law of 1999 sets out the terms and conditions for the implementation of rebalancing measures and of economic, social and cultural development.

> *Multi-annual development contracts shall be concluded between the French government on the one hand and New Caledonia and the Provinces on the other. The measures and operations provided for in these contracts shall facilitate access to initial and ongoing education and training, bringing young people into the workplace, economic development, improved living conditions for local people and cultural development. The New Caledonia Planning and Development Plan shall ensure the balanced development of the territory and, in particular, the fair and equitable distribution of public funds benefiting the provinces and municipalities. It shall define the goals to be achieved and set out the resources to be brought into play to achieve such goals by the French government, by New Caledonia and by the provinces and the municipalities.*

The geographical/spatial aspect of reducing inequality was addressed by public policies focussing on the decentralization of political and administrative powers through provincialization in 1989 (institutional reform to promote the siting of administrative structures in or near the main towns of the North Province and the Loyalty Islands Province by anchoring affluent communities – government officials and public employees), major transport and amenities infrastructure projects to open up villages and tribes and provide services to local communities.

These rebalancing initiatives were made possible by funding obtained *via* development contracts awarded by the French government and provided for in the Accords, and facilitated by a distribution of national income favouring the North Province and the Loyalty Islands Province. In fact, perhaps the most significant instance of this inter-province economic rebalancing was the apportionment formula which ensured that the North and Loyalty Islands Provinces received outsize budgetary allocations compared to the actual size of their populations. For example, the Loyalty Islands Province, which accounts for 7% of New Caledonia's population, received 18% of the country's operating budget, compared to 32% for the North Province (19% of the population) and 50% for the South Province (74% of the population).

The goal of reducing inequality was also pursued by developing communication infrastructure (access roads for remote locations, in particular), cultural infrastructure (setting up cultural centres throughout the country), health infrastructure (establishing dispensaries in all villages), education infrastructure (establishing primary and secondary schools throughout the country, setting up the University of New Caledonia and, more recently, a university campus in the North Province).

In addition to geographical rebalancing, ethnic rebalancing was also a major issue addressed by the Matignon and Noumea Accords. Since 1988, initiatives covering all economic and social areas have been engaged to help the North and Loyalty Islands Provinces, both with predominantly Kanak populations, "catch up" with the predominantly non-Kanak South Province. Education and training rebalancing policies have been implemented to further reduce inequality and increase access by Kanak to positions of responsibility in all business sectors.

Indeed, the only affirmative action scheme favouring the Kanak community to be set up was in this area: the "400 Managers" scheme. This training program was designed for young adults who had completed their secondary education and were interested in further training. The aim was to train young Kanak, for the most part, for managerial positions, over a period of 10 years and covering most economic sectors. The training scheme was extended in 1998 and renamed "Managers for the Future" (Cadre avenir). Another scheme was introduced in 1991 following the realization that high school students from outside Noumea coming in to attend high schools in Noumea were experiencing difficulties with their studies: the *Juvénat lycéen* program. The scheme aims to help these keen young students study successfully for the general high school diploma (baccalauréat général) and to go on to university studies, by providing individual coaching (academic support) and a social (accommodation) and cultural environment conducive to their academic success.

III. WHERE HAVE 30 YEARS OF REBALANCING POLICIES GOT US?

An assessment of public policies involves comparing what they initially aimed at achieving and what was actually achieved. However, no specific objectives were set out in defining the rebalancing policies announced in the Matignon and Noumea Accords and implemented over more than 30 years in New Caledonia: was the aim to reduce inequality (of income, living conditions, access to power and resources, etc.) between Kanak and non-Kanak, between the North and Loyalty Islands Provinces and the South Province? If so, by how much? Or was the aim to eliminate the gaps between different communities revealed by such indicators? This second target is far more ambitious.

To return to the example of Australia, where *Closing the Gap* policies were set in place in the late 2000s: targets for gap reduction were clearly defined and scheduled within a specific timeframe. For example, one of the targets is to increase the proportion of Aboriginal and Torres Strait Islander people (aged 20-24) with a Year 12 (final year of secondary school) or equivalent qualification to 96% by 2031.

While the lack of such clear targets in New Caledonia means that we cannot, at this moment in time, produce a rigorous assessment and a quantitative and qualitative review of rebalancing policies in relation to the resources brought into play, we can nevertheless measure the

progress made over the past 30 years by analyzing changes in geographical inequality (between the North and Loyalty Islands Provinces and the South Province) and between Kanak and non-Kanak. It should be noted that, while numerous studies measuring the changes in ethnic inequality exist in English-speaking countries, this aspect of inequality almost never features in studies undertaken in France, and very often, by extension, in New Caledonia, due to severe limitations imposed (under French law) on the use of ethnic data. All the same, ethnic data do exist in New Caledonia, in official statistics obtained in the ten population censuses carried out in the country since the second World War (except in 2004). Changes in ethnic inequality can therefore be measured by differentiation between the two sub-populations: Kanak and non-Kanak. Although the "non-Kanak" group is extremely diverse (due to the many different communities it includes), the decision to use this community-based differentiation can be justified firstly by the need to render our findings comparable to those obtained in Australia and New Zealand (where there is even greater diversity in non-indigenous groups) and, secondly, in order to assess the effectiveness of the rebalancing policies designed to benefit the Kanak community in line with the spirit of the Matignon and Noumea Accords.

The rebalancing policies were implemented against the background of a particularly propitious economic climate. Over the past 30 years, New Caledonia has seen significant advances in economic and social terms and enjoyed a period of economic prosperity, exceptional in comparison not only with small Island Countries in the Pacific but also in other parts of the world.

This rebalancing policy, with the budgetary apportionment formula and associated transfers of funding as key factors, has helped to reduce inequality in access to public services, in the areas of healthcare, education and transport and communication infrastructure. As noted by Sudrie (2013), the public policies have therefore generally achieved results by significantly reducing social disparities between the provinces in terms of access to public services. Advances achieved can be measured by many indicators: the construction of public amenities, including colleges and high schools, sports halls and cultural centres, road network development, improvement in household utility services (the percentage of households in the North Province with basic facilities (water, electricity) rose from 42% in 1989 to 77% in 2014). These improvements in terms of infrastructure and therefore in health and sanitary conditions are reflected in an increase in the HDI (Human Development Index); life expectancy at birth in the North Province increased from 60 years in 1981 to 76 years in 2015.

Although significant progress has been made, there is still enduring social inequality in New Caledonia; a lack of statistics makes it difficult to get an accurate picture and therefore to identify how to remedy this – the last survey enabling measurement of social inequality, the Household Budget and Consumption Survey, dates back to 2008. The other data come from population censuses, the most recent available census was carried out in 2014. Available data for the period 1991 to 2008 highlight the following paradox: although there was a significant rise in the average standard of living, there was no fall in the poverty rate and inequality became more pronounced. The Gini Coefficient for disposable income stood at 0.42 in New Caledonia (compared to 0.25 in the most egalitarian countries such as Norway or Japan); the poverty rate was 17%.

In 2008, the standard of living for the 10% of the population with the lowest income was 7.9 times lower than the 10% in the highest income group. Income inequality in New Caledonia is much greater than, for example, in France or Australia. Large families and young

people under the age of 20 are the most vulnerable. However, position in the labour market is a key poverty risk factor. Although employment does not completely safeguard against risk of poverty, it does constitute a powerful bulwark (ISEE, 2012).

If we focus on measuring progress in closing gaps between the provinces, according to Sudrie (2013), "transfers" (*via* the budgetary apportionment formula, see above) helped in raising standards of living: GDP per capita in the North Province increased by 50% in real terms between 1989 and 2009; it grew 2.5 times in the Loyalty Islands. Despite these advances, there is no evidence of actual economic rebalancing: North Province GDP, expressed as a percentage of South Province GDP, remained stable over the period (about 15%); Loyalty Islands Province GDP has risen by one percentage point in 20 years (from 3% to 4%)". Moreover, territorial disparities remain extremely pronounced. The North and Loyalty Islands Provinces, where the population is predominantly Kanak, are the least affluent and have more poorly developed infrastructure and facilities. In 2008, median income in the South Province was two times higher than the North Province and 2.5 times higher than the Loyalty Islands Province. The poverty rate stands at 52% in the Loyalty Islands, compared to 9% in the South Province. For all that, urban areas (particularly Greater Noumea) have witnessed the greatest rise in poverty since 1991.

The rise in the average standard of living has therefore failed to redress inter-province inequality, and intra-provincial inequality has increased in the South Province and the Loyalty Islands. The Gini index has risen from 0.42 to 0.44 in the Loyalty Islands and from 0.37 to 0.40 in the South Province. There has only been a reduction in inequality in the North Province (Gini index fall from 0.45 to 0.41).

Why is this imbalance so persistent? The primary reason is historical and inseparable from the history of nickel; the SLN, as the major mining company, has acted as a catalyst both in terms of people (Noumea) and companies, through its suppliers (Ducos). Noumea has thus become the economic "capital" of New Caledonia. Economic activity has converged around the Ducos industrial estate and sea and air transportation facilities have developed around Noumea. Many people of working age in the North and Loyalty Islands Provinces leave their native provinces to find jobs and settle in Greater Noumea (Noumea, Païta, Mont-Dore and Dumbea). The second reason is linked to the number of secondary school age students who leave the Loyalty Islands to continue their studies in Noumea.

However, this province-by-province analysis takes no account of the significant intra-provincial disparities. In fact, there now appear to be greater disparities in standards of living between the East and West Coasts than between the North and South Provinces. Intra-provincial disparity has risen in the North (gaps in per capita GDP between the East and West Coasts increased by 15 points between 1989 and 2009) and fallen in the South (gaps between Greater Noumea and the rural southern region were halved) (Sudrie, 2013).

Intra-provincial differences in the North Province are mainly due to development of the VKP (Voh Koné Pouembout) hub, which has seen significant industrial growth since the mid-2000s due to construction of the Koniambo processing plant, designed to drive development in the North Province.

For some, the very existence of this new industrial and economic hub in the North Province is enough to confirm the success of the geographical rebalancing process.

Advances in education and training can also be assessed as one of the key priorities of the rebalancing policies set out in the Matignon and Noumea Accords. A point worth mentioning is that equality of educational opportunity is a relatively recent aspiration in New Caledonia; Kanak students in secular state schools were only allowed to sit for the baccalauréat (high school diploma) around the middle of the last century (the first Kanak student obtained the baccalauréat in 1961) (Hadj *et al*., 2012). The level of education of New Caledonia's population has risen sharply in the last twenty five years: in 1989, 71% of the population had no qualifications compared to 27% in 2014. In 1989, only 4% of the adult population held a university degree compared to 21% in 2014. The improvement in level of education is general and concerns all New Caledonia's Provinces. Nevertheless, a province-by-province comparison reveals that people without a secondary school diploma are over-represented in the North and Loyalty Islands (39% and 41% respectively, compared to 22% in the South Province). Similarly, 26% of adults in the South Province hold a university degree, compared to 10% in the North Province and 8% in the Loyalty Islands Province. There are therefore significant disparities between the provinces; not only is the South Province retaining its "lead" but the rise in level of education has targeted different types of diploma in different provinces: in the South Province, there is an increase in students achieving high school diplomas and university degrees, in the North Province and the Loyalty Islands Province, students mainly qualify for vocational diplomas below baccalauréat level. Qualification level rises can be linked to the rebalancing policies leading to the development of educational structures and training courses.

These geographical disparities partially reflect ethnic disparities. In 2014, while a relatively higher number of non-Kanak had a university degree, a significant number of Kanak were still without a qualification. In 2014, 36% of Kanak were without a qualification, compared to 17% for non-Kanak. Level of education trends become even clearer if we focus on higher education. In 2014, the proportion of Kanak university graduates (5%) reached (or almost reached) the proportion of non-Kanak university graduates in 1989, 25 years earlier (6%). It should however be noted that these figures include all individuals aged 15-64 and that, in the case of younger generations, the differences are less pronounced (Gorohouna and Ris, 2013).

A gender, as well as an ethnic dimension, is to be taken into account and, if we look at the combined effects of ethnicity and gender, we see that ethnic differences outweigh gender differences but, within each ethnic group, women obtain more academic qualifications than men. These findings are even more marked for the generation aged 20 to 30.

A study of the odds ratio (Ris, 2014, 2019, Ris *et al*. 2017) for the ratio between, for example, the likelihood of one group (non-Kanak) having a high school diploma and not having a high school diploma, compared to the same ratio for another group (Kanak), highlights marked ethnic inequality in gaining access to qualifications. The odds ratio also shows some closing of the qualifications gap: inequality fell significantly over twenty five years, particularly as regards high school diplomas in technology and university degrees. But findings show that gaps widen in line with qualification levels: in 2014, a non-Kanak was 8.3 times more likely than a Kanak to have a university degree. The differences are somewhat less marked for the generation aged 20 to 30 but the trend remains the same: inequality was still significant in 2014, and the higher the qualification, the greater the level of inequality. It is also to be noted that there was much less progress in reducing inequality between 2009 and 2014, as if, in a way, there was really no way of getting inequality down further. Until 2009, the economic climate was very favourable and this undoubtedly made implementing the rebalancing

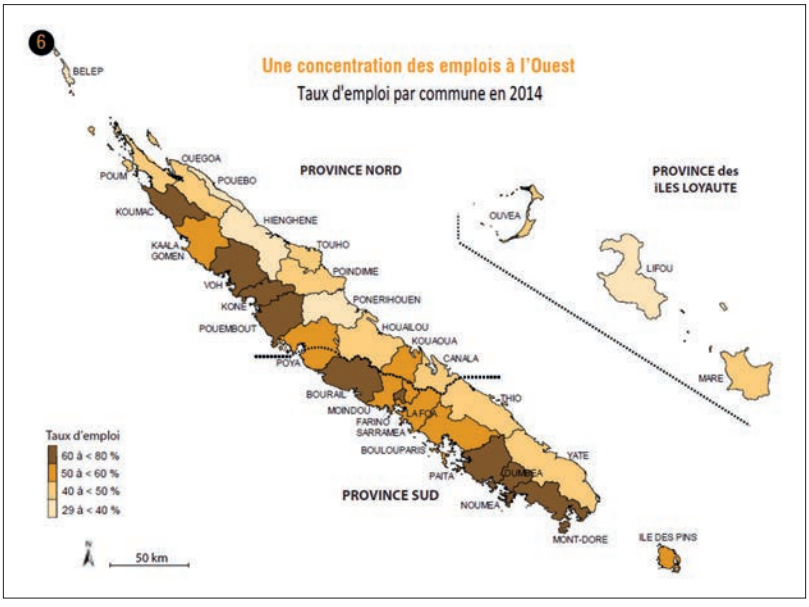
policies easier. Since the early 2010s, it appears that the slowdown in economic growth has made implementing redistribution policies more problematic.

A shift in inequality is observable in both New Caledonia and France; the focus is no longer on access to high school diplomas but on access to higher education. Given that there were very few Kanak with university degrees in 1989, any increase in numbers appears impressive (there were 99 male and female university graduates in 1989 and there were 3,200 in 2014). The apparent reduction in education inequality should therefore be treated as relative in any analysis focussing on a more accurate definition of qualifications. Accordingly, inequality has not disappeared but shifted ground. This sets a limit on the extent to which education has been democratized, given that job opportunities do not depend on a student's level of qualification but on their field of study. The schooling process which yields these results begins at nursery school, where all children are welcomed as children possessing the same language skills as those acquired by any other French-speaking child. The disparities we have noted as appearing at the end of compulsory full-time education are already apparent at primary school level (Hadj *et al.*, 2012) and increase over time into middle and high school (differences between communities are relatively slight at early schooling levels and intensify as qualification levels rise).

These inequalities in educational outcomes have serious consequences in terms of labour market integration and therefore knock-on effects on income inequality and poverty.

As a direct consequence, there are significant geographical and ethnic disparities in the labour market. In 2014, the employment rate was 65% in the South Province, 52% in the North Province and 40% in the Loyalty Islands. There were once again very marked disparities between the East and West Coasts (cf. map 1).

Map 1. Employment rate per municipality in 2014



Source: RP ISEE, INSEE

The employment rate in New Caledonia is 70% for non-Kanak and 49% for Kanak. In 2014, the unemployment rate stood at 27% for the Kanak population, compared to 7% for the non-Kanak population. Kanak were also over-represented in agricultural jobs (83%) and under-represented in management jobs (9%).

There is also significant inequality amongst people in employment. In 2019, one in five jobs was low-wage, with low paid jobs much more prevalent in the agricultural sector and domestic service and hospitality sectors, where part-time jobs are common.

Finally, inequalities in access to jobs are linked to social networks and to the distance of some communities from employment areas, given existing transport problems.

CONCLUSION

Compared to countries with the same levels of wealth and human development, New Caledonia shows a high level of social inequality and a low level of education of the country's population. The high level of income inequality and inequality in educational opportunity is jeopardizing the country's harmonious economic and social development, especially at a time when New Caledonia is facing serious decisions as to its future. There is now a consensus of opinion in studies analyzing the economic and social impacts of inequality, and low levels of inequality have been identified as a major determinant of sustained economic growth episodes (Ostry *et al*., 2014). Accordingly, tackling both inequality of opportunity (by pushing ahead with the policy of geographical and ethnic rebalancing initially set in place in 1988), and redressing existing inequalities, particularly through redistribution policies, would appear essential. Initiatives designed to reduce the impact of social reproduction in schools (in particular affirmative action initiatives like the *Managers for the Future* scheme) must be promoted.

Thus, the last three decades have seen the introduction of significant policies aimed at reducing inequality, provided for in the Matignon and Noumea Accords to benefit to the Kanak people, even though implementation of such policies has focused mainly on inequality between New Caledonia's Provinces.

As already noted, assessing the results achieved by spatial/geographical rebalancing policies remains difficult due to no specific targets having been set. Nevertheless, given the acute levels of inequality in the late 1980s, the progress accomplished over the last 30 years has been considerable. Accordingly, indicators for the North Province show substantial improvement, mainly as a result of the VKP hub development; there has also been strong growth in the South Province, so this does not really constitute rebalancing, in the sense of one province catching up with another (something which, moreover, does not appear easy). It should also be noted that improvements concern indicators of basic standards of living or facilities (water, electricity). If "new" indicators are taken into account (computer equipment, internet connection), improvements are still lagging behind. Furthermore, current intra-provincial disparities, particularly between the East and West Coasts and between villages and tribes, remain significant. Likewise, over and beyond spatial/geographical disparities, despite significant advances in prioritizing the Kanak community, social policies have not yet succeeded in creating genuine equal opportunities in terms of educational achievement and labour market access.

This movement towards convergence, if not catch-up, since 1989, has shown signs of slowing since 2009, the year which signalled the end of New Caledonia's boom years. Addressing these challenges would therefore appear more problematic in a period of slower growth. Nevertheless, they remain a priority in building the universally desired community of destiny.

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THE NICKEL SECTOR IN NEW CALEDONIA: ECONOMIC AND POLITICAL CHALLENGES

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New Caledonia is renowned for holding a substantial portion of the world's known nickel reserves.[1] The country does, however, possess other natural resources. Over more than a century, many explorations were undertaken in the search for a variety of mineral deposits. Various mineral resources were mined in the late 19th century: chromium, cobalt, copper, lead, zinc, gold and iron.[2] But nickel ultimately became the mainstay of mining operations in New Caledonia.

Nickel was mined from 1870 onwards, with a significant nickel *(green gold)* rush[3] occurring in 1875. Mining companies began by employing Kanak labourers and workers from Indochina, Java and Vanuatu, convict labourers and, later on, took on workers from France (particularly after Governor Feuillet's measures to encourage free settlers). Convict labourers were "lent" by the penitentiary authorities, while "outside" workers were employed as indentured labourers.

A nickel boom in the 1960s boosted the development of New Caledonia's mining industry. A number of major mining projects were then in the pipeline but the economic depression which followed put a halt to all projects and engendered a marked sense of gloom. The economic crisis also played a role in reducing the previously significant number of small local mining companies.

This article aims to provide a concise history of the nickel sector after World War II (I), going on to review the challenges linked to rebalancing in the wake of the political accords of 1988 and 1998 (II). Finally, we will look at the issue of a shared New Caledonian strategy regarding nickel (III).

I. NICKEL SECTOR DEVELOPMENTS AFTER WORLD WAR II: A BRIEF OVERVIEW

In the post WWII period, the key development in terms of the nickel industry was the expansion of the long-established Société Le Nickel (SLN) company, founded in 1880. Setting up villages around its mining centres, the company held the majority of mining titles. The sector accounted for up to 30% of New Caledonia's GDP at the time of the nickel boom in the late 1960s. During this period, the nickel industry was also central to trade

1 15% of world reserves, CEROM (2015).
2 Freyss,1995, Le Meur, 2015.
3 "Green gold" is another name for nickel.

union demands for equal treatment of the various communities making up New Caledonia's population. Against a background of marked social segregation and inequality, the goal of equal treatment for all ethnic groups was finally achieved in 1956.

In New Caledonia, a distinction is often drawn between, on the one hand, major operators such as the SLN, who are generally involved in both mining and ore processing (Doniambo plant) and, on the other hand, "small mining operators" – limited in scale and with no involvement in processing. They mine the nickel ore and sell it on, mainly to the SLN, Japan and Australia. For such companies, nickel represents only a portion of overall business activity. Historically, these are powerful European family enterprises, well established in the commercial sector and wielding significant political clout. The four main family-based groups are Pentecost (Nickel Mining Corporation, NMC), Ballande (Compagnie Générale des Minerais Calédoniens, CGMC), Lafleur (Société Minière du Sud Pacifique, SMSP) and Montagnat (Société Georges Montagnat et Cie, SGM).[4]

From 1960 to 1965, nickel ore mining increased five-fold (from 1.5 million tonnes to 7.7 million tonnes), also reflecting strong growth in global demand. Global demand doubled and the US was forced to tap into its reserves. Furthermore, strike action in Canada placed the market under additional pressure and drove up prices. In 1955, production capacity at the Doniambo plant was 8,000 tonnes of nickel. In 1963, it was 30,000 tonnes. The SLN subsequently announced a program to achieve a target of 50,000 tonnes, followed by an increase to 65,000 tonnes and finally 85,000 tonnes. In point of fact, a record output of 71,000 tonnes was achieved in 1975.[5]

The SLN workforce grew substantially and topped 5,000 employees in 1970. In 1968–1969, nickel accounted for over 30% of New Caledonia's GDP (compared to the current figure of 7% to 10 %[6], although in employment terms, the nickel industry accounts for up to 20% of private sector jobs[7]). However, from the mid-1970s onwards, new global production capacities led to a fall in nickel prices, causing a recession in New Caledonia. This was compounded by the fact that nickel prices are not only highly responsive to fluctuations in supply and demand but also to corporate assessments of global economic conditions. Because nickel market prices are quoted in US dollars, the profits of companies such as the SLN are also dependent on the US dollar exchange rate. SLN financial results took a dive due to the 1971 dollar devaluation, with the small mining companies taking a worse hit than the SLN due to the fall in nickel prices. This latter group currently includes three companies: Société Minière Georges Montagnat, Société des Mines de la Tontouta and Maï Kouaoua Mines. The Nickel Mining Company is not included since it is now part of a holding company with a processing plant in South Korea.[8] As regards the SLN, a diversification and deployment strategy is being implemented by shareholders under the banner of the new ERAMET-SLN holding company (1985). Outside New Caledonia, the group is engaged in global deployment, limiting risks by diversifying business activities.

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4 Freyss,1995, Bouard, 2016, Le Meur, 2017.
5 Freyss,1995.
6 CEROM, 2019.
7 CEROM, 2015.
8 A map of mining sites is shown in Section III.

Nickel was considered a strategic metal because of its use in armaments and in some cutting-edge industries; nickel being an essential component in nuclear power plants, aeronautics, shipbuilding, thermal power generation, etc. Consequently, the French government took control of New Caledonia's mining sector in 1969 ("Billotte law"). Nickel was seen as a key component of national independence, a powerful tool in international relations. Following the "Events" of the 1980s, New Caledonia was divided into three provinces under the Matignon-Oudinot Accords. The provinces were endowed with powers over economic development, mining concessions and the environment, leaving each province free to pursue its own economic policy and strategy in terms of the nickel sector.

Right up until the 1980s, the growth of the nickel industry signally failed to eradicate glaring socio-economic inequalities. Jean Freyss (1995) pointed out that cash income per person in tribal communities was 9 times lower than that of Europeans living in Noumea. In 1980–1981, Kanak households earned, on average, an income of XPF770,000 a year, compared with XPF2.243 million for European households, almost 3 times higher. The growth of the nickel industry brought the Kanak population far fewer benefits than the European population: in 1963, the workforce participation rate for Kanak was 23% (57% for Europeans), in 1976 it was 24% (57%), remaining unchanged in 1983 (54%).

The disparities were more blatant outside the public service sector, as shown in the table below:

Table 1: Kanak workforce participation outside the public service sector – 1963 to 1983

	1963	1969	1976	1983
Kanak workforce participation outside the public service sector	20%	24%	20%	16%

Source: Freyss (1995).

During the nickel boom, there was a modest rise in Kanak workforce participation, from 20% to 24%. But since the end of the boom, the Kanak employment rate has dropped to 16% and is proportionately lower than in 1963. Such glaring inequalities provided fertile ground for the upsurge in Kanak cultural and political demands.

II. SINCE THE MATIGNON-OUDINOT ACCORDS (1988): NICKEL AS A POLITICAL TOOL TO PROMOTE REBALANCING

The 1970s and 1980s were marked by Kanak cultural assertion and demands for independence. The nickel crisis played into this climate of unrest due to a significant number of Kanak losing their jobs and returning to their native tribes. With the increasing radicalization of political rhetoric and positions, two factions emerged: the pro-independence separatists, with Jean-Marie Tjibaou as leader, and the anti-independence loyalists headed by Jacques Lafleur. The pro-independence leaders saw economic resources as one of the means towards achieving sovereignty. Prior to the Matignon-Oudinot Accords (1988), Jean-Marie Tjibaou

had begun drawing up an inventory of mineral ore reserves. Jacques Lafleur said that he had discussed mining with Jean-Marie Tjibaou because Tjibaou considered that the Kanak population should also hold a stake in the mining sector.

In 1990, with financial aid from the French government, SOFINOR[9] acquired Jacques Lafleur's mining company: SMSP (Société Minière du Sud Pacifique). At the time, the SMSP was operating as a "piecework company" for the SLN: it had no mining estate of its own and was an SLN subcontractor. The FLNKS asked André Dang, who had taken refuge in Australia in the wake of the 1980s "Events", to head up the newly purchased company.[10] Raphaël Pidjot, a North Province Assembly Councillor, would work with him as apprentice and second-in-command. The first key target set by the SMSP's new chiefs was to reach a production capacity which would lend credibility to the company's claim to the role of partner in the construction of a processing plant. This was achieved in 1995: the SMSP became the world's leading nickel ore exporter.

The SMSP repeatedly asked the SLN to build a plant in the North of New Caledonia. The SLN's refusal to do so obliged SMSP directors to seek an international partner. Concurrently, the FLNKS set the construction of an ore processing plant in the North Province as a condition for any further discussion regarding New Caledonia's institutional future[11]; this was known as the "mining prerequisite".

The "mining prerequisite" was activated in 1998: people were encouraged to demonstrate and set up barriers to block traffic on the main road in the North of the Main Island. The French government negotiated with the key players and the Bercy Accord was signed; as a result, the separatists, via the SMSP, took possession of the Koniambo massif[12] owned by the ERAMET-SLN group, subject to construction of a plant producing 60,000 metric tons a year in partnership with FALCONBRIDGE (Canada). The SMSP obtained a 51% majority stake in the joint venture company Koniambo Nickel SAS (KNS), with partner Falconbridge holding 49%. The deal was as follows:

- the SMSP contributed the massif (the value of which was assessed to allow its inclusion in the company's capital assets), its professional mining expertise and its local knowledge and reputation.
- Falconbridge contributed almost all project financing, its technical expertise and a new ore processing technique (Nickel Smelting Technology, NST).

The Noumea Accord was signed soon afterwards, in May 1998. Technical and financial feasibility studies were carried out in the early 2000s. Meanwhile, the Eramet group brought proceedings before the Paris courts to dispute the transfer of the Koniambo mining titles, and put itself forward as constructor of the North Plant. The French group's change in strategy ultimately got nowhere: the official transfer of mining titles took place in December 2005.

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9 Société de Financement et d'Investissement de la Province Nord – SOFINOR is a semi-public company controlled by the North Province.

10 Pitoiset & Wery, 2008.

11 Bouard *and al.*, 2016, *La Nouvelle-Calédonie face à son destin*, Karthala & IAC.

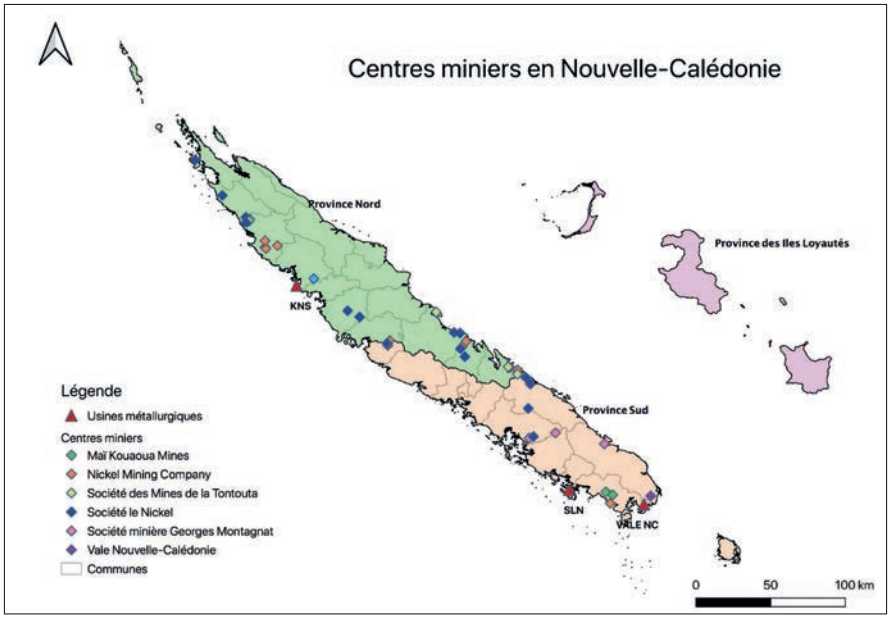
12 In exchange for another massif in Poum, in the North of New Caledonia.

Nonetheless, a financial reassessment of the KNS project was undertaken from 2006-2007 onwards, the costs proving much higher than expected. Despite the increase in costs, building work was commenced in late 2007 by Xstrata, the company which had taken over Falconbridge. The plant went into production in April 2013. Subsequently, in 2013-2014, Xstrata was taken over by Glencore.

Concurrently, a mineral ore processing project was under way in the South, initiated by INCO. The South Plant project was technically innovative, designed around a hydrometallurgical technology using a leaching process. In the late 1990s, a pilot plant proved the efficiency of Inco's innovatory technology, with full-scale implementation of the project following in the early 2000s.[13]

The background to this processing plant, based in Prony and Goro (the municipalities of Mont-Dore and Yaté respectively), was different: the South Province, headed at the time by Jacques Lafleur, supported the project but it was opposed by a significant proportion of the surrounding population. Customary and/or environmental groups organized numerous protests on the ground to try and halt the project. Inco's determination to proceed with construction and operation of the plant was ultimately unaffected by the various protests and legal proceedings.

Figure 1: Mining and ore processing centres in New Caledonia



Source: map drawn up by Elise Roussineau

13 Le Meur, 2015.

Construction of the Goro plant (in the South) began in the early 2000s, ahead of the Vavouto plant (in the North). The two projects are viewed somewhat differently by the New Caledonian public: there appears to be greater support for the North Plant, while the South Plant attracts greater opposition. This divergence in public attitude can be attributed to several factors:

- The necessity for rebalancing is recognized as regards the North Plant. Local people, particularly the Kanak community, were proactive, along with elected separatist representatives, in getting the plant built. Falconbridge therefore adopted the strategy of engaging with local communities right from the start of feasibility studies and construction work on the industrial complex. Conversely, the Goro plant was an industrial and corporate project from the outset, and involved no political goal deriving from the Accords and no active engagement with the local community. There was insufficient prior discussion and dialogue with the local community, as represented by the surrounding tribes, to ensure their involvement in project-related activities. As a result, a significant proportion of the local community took part in sometimes violent protests against the plant. Following a stand-off between protesters and Vale New Caledonia (Inco's successor), efforts were made to reach out to local people, particularly after a pact with the various communities living in the South was signed in 2008.[14] The local communities in the South now see the pact as an example of partnership with an industrial corporation. Community representatives (the Rheebu Nuu Committee) brought it before the United Nations, where it was recognized as a template for the sharing of economic benefits between a business corporation and the indigenous community. The Goro Plant began operations in 2009.

  In concrete terms, the disparities in terms of political aims and geographical positioning led to a contrast in the development of the Voh-Koné-Pouembout area (VKP) in the North and site of the Goro Plant in the South. In the North, the area was scheduled for significant development designed to facilitate provincial rebalancing. Infrastructure and facilities were therefore provided to encourage people to settle locally: housing estates, small business areas, roads, schools, a shopping centre, leisure hubs etc. In the case of Goro, where the aim was not the same, most employees returned to Greater Noumea after work and at the weekend. Goro brings to mind an isolated dormitory town.
- Furthermore, the process technology is different: the Vavouto plant uses a pyrometallurgy process while Goro uses a hydrometallurgy process. More specifically, in the first and more traditional process, nickel is recovered by smelting the ore in furnaces; environmental impacts have mostly been understood and managed since the 2000s. Meanwhile, in the hydrometallurgy process, nickel is recovered using acid leaching technology: it is a new process whose environmental impacts have not been fully identified. When the Goro project was mooted, mastery of the hydrometallurgy process itself was viewed as insufficiently proven worldwide (particularly since trials at Australian hydrometallurgical plants had been inconclusive). Despite New Caledonia's environmental standards for the supervision of this type of industrial activity being relatively high compared to those of other nickel-producing countries in the region, such as Indonesia and the Philippines, this failed to prevent acid leakages in 2009 and

14 Signature of the "Pact for the Sustainable Development of the Great South" in September 2008 by Vale New Caledonia and customary representatives of the Southern clans.

2014 resulting in significant environmental impacts, incidents which reinforced local dissatisfaction with Vale.

– Finally, a third factor should be noted: the capital structure of the companies set up to build and operate the two ore processing plants derived in part from differences in assessing the value of the corresponding mining massifs. In the case of the South Plant, the sum paid to acquire the massif was relatively small, something challenged by sections of both the political community and the public, given that a much higher price had been paid for the purchase of a comparable massif in Canada. New Caledonia's institutions (the South Province, the North Province and the Loyalty Islands Province via the Société de Participation Minière du Sud Calédonien - SPMSC) would later acquire a stake in the project's corporate sponsor, currently 5% of capital, following a switch in majority at the South Province Assembly. In the case of the Vavouto Plant, the North Province adopted the strategy of holding a majority stake in the capital of the joint venture backing the project. The SMSP acquired a 51% capital stake by setting the value of the massif at several billion francs XPF. Their then multinational partner Falconbridge acquired a 49% stake by contributing the funding needed for pre-construction studies. Falconbridge mainly made use of debt financing to fund construction. The message for the local community was that this put the North Province in a position to implement its "nickel doctrine": retaining control of the mineral resource and production facilities in order to maximize economic benefits for the population as a whole.[15]It should be noted that over and above these different approaches to the inception of the two projects, both industrial complexes have since made a significant contribution in terms of actively involving the local population in project-related activities. Firstly, there are the resulting job opportunities: the CEROM estimated the number of direct, indirect and induced jobs for the entire nickel sector at 17,000 in 2012, i.e. 20% of private sector jobs. Secondly, expenditure in New Caledonia worth several hundred billion XPF is generated by industrial subcontracting to local companies. The projects have also led to young New Caledonians being trained for plant-related jobs: training courses are held on site and also abroad, particularly training programs in Canada (Quebec). The industrial groups involved have committed to employing a very significant majority of local people at the plants (up to 95% of jobs during the operations phase).

As regards New Caledonia's long-established mining company SLN, the separatists were also proactive in negotiating with the French government for New Caledonia's institutions to hold a stake in SLN capital. The Société Territoriale Calédonienne de Participation Industrielle (STCPI) was therefore established on the following terms: 50% to Promosud (a semi-public investment company controlled by the Province Sud, and 50% to Nordil (representing the North and Loyalty Islands Provinces). However, dividends were distributed differently: 75% to Nordil and 25% to Promosud. In this way, the STCPI acquired a 34% stake in the SLN and a 4.1% stake in the Eramet group. From the separatist point of view, this equity participation was designed to increase the stake in SLN capital held by New Caledonia's communities from 34% to 50.01% by exchanging SLN mining titles with those held by the Eramet Group. However, this initiative did not meet with the approval of the loyalist camp, with the

15 Gorohouna, 2015, Demmer, 2017.

exception of Calédonie Ensemble[16], thus highlighting the thorny question of establishing a New Caledonian mining strategy endorsed by all.

III. THE ISSUE OF A SHARED NICKEL STRATEGY IN NEW CALEDONIA

Since the Matignon-Oudinot Accords (1988), there have been two major and divergent viewpoints as to nickel strategy in New Caledonia. On one side, the separatists are in favour of taking control of the mineral resource and acquiring a majority stake in key ore processing and production facilities. SOFINOR and SMSP are the main promoters of this strategy. On the other side, the loyalists are in favour of letting large corporate groups shoulder the entire risk of investment and the processing and production of mineral resources. This explains why the loyalist movements, except perhaps anti-independence political party Calédonie Ensemble, are opposed to any takeover by New Caledonia's institutions of the SLN and corporations like Vale NC as regards the South Plant.

A. The separatist nickel strategy

The separatists invested a great deal of effort in the development of the SMSP because they believed that "economic independence"[17] was a necessary first step towards political independence. The elected representatives supporting this approach, particularly the members of the Union Calédonienne, have tirelessly defended this goal to their activists - the various motions proposed by the latter were published in *L'avenir calédonien* review. This is also one of the reasons why the loyalist camp poured so much scorn on the North Plant in the early years of the project. In fact, their underlying fear was that the SMSP strategy could prove successful and convince people of the "economic feasibility" of independence.

Separatist economic thinking saw community ownership of the company undertaking mining and ore processing projects as crucial. The core concern was to transform natural resources into a collective asset bringing benefits for all (Pidjot, 2000). This principle, inspired by Kanak values and socialist political theories, would set a limit on private initiative and consequently the self-enrichment of a few families. It could lead to private initiatives being restricted to other sectors whereas the entire community could share in the financial benefits reaped from this strategic sector.[18] The Union Calédonienne, one of the main parties making up the FLNKS, stated clearly that one of its aims was to "ensure that mining operations benefit the whole community and not a few individuals" (Jacques Lafleur, Pentecost, Ballande *and al.*) (*L'avenir calédonien*, 1990, p. 2).

Adopting this position in line with anti-liberalist economic philosophy would also help to promote rebalancing since, over and above on-site jobs, SMSP profits and dividends could be used to develop other activities benefiting a great many local citizens. SOFINOR, parent company of the SMSP, was thus set the goal of reaping the financial benefits derived from a

16 Calédonie Ensemble is a political party opposed to independence but which has adopted a more centrist position on the political chessboard.

17 Grochain, 2013, Gorohouna, 2015.

18 Gorohouna, 2015, Demmer, 2017.

non-renewable activity, the nickel industry, to create new, renewable business opportunities. The business activities under development, such as tourism and aquaculture, were often labour-intensive and created salaried jobs. The fact that the SMSP was a local community-owned company made the policy possible.

In practice, the acquisition of a majority holding in the SMSP was also a strong signal of support for the local community. Concurrently, it meant that influence could be brought to bear on the project's industrial partner to promote local economic spin-offs. The flip side of the coin was that some people might consider reaping the benefits of economic opportunities generated by construction of the Vavouto industrial complex as their due.

This majority stake in capital assets was extended to offshore plants: a partnership between SMSP and POSCO was concluded in 2005 with a view to acquiring a processing plant in South Korea. The SMSP holds a majority stake (51%) in this joint venture. Another project is underway in China based on the same principle: a 51% stake for the New Caledonian partner. Loyalists oppose this strategy because there are also drawbacks to New Caledonian institutions holding majority stakes in mining projects; these are addressed in the following section.

B. The loyalist strategy

The public sector has a significant weight in New Caledonia and invests heavily in the development of various sectors such as the tourist industry, including investment in communities and areas under loyalist leadership like the South Province. Nevertheless, there is no lack of private enterprise in sectors such as the nickel industry, and there is a substantial private enterprise presence in both the local and international marketplaces. As a result, there is a lack of loyalist support for serious public sector intervention in the nickel industry due to their belief that investment should be left to the private sector. Their views are upheld by several expert studies commissioned by the French government[19], including those undertaken by Ms. Duthilleul and Mr. Colin.[20]

The loyalists also have concerns regarding the amount of debt generated by SMSP investment commitments, and the repercussions thereof on the finances of the North Province as community shareholder. In 2019, Koniambo Nickel (KNS) liabilities were in excess of 1,000 billion XPF, a sum equivalent to New Caledonia's Gross Domestic Product (GDP) for one year (1,028 billion XPF in 2018). In the main, this sum is owed by KNS to its partner Glencore, which has itself secured financing from international funding partners. The SMSP is not in a position to obtain loans for such a large amount from international banks. Moreover, even though the SMSP itself is not heavily indebted (liabilities of around 20 billion XPF in 2020), the KNS joint venture would have to repay the 1,000 billion XPF debt as a priority.

Consequently, elected officials espousing this political viewpoint would prefer multinational companies to take the risk of borrowing such large sums of money. If operations turn out unprofitable and the company is shut down, any repayment of debt incurred would not be

19 Bouard *and al.*, 2016.

20 Reports: Duthilleul, 2012, Colin, 2016.

the concern of local businesses or public community shareholders. A scenario not to be ruled out in the case of projects involving substantial innovation in terms of industrial technology and persistent uncertainty relating to nickel market price fluctuations. If a project cannot get off the ground due to technical issues, the risks of abandoning the project may become financially unsustainable for a local mining company. The issue of debt made a reappearance in 2020 when multinational group Vale announced that they were withdrawing after a decade of production losses at the South Plant. In the North, technical problems forced Glencore and its local partner SMSP to temporarily shut down one of the two furnaces at the pyrometallurgy processing plant.

Another factor is technical in nature: the high-tech and highly-skilled human resources required for a major ore processing project like the KNS or South Korean plants are not all available locally. The expert technical engineers working for multinational groups such as Glencore, Vale and Eramet are the people who undertake project feasibility studies and make on-site technological and financial decisions for the various projects.

CONCLUSION

Insofar as the nickel sector represents New Caledonia's only major industry, it remains a sensitive issue; the economic and political stakes involved are therefore high. Following the Matignon-Oudinot and Noumea Accords, the nickel sector was central to the issue of achieving geographical and ethnic rebalancing in favour of the indigenous community.

Recent years have seen two opposing and not easily reconciled nickel strategies facing off against a background of two political trends deeply opposed as to the issue and concept of independence. However, since the early 2000s, several key players in the sector have been attempting to detach mining strategies from the political issue. Some experts argue that New Caledonia should adopt a unified position on nickel to maximize its chances of playing a role on the international stage. If New Caledonia did manage to adopt and implement a single nickel strategy, it could identify synergies between various players on the basis of the various types of mineral ores to be processed locally or outside the country. Notwithstanding, although this may appear a coherent approach, the basic political philosophies for or against independence are such that a shared nickel strategy is currently not on the cards.

Other issues, including the environment, are also critical and include direct environmental impacts on the mining massifs and the environmental costs of generating energy for the plants. A new power plant is scheduled to be built in Noumea to supply energy to the SLN plant, the intent being to avoid using coal; the Vavouto and Goro plants are currently both powered by coal-fired energy. In recent years, there have been other projects to build plants in the South (around Prony). The issue is relevant for a small country which already has three local processing plants, plus one in Korea and, soon perhaps, one in China. New Caledonia has one of the highest greenhouse gas emissions per capita footprints in the world. There is the issue of whether or not a small archipelago should stop short at three ore processing plants.

Another issue which has been regularly debated for years is that of nickel sector taxation. A levy or tax on nickel has been in the pipeline for several years. Implementing such a tax would however be problematic because New Caledonia has established a tax system

favourable[21] to ore processing businesses, which requires that no new taxes be applied to this sector. A condition which currently impedes introduction of a new levy. Nonetheless, implementation of such a levy would enable setting up a fund for future generations, or a sovereign wealth fund, serving to promote new, more environmentally-friendly business activities.

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PUBLIC FINANCES AND TAXATION IN NEW CALEDONIA: SITUATION AND OUTLOOK

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Public finances and taxation in New Caledonia, two inseparable aspects which, for ease of reference, we will treat as two sides of the same "financial" coin, should be considered as intrinsic to the constitutional and institutional specificities of this French Pacific Collectivity. The end result of a tumultuous history, dating back to French annexation in 1853, reflected through changes in statutes denoting a greater or lesser degree of differentiation compared to mainland France, New Caledonia's specificity would become more marked in the years following the Matignon-Oudinot Accords (1988) and Nouméa Accord (1998).[1] Seeking to implement a consensual solution as a way out of past turmoil, these Accords set New Caledonia, which had become a *sui generis* collectivity, on a path towards greater autonomy vis-à-vis France; in other words, emancipation which could pave the way to independence via several referendums. Although independence was rejected in the first and second referendums, held in November 2018 (56,7%) and October 2020 (53,3%), a third vote can be scheduled at a later date (theoretically late 2022).

The process initiated in 1988 and developed in 1998 puts New Caledonia in a unique position within the French Republic.[2] Indeed, keeping our focus on budgetary and fiscal aspects, while the process has expanded New Caledonia's already acknowledged autonomy, French financial support remains key. This highlights the very essence of New Caledonia's specificity in this area, which feeds into, on the one hand, its situation and financial balances (I) and, on the other hand, new routes opening up in terms of the country's future and the significant financial aspect of this future (II).

I. PUBLIC FINANCES AND TAXATION IN NEW CALEDONIA: SITUATION

As mentioned in the introduction, an appreciation of this position can be reached, first, by reviewing the evidence of New Caledonia's robust financial autonomy (1), something which is, however, far from being synonymous with a limited role played by the French government (2).

1 Fully detailed in the Organic Law No. 99-209 relating to New Caledonia dated 19 March 1999.

2 This uniqueness does, however, also apply to a certain degree to other territories within the French Republic, namely the Overseas Collectivities (COM) under Article 74 of the French Constitution of 1958, which, without moving as far in the direction of independence as New Caledonia, are approaching it in various areas, first and foremost, budgetary and fiscal issues. This is especially true in the case of French Polynesia, which has a population similar to that of New Caledonia (about 275,000 inhabitants).

A. New Caledonia's substantial financial autonomy

The components of this robust autonomy will be outlined in theoretical terms (a) and through data (b). It will then be time to review New Caledonia's strengths and weaknesses in the area under study (c).

1. Autonomy in legal instruments

New Caledonia's financial autonomy, established prior to developments in the 1980s and 1990s, expanded as a result of such developments in two key areas, namely revenue, particularly fiscal revenue, and also expenditure.

Firstly, in terms of revenue, a reading of article 22 of the Organic Law of March 1999 makes it clear that the territory's fiscal system is determined by its deliberative assembly, the Congress of New Caledonia[3]. In other words, with very limited exceptions[4], the French public authorities and, in particular, the Parliament in Paris, are not empowered to regulate New Caledonia's mandatory levies, and therefore its taxes and also its social security contributions.[5] Over and above issues of jurisdiction, the effects of this very broad degree of fiscal autonomy need to be fully understood.[6] They can be summed up by stating that levies collected in New Caledonia remain, as a matter of principle, in New Caledonia[7] and so are not returned to France to be spent or redistributed at some later date. This is a very unusual characteristic given that, within a state, whether unitary or federal, a variable but always significant share of revenue collected from taxpayers usually goes to finance the national budget and not simply to finance the local budget.

Furthermore, to cite another essential dimension of New Caledonia's financial autonomy, the territory has extensive public spending powers because it has responsibility, through its different constituent parts (New Caledonia, the three provinces and the thirty-three municipalities), for most public policies. A reading of articles 20 and following of the above-mentioned Organic Law of 1999 makes it clear that, apart from sovereign functions[8], New Caledonia's entities are those empowered to act. This includes social welfare and education (primary and secondary), both of which require significant expenditure.

In conclusion, as can be seen, New Caledonia possesses a very high degree of financial autonomy and this is confirmed in practice.

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3 Which can pass "country laws". Congress must still comply with French constitutional standards.

4 This principally concerns airport tax.

5 The French distinction between taxes and social security contributions (the latter financing social welfare) is basically just technical.

6 Placing it on the outer frontier of fiscal sovereignty.

7 Apart from the exception mentioned in footnote 4, which remains anecdotal, unlike some social security contributions (pensions) which benefit the French system and then, in part, return to the Pacific in the form of pensions. See above.

8 We can add, for instance, higher education.

2. Autonomy in practice

The most recent available figures[9] show that New Caledonian government revenues (excluding funds transferred by the French government) total almost 35% of local GDP[10], i.e. 350 billion Pacific Francs (XPF) and almost 3 billion euros.[11] Taxes (around XPF190 billion) and social security contributions (less than 130 billion) constitute by far the main sources.

As regards revenue, although New Caledonia has autonomy in fiscal terms, local tax regulations were originally modelled on the French tax system, before mutating to reflect local characteristics (historic significance of taxes on imports), to the extent of becoming really quite unique (substantial levies on mining, personal income tax introduced only in the early 1980s). Another unique feature derives from the Organic Law of 1999, which established a specific system under which New Caledonia as a whole receives all revenue streams (particularly tax) and is then responsible for distributing revenue amongst the territory's various constituent parts (the three provinces and the municipalities) based on allocation mechanisms determined by the above-mentioned Law. These mechanisms, designed to promote a rebalancing in favour of the two less wealthy provinces (where Kanak are in the majority), have been frozen since 1999. They are being challenged by the South Province, where the majority of the population is against independence, as demographic factors gradually lead to increased expenditure to the detriment of the South Province.[12]

Turning now to total public spending[13], *i.e.* local spending by all government agencies: this comes to a little over XPF500 billion (more than €4 billion) or around 50% of local GDP. Most of this spending goes towards operating expenses, and particularly staff costs, which are inflated by the indexing system. This system means that public employees working in New Caledonia, whether employed by the French government or by the New Caledonian government, receive an increased index-linked salary (at least + 73%). Originally linked to the constraints of having to work a long way from France, and to more precarious living conditions, some people now call such benefits into question as being outdated and as contributing to a rise in the cost of living, not to mention acting as a break on local economic competitiveness.

These selected figures serve to demonstrate New Caledonia's financial autonomy, while also leading directly to an issue symptomatic of New Caledonia's singular status: how is the difference between the above-mentioned income (XPF350 billion) and spending (XPF500 billion) to be financed? In these circumstances, the classic response in public finances terms would be to resort to borrowing. However, New Caledonia presents another

9 See the IEOM annual report for 2018, published in 2019 (www.ieom.fr), or the data available at www.isee.nc (under "public finances").The figures often cover the 2014-2015 period.

10 In 2017, New Caledonia's GDP was just in excess of XPF1,000 billion, i.e. €8,3 billion.

11 €1 is worth almost XPF120.

12 As a result, the South Province, location of the capital Nouméa and home to around 75% of New Caledonia's overall population, receives "only" 50% of the operating funds handed out to the three provinces by New Caledonia as a national entity.

13 Thus including French government spending, although the precise attribution of some spending is sometimes complex. See, for example, notes given below regarding teachers' salaries (mainly secondary school teachers).

option, involving the role of the French government. Before looking at this, we should say a few words about the strengths and weaknesses of financial autonomy on the ground.

3. Strengths and weaknesses of financial autonomy

From the 1990s to the early 2010s, New Caledonia experienced a period of strong economic growth which provided the means to finance, to a large extent, the continuing rise in public spending. However, the situation has changed, and growing tensions have been exposed, as a result of the slowdown seen in recent years, marked particularly by the cessation of nickel-related investments. Suffice it to point to current problems in funding welfare spending, not to mention the impacts of Covid 19. These imbalances have been intensified by some limitations in New Caledonia's financial framework and, in particular, by the large number of public stakeholders (territory, provinces, municipalities, and also public institutions and semi-public entities). Recently, this situation has justified the use of cost-saving measures and reforms to boost efficiency in both public spending and the tax system. On this last aspect, we can cite the recent modernization of taxation on imports and consumption, via implementation of General Consumption Tax (Taxe générale sur la consommation – TGC) based on a value-added tax model.

These weaknesses can, however, be mitigated by pointing to the country's strengths, including a significant fiscal potential due to the fact that mandatory levies as a whole remain in New Caledonia (35% of GDP) – 10% less than in France (around 45%), while levels of public spending are very similar (over 50% of GDP). This is made possible by French government support.

B. The key financial role of the French government

This role can be viewed as two cumulative functions: first and foremost, directly through money disbursed in New Caledonia (1a), and also indirectly through the French government providing a financial framework facilitating the achievement of New Caledonia's budget balances (b).

a. French government funding as direct support

In 2018, French government spending in New Caledonia totalled over 150 billion Pacific francs (XPF), i.e. €1.3 billion and 15% of local GDP[14], a figure which has remained stable over recent years[15]. This sum includes expenditure such as grants to local authorities and development contracts, but consists mainly (over half of the total) of indexed salaries paid by the French government to public employees and personnel on the ground in New Caledonia. Although the individuals concerned are, logically, employed within the context of functions still under French government jurisdiction (army, legal system, etc.), a significant portion, almost XPF50 billion – €400 million – basically concerns French government payment of the

14 In relation to New Caledonia's relatively small population, totalling just over 270,000 at the last census in 2019.

15 The figure has increased since the Nouméa Accord in 1998, but decreased as a percentage of New Caledonia's GDP, given that this too has increased since 1998.

salaries of secondary school teachers (public and private)[16], something already within the jurisdiction of New Caledonia.

Two opposing approaches are needed for a more detailed analysis of the above figures. Firstly, they are direct expenditures; they therefore represent a minimum if their *indirect* dimension is taken into account. In point of fact, they do not include national tax exemption measures (tens of millions of euros a year, reducing French government revenues by the same amount), and similarly, they do not take into account funding in the form of loans and bank guarantees[17]. Finally, some people further maintain that the French government also provides aid by enabling New Caledonia to finance a portion of its balance-of-payments deficit thanks to the Pacific franc being pegged to the Euro. Secondly and conversely, the fact that these are *gross* figures should be taken into consideration given that New Caledonia contributes to French public finances.[18] Primarily, this is in the form of social security contributions, particularly towards the pension scheme, and not taxes.[19] This broadly explains why, in assessing *net* public payments, some economists cite a figure of XPF120 billion (€1 billion and 12% of New Caledonia's GDP) and not a figure of XPF150 billion.

b. The financial framework set in place by the French government as indirect support

French government support may mainly take the form of the disbursements mentioned above, but it is important to note that it does not stop there. In fact, the French government provides a second kind of support, in two related ways.

In the first place, by endorsing a New Caledonian accounting and budgetary framework very similar to that applying to local and regional authorities in France. The former was recently reformed by the Decree of 7 November 2012. As regards the second, on the one hand, New Caledonia's municipal authorities comply with budget provisions applicable to their French counterparts and, on the other hand, the Provinces and New Caledonia as a whole comply with budget provisions applicable to France's departments. Overall, these provisions keep these authorities in line by imposing strict rules as to accounting methods and the use of public money. Their primary function is to ensure that accounts are both accurate and transparent, and that public spending is balanced by prohibiting excessive deficits. Finally, it should be noted that the New Caledonian authorities, like all French authorities, can call on the services of the Directorate (General) of Public Finances at the Ministry of Finance in Paris. The Directorate plays an essential role in overseeing local authority spending and the collection of territorial taxes and customs duties.

Furthermore and entirely in keeping, such fixed accounting and budgetary regulations provide a basis for checks and inspections, mainly carried out by the Territorial Chamber

16 Including teachers and administrative staff working in private primary schools.

17 In particular, *via* the French Development Agency (Agence française de développement – AFD), as in the case of current Covid 19-related impacts (a loan of almost XPF30 billion).

18 It also contributes to France's economy through New Caledonian money invested in France (property, dividends, etc.), but this concerns private and not public money.

19 See footnote 7 above.

of Accounts, often at the request of the French High Commissioner, given that these two Nouméa-based institutions fall within French government jurisdiction.[20]

In conclusion, New Caledonia may currently be facing growing financial pressures, especially regarding its social accounts, but its major balances remain fairly healthy and stable, particularly viewed in terms of deficits and public debt, which remain limited.[21] That said, this conclusion, which in itself is open to debate, is above all only valid in current circumstances, where the French government plays a role impossible to disregard. And this role lies at the very heart of the referendum process which began in late 2018, the outcome of which remains undetermined. This outcome is central to New Caledonia's financial future, regardless of the path forward decided by public vote.

II. THE FUTURE OF PUBLIC FINANCES AND TAXATION IN NEW CALEDONIA

The current context in New Caledonia, characterized by the scheduling of various referendums, reflects the options open to citizens entitled to vote: in summary, to become independent (1) or to remain within the French Republic (2). In both cases, the financial consequences are likely to be significant.

A. The avenue(s) to independence

Independence, which would entail the rules of international law being applied to relations between France and New Caledonia, should be envisaged as following two possible models, namely "complete" independence (a) or "partial" independence (b).

1. "Complete" independence

In principle, the simplest solution in scientific terms would be "complete" independence since the initial reaction is to argue that the accompanying separation would lead to a sudden suspension of French government transfers. Taking a slightly more rational view, it appears that this suspension would be neither immediate nor total. Indeed, in such instances, the historic power often continues to provide some financial aid to support the new nation state. However, two factors must be taken into account. Firstly, such post-independence aid cannot equal, or even come close to, the volume of funds transferred within one and the same nation; thereafter and going forwards, such payments are destined to decrease over time. These factors are both logical because, applied to New Caledonia, they entail exchanging France's national (overseas) legal system for that of International Law (cooperation between independent countries).

Nevertheless, and this is the usual argument advanced in response, the reduction in French government funding could by offset by international aid. Offering a comprehensive and consistent overview on international aid is not easy because such aid is received by many

20 The Territorial Chamber is independent, in the same way as any other court of justice.

21 Debt for all New Caledonia's public entities has doubled in five years to reach 16% of local GDP (end of 2018) However, it appears greater if debt for public institutions and semi-public companies is included.

countries in very different situations. We will simply point out that, as far as small South Pacific island nations are concerned, there are nearby examples of countries receiving substantial financial support in terms of GDP. This is, for example, the case of Vanuatu, which receives aid totalling almost 20% of GDP.[22] However, we should immediately add that other islands receive less aid and that any comparison could appear problematic insofar as New Caledonia is wealthy - indeed ten times wealthier than Vanuatu in GDP terms. Can we hope for significant development aid when New Caledonia already possesses a substantial level of wealth? A little doubtful, perhaps.[23]

In any case, many local stakeholders advocating independence do not view this in terms of an absolute. In other words, many are assuming the continuance of legal and therefore financial ties with France[24], but as part of an agreement under international law since it would be between two sovereign nations. This is where the solution of "independence in association" between France and a newly-independent New Caledonia comes in.

2. "Partial" independence: association (or partnership)

This represents a decolonization route midway between complete independence and integration within an existing sovereign nation, enabling a formerly colonized territory to assert its sovereignty whilst maintaining close ties with the former colonizer. The system is based on mutual consent and constitutes a sort of independence "light". There are examples of this in the South Pacific[25], including the association between New Zealand and the Cook Islands.[26]

Upon closer inspection[27] of the most comparable cases[28], financial aid to the associated territory is much less than that currently provided to New Caledonia by the French government.[29] This finding is logical because, in these partnership situations, the principles of international law take precedence.

Of course, a possible association with France would open up new funding possibilities, not to mention potential cooperative arrangements with other nations. While, for example, diplomatic or educational support and funding would be conceivable, the first thing that springs to mind is leasing a military base for use by the French army (or other armies), along the lines of Djibouti. More broadly, military agreements may involve the nation leasing

22 See: OECD statistics ("Development Finance Data"), representing a (high) average over the past five years.

23 Or in return for material concessions (e.g. mining or maritime operations rights).

24 It being understood that a tie of this kind could be envisaged with one (or more?) other nation.

25 Between the United States and the Federated States of Micronesia (FSM), Palau and the Marshall Islands.

26 A. Quentin-Baxter, "The New Zealand Model of Free Association: What Does It Mean for New Zealand?", *Victoria University of Wellington Law Review*, no. 39, 2008, p. 607-634.

27 M. Tirard, "L'hypothèse de la Nouvelle-Calédonie comme État associé à la France. Perspectives comparées à partir des finances publiques", *Revue française de finances publiques*, no. 143, 2018, p. 151-168.

28 Comparisons are difficult given the specific features of each country's situation, in particular New Caledonia's wealth (see below: Note 30). That said, the Cook Islands appear to provide a more relevant example than the Federated States of Micronesia (or Palau and the Marshall Islands). In fact, the principal aim of the FSM's association with the United States is to secure an American military presence on the doorstep of Asia (and China). A seemingly highly unequal arrangement.

29 Currently around 5% of Cook Islands GDP (see Note 27), compared with around 15% in New Caledonia (see above).

out the base requesting assistance from troops stationed there. In this way, New Caledonia could possess and finance its own army, but this army would be limited (if it existed at all); relying on a partner (France?) with a military presence on New Caledonian territory would remain a possibility if the need arose. Finally, another plausible option could be training for New Caledonian soldiers (and police/gendarmes) provided by a foreign army (French?). This would imply partial funding by the latter and would offer the new independent state a way of making savings. While it is difficult to provide accurate figures, it would seem possible to maintain that the partnership(s) could be worth (at best?) tens of billions of Pacific francs (i.e. several hundred million euros) to an independent New Caledonia. The fact remains that this would bring in much less than the amounts received under current French funding; so a potential association agreement, as beneficial as it might theoretically appear, could not be synonymous with a financial *status quo* disguised by a legal revamp.

If independence in association (with France) were to carry the day and *a fortiori* if total emancipation were to be the preferred option, logic would dictate that relations between the nations concerned would need to attain a truly international dimension. In other words, French financial aid would vary in relation to the close nature of the relationship and the characteristics of a newly independent New Caledonia, but there should certainly be a decrease in aid compared to current circumstances, unless the aim was to (re)instate dependency. This does not rule out accession to sovereignty but requires more in-depth consideration of the financial aspects of sovereignty. There is even less reason to rule out sovereignty if greater autonomy within the French Republic were to endure; would it even be possible to conserve the current financial *status quo*? Not an option either, in principle, at least in legal terms.

B. The option of remaining within the French Republic

By taking as a starting point the situation we have today (a), we can establish a clearer picture of the financial implications involved going forward (b).

1. The starting point for reflection: New Caledonia's current financial specificity

Should New Caledonia decide to remain "within" France when all referendums have been held, the applicable 1998 Nouméa Accord provides in Article 5 that a period of negotiations shall commence. We should not forget that this Accord remains in application for approximately twenty years (twenty + the period required to hold referendums). Thereafter it will lapse, subject to the provision set out in the Accord, aimed at preventing any risk of falling into uncharted territory, which states that its main precepts are constitutionally irreversible and will therefore remain in force.

Does this provision concern the financial aspects? While, from a legal standpoint, a negative response would appear the most likely, we should nevertheless add that any backwards move as regards the territory's autonomy and, in particular, the financial aspect thereof, would be politically impossible, at least to any significant extent. That said, even in the event of a possible reshuffling of cards during subsequent negotiations, in ways that no-one but a soothsayer could possibly predict with any accuracy, the fact remains that the system which has now been in place for over twenty years should remain the starting point for all debate and discussion. So it appears logical to take this premise and the balances it entails as a basis for rational reflection on the assumption advanced here of New Caledonia remaining within the

French Republic. This situation, as outlined above, can be summarized as follows: a growing financial autonomy for New Caledonia accompanied by substantial French government financial support. Can this be sustained over time?

2. Possible ways forward

Any response to the above question requires a consideration of views from both sides of the discussion table.

Viewed from Nouméa, the response would tend to be positive, although some people believe that, by handing over so much money, France is not encouraging New Caledonia's effective emancipation. Regardless of such interesting critical comments, it is undeniable that the present financial system means that New Caledonia receives significant benefits from France (French financial backing) without the drawbacks (a significant portion of taxes returning to France as part of a reciprocal redistribution system, and also public policies - social, economic, educational, etc. - introduced by the French national legislature in Paris and not at local level in Nouméa). So one could legitimately assume that the desire in Nouméa would be to preserve, if not in identical form then at least in substance, this favourable legal and financial arrangement.

On the other hand, viewed from Paris, the current deck of cards, resting on financial imbalances, needs reshuffling. Indeed, how can we go on explaining that French taxpayers finance, almost unilaterally, their New Caledonia counterparts? How can we defend such a situation when average wealth in New Caledonia is similar to that in France[30], although inequalities in New Caledonia are far more pronounced, inequalities which the French government lacks the powers to redress? Especially, how can we justify this state of affairs when the current system was designed, within the framework set in 1998, to take us up to the referendums which, based on our present assumption, will not have resulted in independence ?[31]

Such concerns and questions pertain to the "New Caledonian equation" born of the Nouméa Accord, i.e. a territory commanding substantial financial autonomy whilst benefiting from French financial support. They point up the need for the reshuffling of cards which should take place in a post-referendum context favourable to remaining within France. In these circumstances, if (financial) autonomy were to be preserved – the most likely outcome – and without necessarily remodeling the current framework from the bottom up, it should follow that France's role and therefore spending should be scaled down[32], with New Caledonia responsible for adopting financial reforms to offset any shortfall. Such reforms would adhere to an alternative strategy familiar worldwide, namely, unless public debt is to rise, seeking a middle course between raising revenues, particularly tax revenues, and/or reducing public spending. However, and this is a factor not to be overlooked, *political* forces could oppose such rebalancing, entirely logical from a *legal* standpoint. Indeed, the

30 Per capita GDP is about €30,000, namely 10% lower than France. So New Caledonia is, on average, one of the richest French overseas territories.

31 Obviously, if the New Caledonians say no to independence, even via three referendums, this does not mean that full sovereignty is forever ruled out. Everything would depend on the outcome of a new negotiation process.

32 First and foremost, spending on secondary education, an area which already falls within New Caledonia's jurisdiction but is still financed by France (see above).

solutions summarized here would most certainly be painful for New Caledonian taxpayers, who are also voters...

In conclusion, whichever path forwards is chosen by the New Caledonian people as a result of the referendums, it is bound to entail significant financial turmoil. It is therefore regrettable that these aspects are dealt with too rapidly and at times too subjectively in debates and discussions. On the contrary, it is vital to adopt an educational approach and to inform citizens about the financial repercussions of their vote(s) in the upcoming referendum(s). While New Caledonia's financial future is clearly indissociable from its yet unwritten institutional future, it is only by transcending a purely technical view of public finances and taxation that we will fully understand that these factors form the basis for an authentic societal model.

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PART VII

INTERNATIONAL ENVIRONMENT

NEW CALEDONIA'S INTEGRATION INTO ITS REGIONAL ENVIRONMENT

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New Caledonia's emergence as a player on the regional stage is a slow process shaped not only by the archipelago's degree of autonomy but also by the conflicting forces at play in the country. Prior to 1998, New Caledonia's outlook was polarized (Australia, New Zealand, Vanuatu) and sectoral (tourism, retail, trade, medical evacuations) or political (seeking support for the separatist cause) in character, with areas of interest differing in accordance with sensibilities, interests and affinities. The French government had sole jurisdiction over external relations and foreign trade. Local authorities had already played a role in negotiating some agreements, but institutional issues were the primary concern. The Noumea Accord offered new possibilities and, with the domestic climate considerably more serene, New Caledonia officially opened up to its surrounding region.

I. UP TO 1998: REGIONAL INTEGRATION GOVERNED BY TIES TO FRANCE

A. French aspirations, the basis for integration initiatives

In the wake of World War II, France saw itself as a power in the Pacific Region and planned to extend French influence in the area alongside the United States, Australia, and New Zealand. This aspiration led France to take an active role in establishing the South Pacific Commission (SPC) in 1947; the SPC became the Secretariat of the Pacific Community in 1997. The aim of this regional organization was to promote stability in a region devastated by the War in the Pacific, to provide funding and support to the peoples of Oceania and to facilitate administration of the trust territories. Initially restricted to nation states with strategic interests and territories in the region: Australia, New Zealand, France, the Netherlands, the United Kingdom and the United States of America, the SPC nevertheless represented a significant lever for New Caledonia's integration in its regional environment. The South Pacific Commission became the focus for meetings between Oceanian administrators and was active in developing initiatives designed to encourage a sense of regional identity. In 1959, a decision to launch the Pacific Games was taken, with the first games held in Suva in 1963. These sports events provided New Caledonia with opportunities for meetings and discussions and for enhancing its image; indeed, New Caledonia took first place at 13 of the 16 Pacific Games held between 1963 and 2019. As from 1983, when the 22 island nations and territories of Oceania obtained recognition as voting members, New Caledonia became a full member of the SPC and host country for the SPC headquarters.

Nevertheless, throughout this period New Caledonia saw itself as the "France of the Southern Hemisphere", *La France australe*, the title given to the daily newspaper published from 1889 to 1979, and still looked towards mainland France. The country lived in an atmosphere of regional isolation sustained by France, which retained control over external relations,

relations which acquired strategic importance after the establishment of the Nuclear Test Centre[1] in French Polynesia and De Gaulle's decision to make France a nuclear power. At the time, the New Caledonian population's perception of the region was skewed towards Australia, which opened a consulate general in Noumea in 1940, and New Zealand, two countries with a European cultural tradition, both allies during the War in the Pacific and ideal tourist destinations. As far as other Pacific island nations were concerned, Vanuatu was the only exception. New Caledonia maintained close relations with the neighbouring Franco-British Condominium, with a portion of the French-speaking population taking refuge in New Caledonia when Vanuatu achieved independence in 1980.

B. Aspirations towards independence, enthusiasm mingled with unease regarding the issue of regional integration

Historically, the emergence of Oceanian regionalism, underscored by the establishment of the Pacific Islands Forum (PIF) in 1971, and following the accession to independence of most Pacific territories (Samoa 1962, Nauru 1968, Tonga and Fiji 1970, Papua New Guinea 1975, the Solomon Islands and Tuvalu 1978, Kiribati, the Marshall Islands and the Federated States of Micronesia 1979) coincided with the assertion of demands for independence in New Caledonia (1975).

Initiatives by the separatist Front Indépendantiste to seek support lending its conflict with France an international dimension would serve as the basis for the first ties between New Caledonia and the independent island nations of Oceania. The Pacific Islands Forum opened its doors to separatist leaders in 1979; they also obtained support from the Solomon Islands, Papua New Guinea and Western Samoa in adopting a petition aimed at getting the Forum to introduce a United Nations resolution to place New Caledonia back on the list of non-self-governing territories. In 1981, the Forum decided to delegate a mission to Paris to discuss New Caledonia's political evolution; it was led by the Prime Minister of Vanuatu and comprised Fiji and Tonga. This excellently orchestrated strategy was crowned with success since, over time, the Forum gradually adopted a pro-Kanak and pro-separatist position. And in 1986, the Pacific Islands Forum declared its official and unanimous support for New Caledonia's right to self-determination, and worked actively to get New Caledonia put back on the list of non-self-governing territories. The resolution adopted by the United Nations General Assembly on 5 December of the same year affirms "the inalienable right of the people of New Caledonia to self-determination and independence". Australia's commitment in support of the separatists resulted in the Quai d'Orsay declaring the Consul General of Australia in Noumea *persona non grata* in January 1987.

Concurrently, the Melanesian Spearhead Group (Groupe Fer de Lance Mélanésien – GFLM) was set up by Vanuatu, Papua New Guinea and the Solomon Islands to support the separatist cause in New Caledonia.[2] The FLNKS was later welcomed as a member of the group, which Fiji had also joined.

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1 CEP – Centre d'Expérimentation du Pacifique, Pacific Nuclear Test Centre, established in 1964 in Papeete and comprising the Moruroa and Fangataufa test sites.

2 Regarding the role played by the Pacific Islands Forum and the Melanesian Spearhead Group, see N. Mrgudovic, "Nouvelle-Calédonie ou Kanaky : perceptions régionales du 'Caillou'", *Journal de la Société des Océanistes*, 117/2003, p. 281-297.

The regional hostility perceived by loyalist politicians, who held a majority position in New Caledonia's institutions, discouraged both pro-regional initiatives and any idea that New Caledonia could use a possible autonomous status to forge political ties with neighbouring nations. Moreover, France distrusted external influences and did nothing to encourage the development of ties between New Caledonia and its Pacific neighbours.

The Matignon Accords of 26 June 1988 heralded the return of peace after a grim period of violence bordering on civil war and ushered in a new era – "regional partnership became a possibility".[3] The 1991 election of Jacques Iekawe, the country's first Kanak prefect, as Director General of the SPC, was an affirmation of New Caledonia's recognition by the nations of the Pacific Region. And yet New Caledonia's position within the region was addressed neither by the Accords, nor by Law no. 88-1028 of 9 November 1988 relating to the status of New Caledonia; external relations remained very much a sovereign power wielded exclusively by the French government. Notwithstanding, French government policy was to encourage the regional integration of French Overseas Collectivities[4] *(geographically-defined authorities or governing bodies)* and, in New Caledonia, this led to frequent visits by officials from other countries and to region-wide visits by New Caledonian elected representatives.

C. The Noumea Accord and international autonomy

By providing that "the sharing of powers between the French government and New Caledonia will signify shared sovereignty", and by placing international and regional relations in the category of powers shared by the French government and New Caledonia, the preamble to the Noumea Accord marks a decisive turning point. The legal framework for New Caledonia's jurisdiction in the area of external relations is defined by the Organic Law of 19 March 1999, Section 2, entitled "New Caledonia's external relations and the association of New Caledonia with French government powers", articles 28 to 33.[5] The transfer of jurisdiction over regional cooperation came into effect on 1 January 2000.

While the French government retains jurisdiction over foreign affairs, the Noumea Accord requires it to take New Caledonia's own interests into account in international negotiations conducted by France, and to involve New Caledonia in discussions. As regards regional relations, powers are shared in terms of both bilateral diplomacy and multilateral relations. New Caledonia exercises international competency in three areas.

New Caledonia can enter into agreements with one or more Pacific nations, territories or regional bodies, and with regional bodies under the aegis of United Nations specialized agencies. In matters falling within the jurisdiction of the French government, the President of the New Caledonian government may take responsibility for, or be involved in, negotiation and signature of the instrument of agreement. In matters falling within the jurisdiction of

3 See A. Christnacht "Matignon: une poignée de main qui a changé la donne" *in Australie – Nouvelle-Calédonie, 70 ans de relation bilatérale*, Australian Consulate General, July 2010, p. 46-51.

4 See R. Bessard et N. Mrgudovic (éds), "Intégration régionale des territoires français dans le Pacifique sud", *Journal de la société des océanistes*, n°140, 2015-1, p. 5-121.

5 See C. Gravelat, 2019, "La souveraineté partagée dans les relations internationales de la Nouvelle-Calédonie", in J.-M. Boyer, M. Chauchat, G. Giraudeau, S. Gorohouna, C. Gravelat, C. Ris (éds), *L'Avenir institutionnel de la Nouvelle-Calédonie*, Presses Universitaires de la Nouvelle-Calédonie, PUNC, p.162-168.

New Caledonia, the Congress authorizes the President of the government to negotiate, the French government grants him/her the powers required for signature, thereafter the Congress passes a resolution approving the Agreement and, if required, it is ratified or approved by the French Parliament.

Sometimes, the scope of an agreement may extend over areas involving the jurisdiction of both the French government and New Caledonia or the Provinces. As is the case for the Agreement between the Government of the French Republic and the Government of the Republic of Vanuatu relating to cooperation between New Caledonia and Vanuatu, renewed every four or five years; it is systematically signed by the President of the Government of New Caledonia on behalf of the Government of the French Republic.[6] As regards New Caledonia's scope of jurisdiction, practice has shown that French government involvement may come right at the end of the process, after completion of negotiations. Furthermore and importantly, New Caledonia signs, without any involvement of French government powers, declarations of intent, joint declarations, joint plans of cooperation and administrative arrangements. For example, a joint cooperation plan was signed on 10 September 2016 between the Government of New Caledonia and the Government of New Zealand, without any involvement on the part of the French government. Similarly, at the meeting of the Joint Cooperation Committee co-chaired by New Caledonia and Vanuatu government heads in 2016, it was decided to lay the groundwork for a more politically oriented dialogue, a move leading to the signing of a joint cooperation plan in March 2017. To be sure, declarations of intent and joint plans are not legally binding international agreements, but they nevertheless represent political commitments underpinning the establishment of genuine diplomatic relations.

New Caledonia may establish diplomatic representations in Pacific Region countries, and with regional and European Union organizations. The country chose to make use of the French diplomatic network in Oceania to promote and strengthen its integration at regional level, and on 26 January 2012 signed a framework agreement "relating to the inclusion of delegates for New Caledonia in the French government's diplomatic network in the Pacific (Oceania)".[7] Given a role in the French diplomatic and consular mission and reporting to the head of a consular post, New Caledonia's delegate "is inscribed on the French Diplomatic List. As such, during the course of his/her mission, he/she shall enjoy the corresponding privileges and immunities, in accordance with the Vienna Conventions on Diplomatic and Consular Relations."[8] Consequently, New Caledonia's delegate is a diplomat, accredited to the Government of the country to which he/she is appointed. In terms of bilateral relations, he/she ensures New Caledonia's representation vis-à-vis the Government concerned and facilitates the establishment of a lasting dialogue. The sensitive nature of the delegate's role can be measured by the time it took New Caledonia's authorities to implement this measure

6 Decree no. 2015-740 of 25 June 2015 publishing the Agreement between the Government of the French Republic and the Government of the Republic of Vanuatu regarding cooperation between New Caledonia and Vanuatu, signed in Noumea on 23 February 2015, JORF no. 0147 of 27 June 2015.

7 In Oceania, France has diplomatic missions in Australia, New Zealand, Vanuatu, Fiji and Papua New Guinea. The French Ambassador in Wellington is accredited to the Cook Islands and Samoa; the French Embassy in Port Vila has competence for the Solomon Islands; the French Embassy in Suva covers Fiji, Tonga, Kiribati, Tuvalu and Nauru; the French Embassy in Manila covers Micronesia.

8 Article 1 of the Agreement of 26 January 2012.

symbolizing New Caledonia's emancipation as required by the Noumea Accord. These New Caledonian delegates took up their duties in France's embassies in Australia, Papua New Guinea, Vanuatu and Fiji in mid-2019, constituting a "network of 'diplomats' [...] tasked with promoting New Caledonia's messaging and policy at regional level to strengthen the country's position and influence, and opening up new opportunities for discussions and exchanges in all areas: economy, education, culture, research, sport [...]."[9]

Finally, with the agreement of the French government, New Caledonia can acquire the status of member, associate member or observer in some international organizations, where it will be represented by the President of the government or his/her representative.

New Caledonia's commitment to a role in the regional arena means projecting a positive image as a socially and politically stable country with well-structured institutions and efficient administrative services, as well as policy coherence in terms of external action. Accordingly, this is where, more than any other area, the collegial model underpinning the working of New Caledonia's government and its composition based on proportional representation and political consensus serve their full purpose. Where external relations are concerned, the President represents the government; however, each and every member of the government can take initiatives in his/her sector. Notwithstanding, every decision must be taken by majority vote of the members, and each member of the government has a full right of veto meaning he/she can contest the content of a decision taken on one of the issues under his/her responsibility. Similarly, mutual trust between the French government and New Caledonia is based on transparency and ongoing dialogue.

II. REGIONAL INTEGRATION, DRIVING CONSENSUS ON EMANCIPATION

During the 2000s, the New Caledonian government faced a number of internal issues linked to the setting up of new institutions, whilst remaining constantly aware of the importance of the regional integration called for under the Noumea Accord and advocated by French President Jacques Chirac at the France-Oceania summit in 2003.[10]

The strategy took clear shape from 2009 onwards. New Caledonia's assumption of accountability and regional scope and reach were taken as a given by all political factions. Nevertheless, the political significance attributed to collective international initiatives varied according to political affiliations: for the separatists, the aim was to use experience and autonomy to prepare for independence, while for supporters of remaining within France, the aim was to demonstrate the effectiveness of New Caledonia's international competency as proof that acceding to full sovereignty in order to exercise such competency was futile and pointless. Whatever the thinking, the overriding goal was quite simply the implementation of the Noumea Accord, a process contested by no political party in power.

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9 Official communiqué from the Government of New Caledonia, "New Caledonia's delegates in post soon", 14 June 2019: https://gouv.nc/actualites/14-06-2019/les-delegues-de-la-nouvelle-caledonie-bientot-en-fonction

10 See C. Lechervy, 2017, "Les politiques américaines et françaises vis-à-vis de l'intégration régionale de leurs territoires non souverains du Pacifique », *in* S. Al Wardi, J.-M. Regnault and J.-F. Sabouret (dir.), *L'Océanie convoitée, Histoire, géopolitique et sociétés*, CNRS Éditions, Paris, p. 277-290.

A. Multilateralism, motive force for inter-island relations

There is nothing new about New Caledonia's participation in the activities of regional organizations[11] as a member, associate member or observer since the country has been a member of the SPC since 1983, and has hosted the commission's headquarters in Noumea since 1947. The SPC celebrated its seventieth anniversary in late 2017 at a ministerial conference chaired by New Caledonia. New Caledonia has also been a member of the Pacific Regional Environment Programme (SPREP) since its inception.

Since 2000, New Caledonia has actively pursued a strategy of joining regional and international organizations whose aims fall within its field of competence. It became a member of the South Pacific Tourism Organisation (SPTO), and of the Oceania Customs Organisation (OCO). It was granted the status of associate member of the Economic and Social Commission for Asia and the Pacific (ESCAP), one of the five United Nations regional commissions for Asia and Oceania. As an observer member of the Pacific Forum Fisheries Agency (FFA)[12], New Caledonia is involved in work carried out by the Inter-American Tropical Tuna Commission (IATTC), the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC) and the South Pacific Regional Fisheries Management Organisation (SPRFMO).

New Caledonia has a non-voting seat on the World Health Organization (WHO) Regional Committee for the Western Pacific and became an associate member of the Organisation Internationale de la Francophonie (OIF) in 2016, joining Vanuatu, the only French-speaking nation state in Oceania. In November 2017, New Caledonia joined the United Nations Educational, Scientific and Cultural Organization (UNESCO) as an associate member, as did Tokelau, a non-self-governing territory administered by New Zealand.

But it was undoubtedly New Caledonia becoming a member of the Pacific Islands Forum (PIF)[13], the region's premier political and economic policy organization, which made New Caledonia a significant player on the regional stage. The mission of the Pacific Islands Forum is to "strengthen regional cooperation and integration through the pooling of governance resources and the alignment of policies, to ensure that Forum members continue to work towards economic growth, sustainable development, good governance and common security".[14]

New Caledonia joined the Pacific Islands Forum in 1999 as an observer, immediately after the signing of the Noumea Accord, and became an associate member in 2006. From 2009 onwards,

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11 On regional integration, see N. Mrgudovic, "Régionalismes et sous-régionalismes : une nouvelle approche de la dynamique politique régionale dans le Pacifique Sud", *in* S. Al Wardi, J.-M. Regnault and t J.-F. Sabouret (dir.), *op. cit*., p. 513-526.

12 FFA: Forum Fisheries Agency.

13 A regional organisation founded on 5 August 1971 in Wellington, New Zealand as the South Pacific Forum; its membership currently includes all the nation states of Oceania: Australia, Cook Islands, Fiji, Kiribati, Marshall Islands, Federated States of Micronesia, Nauru, Niue, New Zealand, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu, together with two autonomous French collectivities – New Caledonia and French Polynesia.

14 Article II of the Agreement of 27 October 2005 establishing the Pacific Islands Forum.

to further endorse the Noumea Accord, New Caledonia expressed the desire to become a full member, playing a more active role within the PIF. This received the full support of the French government and a formal application was made in Port Vila in 2010. However, New Caledonia had to wait seven years before the country's ambition of increased integration into the regional environment became a reality, with the leaders of the Pacific nation states unanimously agreeing to welcome New Caledonia (and French Polynesia) into their circle.

What makes New Caledonia's advancement all the more remarkable is the fact that France is not a member of the Forum and that specialized issues addressed by the organization not only go well beyond New Caledonia's scope of jurisdiction but involve sovereign powers: regional security (cross-border crime, mutual legal assistance, military cooperation, combating illegal fishing, etc.) and good governance (full observance of democratic values, and the defence and promotion of all human rights).

New Caledonia first attended, as a full member, the 48th Pacific Islands Forum held in Apia, Samoa, from 5 to 8 September 2017. In 2018, New Caledonia signed the crucial Boe Declaration on Regional Security, thus joining the nation states of Oceania in recalling their vision and values for the Pacific under the Framework for Pacific Regionalism, and their commitment to a region of "peace, harmony, security, social inclusion and prosperity so that all Pacific people may lead free, healthy and productive lives", and recognizing their endorsement of the 'Blue Pacific' identity to drive collective action. New Caledonia also joined with its neighbours in reaffirming that "climate change remains the single greatest threat to the livelihoods, security and wellbeing of the peoples of the Pacific". [15]

New Caledonia's president now takes part in the Pacific Islands Forum Leaders Retreat, a vital feature of the Forum's work held behind closed doors, where New Caledonia can express itself freely; there is nothing to prevent it speaking or taking a position on sovereign issues, albeit without representing France. And it is also quite possible that, one day, New Caledonia may adopt positions different from those of France on matters of regional diplomacy, given that it enjoys a degree of international autonomy close to actual sovereignty.

Finally, since 2013, although not yet opting for formal membership, New Caledonia has been attending summits held by the Pacific Islands Development Forum (PIDF), set up in 2013 by Fiji following its exclusion from the Pacific Islands Forum in 2009.

From 2012 to 2016, New Caledonia's government organized a regional conference in New Caledonia entitled "Oceania 21"; the conference focussed on sustainable development and climate change and aimed to bring the Pacific island states together so they could speak with a single voice at Conferences of the Parties to the United Nations Framework Convention on Climate Change. Although handing over organization to Tonga in 2017 appears to have brought the initiative to an end, this annual event succeeded in proving that New Caledonia was capable of mobilizing and bringing together highly placed representatives of Pacific nation states and territories.

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15 The Boe Declaration can be viewed on the Pacific Islands Forum website: https://www.forumsec.org/2018/09/05/boe-declaration-on-regional-security/; See T. N. Cain, "Let's Hear It for the Boe.", *Security Challenges*, vol. 16, no. 1, 2020, p. 32-36.

B. Bilateralism, special relations with nearest neighbours

Vanuatu is the island state with which New Caledonia has the most long-standing and lasting institutional relations. Deeply rooted historical and cultural ties underpin this relationship, which extends far beyond diplomatic exchanges. The fact that several thousand Ni Vanuatu and New Caledonians of Ni Vanuatu origin live in New Caledonia provides ample justification for a Vanuatu Consulate General in Noumea. Vanuatu receives New Caledonian aid much more frequently than other island states hit by natural disasters; since 2014, when jurisdiction over public security was transferred from France, New Caledonia has actively joined with French initiatives under the FRANZ Partnership[16] agreement between France, Australia and New Zealand to coordinate disaster reconnaissance and relief assistance in the Pacific.

The partnership between New Caledonia and Vanuatu falls within the framework of a cooperation agreement between the French Republic and the Republic of Vanuatu. This agreement was first concluded in 2002 by New Caledonian President Pierre Frogier on behalf of the French Republic and is regularly renewed[17]. Implementation of the agreement, extensively funded by New Caledonia, currently covers the areas of education, higher education, military cooperation, the environment and scientific research. New Caledonia knows it can count on Vanuatu's support in its policy of regional integration and is committed to strengthening its ties with this Melanesian nation, over and beyond any partnership with France, through more intensive policy dialogue[18] and the establishment of a trade agreement designed to boost exports on both sides. At the signing of this historic agreement, the President of the New Caledonian government pointed out that "this is the first time that New Caledonia has, on its own behalf, signed an international agreement with a sovereign state. This agreement is the culmination of four years of economic diplomacy conducted by my government". [19]

The histories of New Caledonia and Australia were intertwined throughout the 19th century and the first half of the 20th century, corresponding to periods of colonization followed by global conflicts. Right up to 1940, the year which saw the first official Australian representative arrive in Noumea, the New Caledonians and Australians worked together and shared information outside of any institutional framework. The 80th anniversary of the bilateral relationship between Australia and New Caledonia was celebrated in 2020. This highly eventful and even "impassioned" relationship became more balanced in the 2000s and relations of mutual trust were achieved.

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16 The FRANZ Partnership (France-Australia-New Zealand) is a tripartite cooperation agreement between France, Australia and New Zealand, signed on 22 December 1992 in Wellington, to "coordinate and rationalise civil and military assistance to Pacific island states and territories hit by natural disasters".

17 Decree no. 2019-1113 of 30 October 2019 publishing the Agreement in the form of an Exchange of Letters extending the Agreement of 23 February 2015 between the Government of the French Republic and the Government of the Republic of Vanuatu regarding cooperation between New Caledonia and Vanuatu, signed in Noumea on 18 February 2019 and in Port Vila on 20 February 2019. https://www.legifrance.gouv.fr/eli/decret/2019/10/30/EAEJ1929720D/jo/texte

18 See the New Caledonian government website: https://gouv.nc/actualites/03-03-2017/cooperation-renforcee-entre-caledonie-et-vanuatu

19 See the New Caledonian government website: https://gouv.nc/actualites/24-04-2019/laccord-commercial-avec-le-vanuatu-est-signe

Relations with Australia began to take on a more formal dimension in 2002 when the Governments of Australia and New Caledonia signed a declaration of intent regarding the promotion and development of trade relations between the two countries. Relations acquired new impetus in 2010 with the visit to Australia, at the invitation of the Australian Minister for Foreign Affairs, of a delegation from New Caledonia led jointly by the High Commissioner and the President of the New Caledonian government and including the Presidents of the provincial assemblies. This represented a key landmark in New Caledonia/Australia relations.

Australian ministerial visits occur on a regular basis. There are many instances of cooperation between New Caledonia's institutions and Australia in the areas of research, secondary education and higher education. In economic terms, Australia is New Caledonia's leading destination for foreign direct investment. A stepping-up of relations was evidenced by bilateral meetings on technical issues, official visits and the diversification of cooperation initiatives. The France/Australia strategic partnership established in 2012[20] and strengthened in 2017[21] was clearly a contributive factor. Nevertheless, the cooperation plan first mooted in 2016 during an official visit to Australia by the President of the New Caledonian government, is still at the project stage.

New Caledonia is New Zealand's closest neighbour. Although visits by New Zealand ministers occurred on a regular basis from 2000 to 2013, establishing official relations with New Zealand proved a lengthy process. In 2012, New Zealand became the first Pacific Region country with a New Caledonian Delegate in place within the French Embassy. New Caledonia finally established official relations in the wake of a climate of increased cooperation between New Zealand and France from 2015 onwards (commemorative ceremonies with high-level trips to Paris, discussions on strategic issues within the UN Security Council), and French Prime Minister Manuel Valls' visit to Auckland in May 2016. The Prime Minister's visit was followed, in June 2016, by a visit from the President of the New Caledonian government accompanied by a delegation of business leaders. A Joint Cooperation Plan was signed in September 2016.[22]

Prior to 2006, New Caledonia had planned to establish a partnership agreement with Fiji, a member country of the Melanesian Spearhead Group. This agreement, similar to the partnership agreement with Vanuatu, was intended to cover the economic development and investment sectors, as well as cultural, sport and human exchanges. That same year, the coup in Fiji put an end to the initiative, with the New Caledonian government suspending all official trips to Fiji. As from 2011, at the behest of the Union Calédonienne, a separatist political party represented in government, a strategy laying the basis for the normalization of bilateral relations was adopted with a view to Fiji's return to democracy, expected in 2014. Some very concrete cooperative measures have been implemented, including the 2019

20 See the Joint Statement of Strategic Partnership: https://au.ambafrance.org/IMG/pdf/Strategic_Partnership_-_MAEE_-_English_16_01_12x.pdf?6487/ccef6b5465afe61dd1e3f11beda4b23272a2ee12

21 See the Joint Statement of Enhanced Strategic Partnership between France and Australia: https://www.dfat.gov.au/geo/france/Pages/joint-statement-of-enhanced-strategic-partnership-between-australia-and-france

22 See the Joint Cooperation Plan on the website of the New Zealand Ministry of Foreign Affairs: https://mfatgovtnz2020.cwp.govt.nz/assets/Countries-and-Regions/Pacific/New-Caledonia/New-Zealand-New-Caledonia-Joint-Cooperation-Plan_English-version.pdf

signing of a declaration of intent by the Fiji Commerce and Employers Federation and the New Caledonia Trade and Invest cluster (NCT&I) tasked with promoting New Caledonia's external economic relations. Nevertheless, establishing institutional relations is proving difficult.

Relations with Papua New Guinea, a country in the Melanesian Arc and also a member of the Melanesian Spearhead Group, remained tenuous despite successive New Caledonian governments being in favour of a closer relationship. Relations only acquired official status in 2018 when an economic diplomacy mission led by the President of the New Caledonian government resulted in the signing of a protocol committing the parties to collaboration on a bilateral cooperation agreement. This Joint Cooperation Plan was signed on the sidelines of the Pacific Islands Forum 49th Summit in Nauru in 2018.

In 2013, the Governments of New Caledonia and the Cook Islands signed a sister-sites agreement between their large-scale marine protected areas to coordinate the sustainable management of their marine areas and, more particularly, to share information.

In more general terms, the Coral Sea Natural Park is key in facilitating New Caledonia's integration into regional and international networks committed to preserving the oceans, and gives New Caledonia a scope of influence which it can use to good effect in many forums and vis-à-vis its regional partners. The strategy for implementing measures for the preservation of the lagoons and the EEZ is in full compliance with International Ocean Policy, including the achievement of Aichi Biodiversity Target 11.

Although relations with the Kingdom of Tonga remain unexceptional, the last decade has seen some progress, including in terms of support for the French-speaking world.

C. Parallel diplomacy with the Melanesian states

New Caledonia's greatest ambiguity in diplomatic terms lies in the close ties between the FLNKS and the states forming the Melanesian Spearhead Group (MSG).[23] The fact that the FLNKS is an MSG member alongside states represented at head-of-government level lends the separatist Front a degree of visibility and legitimacy that competes with that of the New Caledonian government and its president, who are still the sole authorities responsible for regional policy and empowered to represent New Caledonia. At one time, the MSG had provided key support to the FLNKS in its campaign for international recognition of the Kanak demand for independence; however, the MSG's current focus is on economic integration and establishing a zone of free trade and free movement of labour between Melanesian states. This development and the fact that no official representatives of New Caledonian authorities are present at the organization's meetings and summits makes smooth relations more difficult whilst increasing New Caledonia's political and cultural propinquity to its Melanesian neighbours. Commitments likely to be made by the FLNKS are not necessarily honoured by New Caledonia although, with a view to achieving the aim of optimized regional integration, the New Caledonian government repeatedly provides

23 See N. Mrgudovic, "Le groupe du Fer de Lance mélanésien face à ses défis", *Journal de la Société des Océanistes*, 140/2015, 59-74.

financial support for FLNKS initiatives. In the face of this paradox, the MSG members often express their support for New Caledonia becoming a member of the group. Only a lack of consensus within the FLNKS, owing to fears of losing a significant soft power lever for the separatist cause, poses an obstacle to New Caledonia actually becoming a member.

CONCLUSION

Since the Noumea Accord was first implemented twenty years ago, New Caledonia has gained in authority and influence in both the regional and international arenas. Continuing to benefit from French funding and support, New Caledonia's initiatives have grown in scope and diversity in line with the gradual transfer of new powers from France to New Caledonia.

For all that, because New Caledonia remains locked into a structurally artificial economic system, it is unable to become a party to regional trade agreements it never signed up to[24]. New Caledonia also remains both exclusively Melanesian, a reason for the limited nature of relations with the island communities of Polynesia and the lack of relations with Micronesia, and very Westernised, given the nature of its relations with Australia and New Zealand.

Relations with France's Pacific territories do not qualify as external relations. Relations with Wallis and Futuna are covered by a specific Accord, the signature of which is provided for in the Noumea Accord. The two territories are closely linked by reason of the extensive Wallisian and Futunan community living in New Caledonia, and have institutional ties due to Wallis and Futuna being dependent on various New Caledonian public services (air services, hospitals, prison, etc.). Relations with French Polynesia, although real, are not institutionalized and, in political terms, tend to veer towards sentiments of jealousy and competition.

The trust in New Caledonia shown by the French government in the area of external relations exemplifies the concept of shared sovereignty and has led to New Caledonia taking on an authentic diplomatic role.

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RELATIONS BETWEEN NEW CALEDONIA AND THE EUROPEAN UNION

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New Caledonia falls into the category of overseas countries and territories (OCTs) associated with the European Union (EU). "The relationship between the OCTs and the European Union can be summarized, simplistically but not inaccurately, as having a foot inside and another foot outside the EU: they are not integrated into the Community but form part of an EU Member State".[1]

The European Union's distant territories fall into two groups: the outermost regions (OR) and the OCTs. The ORs are an integral part of the European Union and the single market is fully applicable in their territories under a legal framework almost identical to the Member States they form part of, whereas the OCTs, although constitutionally linked to the Member States of France, Denmark and the Netherlands, are not part of the European Community but are associated with it and enjoy wide-ranging autonomy in exercising their powers.

The association arrangements linking the OCTs to the EU were originally designed to regularize the position of the colonial empires of Member States vis-à-vis the single market. Given that such territories enjoyed no internal autonomy, the arrangements exclusively concerned the relations of the Member State with the European institutions. The association now forms part of a process of negotiation and cooperation between the Member State, the OCT concerned and the European Union. Thus, Article 30 of the New Caledonia Statutory Law of 1999[2] provides that: "The president of the local government and, where appropriate, the presidents of the provincial assemblies, or their representatives, shall be associated or participate, as part of the French delegation, in negotiations with the European Union and the European Community regarding relations between New Caledonia and the EU and European Community". The President of the Government may also "request the French Government to take the initiative in negotiating with the European Union and the European Community with a view to securing specific measures conducive to the development of New Caledonia."

New Caledonia therefore has the opportunity to negotiate or at least take part in negotiations with the EU in order to defend its interests. In legal terms, the relationship of association

1 J. Ziller, "L'association des pays et territoires d'outre-mer à la communauté européenne", *Revue française d'administration publique*, 2002/1, p. 127-136.

2 Organic Law no. 99-209 of 19 March 1999 relating to New Caledonia.

gives New Caledonia considerable freedom to implement its economic policy whilst enjoying the benefits of European citizenship and receiving EU funding under a variety of schemes (I). New Caledonia is now a fully engaged player in the association and is keen to play a proactive role as an outpost of the EU in the Pacific Region (II).

I. "ONE FOOT IN, ONE FOOT OUT": THE LEGAL FRAMEWORK UNDERPINNING ASSOCIATION

As one of the European Union's 13 OCTs[3], it follows that New Caledonia does not form part of the Community and is not bound by the EU's "*acquis communautaire*", i.e. the treaties, legislation, legal acts and case-law applying to all European Member States and to the ORs. In terms of local legislative powers, New Caledonia enjoys a legal freedom not granted to national institutions when they act on behalf of France, or to the ORs in any area subject to EU governance. Nevertheless, New Caledonia's French inhabitants are European citizens and enjoy all rights attached thereto, including freedom of movement.

A. European integration - rules governing overseas colonies and territories

The relationship of association between the EU and the OCTs dates back to the signing of the Treaty of Rome in 1957, establishing the European Economic Community (EEC).[4] The French overseas territories concerned were: French Equatorial Africa, French East Africa, the trust territories of Togo and Cameroon, the Comoros, Madagascar, French Somaliland (now Djibouti), St. Pierre and Miquelon, French Polynesia, New Caledonia, Wallis and Futuna, and the French Southern and Antarctic Territories. At the time, the intention of the signatories was to endorse the solidarity binding Europe and the overseas territories. Given the extremely diverse character of the political, economic and legal ties between these territories and the Member States, and the great economic and social disparity between the European powers and their overseas territories, applying the Treaty of Rome to these territories raised insurmountable obstacles.

Taking all the special features of these "remote" territories into account, the EU Member States decided to grant them associated status with the aim of promoting their development and economic and social prosperity. Most of these territories have now gained independence and their association with the EU is currently governed by international treaty (the two Yaoundé Agreements of 1963 and 1969, the four Lomé Conventions signed between 1975 and 1989, and the Cotonou Agreement).[5]

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3 In the case of France, these are New Caledonia, French Polynesia, St. Pierre and Miquelon, the French Southern and Antarctic Territories, Wallis and Futuna and, since 2012, Saint Barthélemy. In the case of Denmark, this is Greenland. In the case of the Netherlands, these are Aruba and the Netherlands Antilles (Bonaire, Curaçao, Saba, Sint Eustatius and Sint Maarten, the southern part of the island of St. Martin).

4 See: I. Vestris, "La prise en compte de l'outre-mer du traité de Rome à nos jours", *Quebec Journal of International Law* [online], Volume 2-1, 2018, p. 337-355. URL : https://www.persee.fr/doc/rqdi_0828-9999_2018_hos_2_1_2389

5 For further information on the agreements between the EU and the ACP States, see C. Haguenau-Moizard and T. Montalieu, "L'évolution du partenariat UE-ACP de Lomé à Cotonou : de l'exception à la normalisation", *Mondes en développement*, vol. no. 128, no. 4, 2004, p. 65-88.

There was little change in the terms of association for the other (not yet independent) territories before the 2000s. These are set out in Part IV of the Treaty on the Functioning of the European Union (TFEU)[6], in Articles 198 to 204 as regards the principles, and by a Council of the EU decision as regards the detailed association arrangements. The Council adopted the most recent Overseas Association Decision (OAD) on 25 November 2013;[7] it came into force on 1st January 2014 and remained valid until 31st December 2020. "The purpose of association shall be to promote the economic and social development of the countries and territories and to establish close economic relations between them and the Union as a whole. [...] association shall serve primarily to further the interests and prosperity of the inhabitants of these countries and territories".[8] This includes establishing close economic relations between the OCTs and the EU.

The OAD takes into account each OCT's specific issues and opportunities. Article 3 of the 2013 OAD provides that "The association shall pursue the overall objectives laid down in Article 199 of the TFEU, by enhancing the OCTs' competitiveness, strengthening the OCTs' resilience, reducing their economic and environmental vulnerability and promoting cooperation between them and other partners". The OAD defines key areas for support, including the diversification of OCTs' economies, sustainable management of natural resources and adaptation to and mitigation of climate change in the OCTs (Article 5 of the OAD). A new draft OAD was published by the European Commission on 14 June 2018. Given that the UK has left the EU, this new OAD does not apply to the 12 British OCTs. Discussions between the EU and the OCTs regarding the new OAD are still ongoing.

The EU is also proactively working to support the OCTs in achieving increased integration into their regional environment, a process undoubtedly conducive to their development.

B. Association, an advantageous arrangement for New Caledonia

European Community law does not apply in New Caledonia, which is not part of the single market. As a result, market intervention, strictly regulated within the EU, is subject to far less control in New Caledonia. Furthermore, thanks to the very favourable provisions of the TFEU, New Caledonia is free to impose quantitative restrictions and collect customs duties on goods arriving from an EU Member State, if doing so is necessary to domestic development or industrialization, or if such measures are tax-related and generate budgetary revenue. Conversely, Member States are banned from introducing customs duties on imports from the OCTs. In this way, New Caledonia can set in place customs arrangements designed to protect locally produced goods and materials. More generally, New Caledonia is bound by no European restrictions in terms of economic policy.

Consequently, the OCTs are not covered by EU common policies, including the common agricultural policy and the common fisheries policy, and are therefore in a position to

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6 The Treaty on the Functioning of the European Union is available on the EU website at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF. For the history of European integration, see URL: https://europa.eu/european-union/about-eu/history_en

7 The Council Decision (Overseas Association Decision - OAD) of 25 November 2013 can be consulted on the official website of the European Union, URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013D0755

8 Article 198 TFUE.

implement extremely favourable arrangements for the use of fisheries resources. Subject to compliance with the procedures laid down by the Statutory Law of 1999[9], including accession to French government powers, New Caledonia is also entirely free to sign fisheries agreements with neighbouring States, whereas the power to do so falls within European authority jurisdiction where France and the integrated regions are concerned.

French citizens are European citizens. Overseas regions are thus "the locations most visibly reflecting the heterogeneous nature of Europe. [...] They make it easier to understand the dynamics involved in the relationship between citizenship and nationality, on the one hand, and between a judicial and a territorial area, on the other".[10] Although the OCTs are located outside the European Union and therefore outside the scope of European Community law, they are populated by European citizens. Because they have French nationality, New Caledonians are European citizens. European citizenship is a right attached to an individual, wherever he or she is, and is conditional on possessing the nationality of a Member State.

The rights attaching to European citizenship are specified in Article 20 of the TFEU. These include: the right to move and reside freely within the territory of the Member States; the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State; to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State; the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union.

Accordingly, New Caledonians enjoy the rights of free movement of workers and freedom of establishment. As regards the conditions of entry, residence, establishment and employment applying to nationals of one of the EU Member States, these are identical to those in force in mainland France, except that work permits are issued by the Government of New Caledonia.

C. Cooperation for development aid

The EU actively promotes development by supporting policies in the productive sectors and trade, in human, social and environmental development, and cultural and social cooperation. In terms of regional integration, cooperation concerns initiatives between New Caledonia, third countries and the ORs, with the aim of stepping up economic cooperation and development, encouraging the free movement of people, goods, services, labour and technology, freeing up trade and payments, and implementing sectoral reform policies at regional level.

The European Development Fund (EDF), directly financed by Member States, is the main EU cooperation instrument. EDF development aid comprises regional and territorial allocations

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9 Article 28 of Organic Law no. 99-209 of 19 March 1999.

10 T. Pullano, "Chapitre 5 / L'application du droit de citoyenneté aux territoires d'outre-mer. Une épreuve", *in La citoyenneté europ*éenne. Un espace quasi étatique, Paris, Presses de Sciences Po, "Académique", 2014, p. 145-170. URL : https://www.cairn.info/la-citoyennete-europeenne--9782724615203-page-145.htm

and is programmed over a 5 year period. In the Pacific, the EDF currently concerns New Caledonia, French Polynesia and Wallis and Futuna (Pitcairn is no longer an EU OCT). Under the Overseas Association Decision (OAD) for EDF funding allocation, each OCT must identify a sector of concentration to which the EU will contribute funds. The 9th EDF allocated €21 million to New Caledonia: the territorial allocation was directed towards vocational training and the regional allocation towards promoting renewable energies. The 10th EDF allocation of €20 million was mainly directed towards the sustainable management of natural resources (waste management and coral reef recovery), vocational training and social dialogue. New Caledonia received territorial funding of €29.8 million under the 11th EDF (2014-2020), with the chosen focus for funding being implementation of the country's "Employment and Vocational Integration" sectoral strategy, designed to help integrate people with the least prospect of finding jobs into the labour market, and also to boost the effectiveness of public policy on employment, vocational integration and training.

Negotiations on the EDF territorial allocation envelope for the 2021-2027 period are ongoing. The sector of concentration identified by New Caledonia is the transition to renewable energy sources. New Caledonia aims to focus on renewable energy operation and storage procedures and on increasing green growth in its industrial sector, including metallurgy. Over and above providing budget support to New Caledonia for the identified sector of concentration, the EDF helps to fund various other smaller-scale projects.[11]

In terms of regional integration, the EU also provides funding for numerous cooperation projects, including the Programme Régional Océanien des Territoires pour la Gestion durable des Écosystèmes (Oceanian Territories Regional Program for Sustainable Ecosystem Management – PROTEGE) over the 2019-2022 period, part of the European Green Deal aiming to make Europe the first climate-neutral continent by 2050.[12] New Caledonia thereby acts as a laboratory for the testing of new agricultural production methods and ways of changing consumption attitudes and behaviour. The results achieved by the eleven demonstration farms in New Caledonia should subsequently be replicated on a larger scale. The aim is to support all agricultural systems in transitioning to agroecology and organic agriculture, thereby achieving greater self-sufficiency vis-à-vis imported inputs, greater cultivated and uncultivated biodiversity, better resource management, greater resilience in the face of climate change and increased food safety.

Moreover, since the 2013 AOD, New Caledonia has been eligible for all the Union's horizontal programs. The most significant are "Erasmus+", the student exchange program contributing to the creation of a European Higher Education Area, "Horizon 2020", the program focussing on scientific excellence and future and emerging technologies, "Creative Europe", the program supporting cultural and creative sectors, and "Life", dedicated to environmental and climate objectives and contributing to the shift towards a clean, circular, energy-efficient, low-carbon and climate-resilient economy, including through the transition to clean energy,

11 The EU has provided funding for a wide range of projects. Examples include construction of the new Noumea Aquarium, a project 40% funded by the European Union, extending a local fisheries company's refrigerated warehouses, a Loyalty Islands fisheries project, and construction of a road linking the villages of Hienghène and Pouébo in the North Province.

12 On the European Green Deal, see the official EU website at https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en

to protect and improve the quality of the environment and biodiversity.[13] When it came to establishing programs for the 2014-2020 period, based on the EU's Europe 2020 Strategy for Smart, Sustainable and Inclusive Growth[14], New Caledonia was actively involved in initiatives undertaken as part of the Clean Energy for European Islands Initiative, launched in May 2017.

Finally, New Caledonia has access to EIB (European Investment Bank) loans for both the private and public sectors and, since 2017, has enjoyed the benefits of an extension of the risk-sharing agreement established as part of the Investment Plan for Europe, designed to boost investment. With EIB financial support, the AFD (Agence Française de Développement – French Overseas Development Agency)[15] can take on higher risk levels in financing projects fundamental to economic development and competitiveness.

II. AN INCREASINGLY STRATEGIC PARTNERSHIP

With the constant aim of getting their concerns and ambitions heard, the OCTs have gradually mobilized to make the best use of opportunities for dialogue with the EU. By virtue of their potentials, their diversity, their natural resources and geographical positioning, they play an increasingly significant role in various European strategies. New Caledonia is fully engaged in developing relations with the EU.

A. OCT-EU dialogue

The AOD provides for a broad-based dialogue to enable the EU, all the OCTs, and the Member States to which they are linked to consult each other on the principles, detailed procedures and results of the association. An OCT-EU forum for dialogue meets annually to bring together OCT authorities, representatives of the Member States and the European Commission. Members of the European Parliament, representatives of the EIB, and representatives of the outermost regions are, where appropriate, associated with the OCT-EU Forum; given that many European policies affect the interests of the OCTs, such political and technical dialogue plays a vital role.

The Commission, the OCTs and the Member States to which they are linked hold trilateral consultations on a regular basis. These consultations are held at least four times a year on the initiative of the Commission or at the request of the OCTs and of the Member States. Partnership working parties have been set up by mutual agreement; they act in an advisory capacity and provide a framework for technical discussions on matters which are of specific concern to the OCTs and the Member States, complementing the work being done at the annual forum and/or at the Tripartite meetings. The Commission chairs the OCT-EU Forum, the trilateral consultations and the working parties, and provides their secretariat. The

13 See: R. L. Budoc, "Quelle association ue/ptom à l'horizon 2014/2020 ? Le cas du Pacifique Sud", *Journal de la Société des Océanistes* [Online], 140 | January-June 2015. URL: http://journals.openedition.org.proxy.univ-nc.nc/jso/7227; DOI: https://doi.org/10.4000/jso.7227

14 See URL: https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=celex:52010DC2020

15 The AFD is a public institution tasked with implementing French policy on development and international solidarity.

France-French OCT monitoring committee on the EU-OCT partnership also meets regularly and reviews progress on matters involving the EU and the OCTs.

In the early 2000s, the feeling amongst representatives of the various OCTs was that they needed to get together and uphold a common position, particularly with reference to the new OAD drafted by the European Commission. In 2002, at the second OCT Ministerial Conference in Bonaire (Netherlands Antilles), this rationale led to the signing of an agreement for the establishment of the Association of Overseas Countries and Territories of the European Union – OCTA.[16] The Association has the following objectives: to uphold the collective interests of the OCTs vis-à-vis the European institutions, to make recommendations to the governments of the OCTs and to the Member States on appropriate measures to be taken. OCTA has become a key contributor to discussions between the EU and the OCTs. The Ministerial Meeting is the highest body of the OCTA and meets annually; it appoints a rotating Chair who heads the organization until the next meeting, and elects an Executive Committee (ExCo).

At the most recent OCTA Ministerial Conference in December 2020, Thierry Santa, President of the Government of New Caledonia, was elected Chair. The current Chair's term covers a reform of the OCT-EU partnership designed to take into account both the exit of the British OCTs and the global Covid-19 health crisis. European Union support will prove invaluable in building the resilience of New Caledonia's economy and the economies of all other OCTs impacted by the health crisis.

B. Economic outlook

The proposed new OAD, scheduled to enter into force in 2021, provides for possible cooperation to promote sustainable raw materials production and supply as part of all mining-related operations. In New Caledonia, this sector has already received EU support via mining site reforestation programs, and through the SOLSA project sponsored by the Eramet Group as part of the European Horizon 2020 program, whose main focus is achieving greater efficiency in mining and mineral exploration by developing new cutting-edge techniques.

The EU remains heavily reliant on third countries for supplies of raw materials, a situation which has led the European Commission to develop an action plan for critical raw materials, i.e. "raw materials of high importance to the EU economy and of high risk associated with their supply".[17] This plan forms part of the European Green Deal[18] and makes provision for establishing a strategy to ensure the EU has a secure and sustainable supply of raw materials. In his speech at the High-Level Conference on Green Mining[19], held on 5 May 2021, European Commission Vice-President Maroš Šefčovič stressed that "raw materials are an important

16 See the OCTA website, URL: http://www.octassociation.org/octa

17 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Critical Raw Materials Resilience: Charting a Path towards greater Security and Sustainability, 3 September 2020, URL: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0474&from-EN

18 On the European Green Deal, see the official EU website, URL: https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en

19 On the High-Level Green Mining Conference, see URL: https://www.2021portugal.eu/en/news/high-level-conference-on-green-mining/

enabler of the twin green and digital transitions, as well as the decarbonisation of the EU's economy through clean and low-carbon technologies such as batteries, photovoltaics and windmills". He recognised that "the scale of the challenge is immense". To meet European needs in the renewable energy sectors alone, the EU will need up to 18 times more lithium and 5 times more cobalt in 2030, compared to the current supply. The aim is therefore to diversify imports by building partnerships with mineral-rich third countries, and by boosting each Member State's domestic capacity for primary and secondary raw materials.

New Caledonia is keen to embrace this European endeavour. Nickel is produced in thirty-five countries and by sixty processing plants, three of which are located in New Caledonia. Indonesia is the world's largest producer, followed by the Philippines, Russia and, in fourth place, New Caledonia. New Caledonia is currently one of the countries boasting the world's most significant nickel reserves, and the vast majority of products generated by its mining and metallurgy industry are exported to Asia.

Unlike other nickel-exporting countries, New Caledonia's nickel products are considered "clean" and therefore fit the bill for a Europe looking to enhance its green credentials. Governed by extremely strict environmental standards (Mineral Resources Development Blueprint, reforestation requirement, waste water treatment, protected areas…), New Caledonia's nickel production could well set a global benchmark for the nickel industry. New Caledonia could potentially become a major source of raw materials supply to the EU by focussing, in particular, on the storage batteries (with nickel a major component thereof) required for the transition to renewable energy. New Caledonia must therefore rise to the challenge of becoming a stakeholder in this European strategy.

C. Geopolitical outlook and strategic scope

In addition to becoming the first climate-neutral continent by 2050, Europe is committed to strengthening its presence on the international stage. The Pacific has become a foreign policy priority[20] and, in April 2021, the EU Council approved, for the first time, a strategy for cooperation in the Indo-Pacific, designed to put together a coherent response to increasing concerns about China's rise as a global power. The intention is to reinforce the EU's strategic focus, presence and actions in the Indo-Pacific region. This long-neglected region now represents a strategic stake in Europe's push towards greater influence. However, Brexit has removed 12 OCTs from the European Union's sphere of influence and France is now the only resident power in the Indo-Pacific. So, with global attention focussing on the region, New Caledonia enjoys a favourable geopolitical context.

In the proposed OAD negotiated in 2020, the EU commits to supporting integration and regional cooperation between the OCTs themselves, between the OCTs and the ACP States[21]

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20 See: F. De Teyssier, Gilles Baudier, "Chapitre VI. L'ordre européen et le monde", *in* François de Teyssier (ed.), *La Construction de l'Europe*, Paris, Presses Universitaires de France, "Que sais-je ?", 2021, p. 110-123. URL: https://www.cairn.info/la-construction-de-l-europe--9782715405974-page-110.htm

21 The ACP countries form a group known as the Organization of African, Caribbean and Pacific States (OACPS) initially established to coordinate cooperation with the European Community (EC), and later with the European Union. All of these countries (except Cuba) are signatories to the Lomé Convention and the Cotonou Agreement. See: Organisation of African, Caribbean and Pacific States, URL: http://www.acp.int/

(Africa, Caribbean, Pacific) and between the OCTs and third countries. New Caledonia sees itself as an EU outpost, providing opportunity for the European Union through the territory's active commitment to a dynamic regional integration policy sanctioned by a statutory legal framework allowing the country considerable freedom in terms of international action.[22] New Caledonia is a member of the Secretariat of the Pacific Community (SPC) and hosts the SPC headquarters, has been a member of the Pacific Regional Environment Programme (SPREP) since its inception and, importantly, is a member of the Pacific Islands Forum (PIF), the region's premier international political organization. France and the EU are not members of the Forum and are only included in the annual post-Forum dialogue. As a regional political and non-specialized organization whose membership comprises all Oceania's ACP countries, the PIF naturally qualifies for the role of key European Commission partner, and the EU relies on the Forum's organisational structure and network for implementation of its development programs. The PIF is also a powerful tool facilitating integration of France's Pacific territories, and promotes increased cooperation with neighbouring ACP countries.

New Caledonia is fully aware of the stakes and of its position and, for several years, has been advocating a strengthening of synergies between the ACP countries and the OCTs, with a view to their becoming real levers for European action in the region, particularly in programming and implementing EU financial aid. Noumea has already been appointed Regional Authorizing Officer for the PROTEGE project and is the venue for the European Commission Bureau for the OCTs. This bureau, which reports directly to the Delegation of the European Union for the Pacific in Suva, oversees implementation of EDF-financed projects in New Caledonia, French Polynesia, Wallis and Futuna and, until completion of ongoing programs, in the Pitcairn Islands.

The EU's growing recognition of the overseas regions' strategic importance[23] can be seen in their increased role in the new partnership agreement between the EU and the members of the Organization of African, Caribbean and Pacific States[24], initialed by the chief negotiators on 15 April 2021.[25] Under this agreement, successor to the Cotonou Agreement[26], "the Parties shall encourage regional cooperation with the overseas countries and territories (OCTs) associated with the EU and the outermost regions (ORs) of the EU in areas of common interest". The new agreement also states that exchanges in the fields of business and tourism must take into account "the specific situation of the overseas countries and territories associated with the EU (OCTs) and the EU outermost regions (ORs), in recognition of their physical proximity and their economic and cultural ties and other areas of cooperation". Trade and business

22 On the legal framework underpinning New Caledonia's international action, see the chapter on integration into the regional environment.

23 On advances in EU policy on integrating OCTs into their regional environment, see Rémi Louis Budoc, *ibid*.

24 The full text of the agreement is available online at: https://ec.europa.eu/international-partnerships/system/files/negotiated-agreement-text-initialled-by-eu-oacps-chief-negotiators-20210415_en.pdf

25 On the signing of this agreement, see the Organization of African, Caribbean and Pacific States website at http://www.acp.int/content/post-cotonou-negotiations-new-euafrican-caribbean-and-pacific-partnership-agreement-conclude

26 2000/ 483/ CE: Partnership agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000. The Cotonou Agreement forms the backbone of the partnership between the European Union (EU), the EU countries and 79 countries in Africa, the Caribbean and the Pacific (ACP). It aims to mitigate and eventually eradicate poverty, support the sustainable economic, cultural and social development of partner countries and facilitate the gradual integration of their respective economies into the world economy.

opportunities, including with the OCTs, must be bolstered on a basis of mutual benefit. Referring more specifically to the Pacific protocol: "The Parties shall endeavour to involve the OCTs in regional integration, cooperation and organisations, as appropriate, especially in the areas of climate change, environmental sustainability, sustainable management of natural resources, connectivity, and trade and investment". Crucially, the EU has taken note of the request by Pacific region OCTs to take part as observers, under the provisions of the Pacific protocol, in forums for dialogue with neighbouring States.

New Caledonia's European ambitions, backed by the French government, will henceforth acquire new impetus. As a member of most regional organizations, either alone or alongside France but with an independent voice, and as a country maintaining close relationships with many leaders in Oceania, New Caledonia plays an active part in promoting EU and Indo-Pacific strategy values. As a French territory in Oceania, New Caledonia can also facilitate relations and mutual understanding between the Pacific countries and the EU, helping to overcome cultural divides between Europe and the Pacific islands. New Caledonia, as an EU OCT, hosted the first EU-Pacific summit in Noumea in 2017. The fact that the summit was held on the territory of the only Member State with constitutional responsibilities in the region, gives meaning to and legitimizes the EU message. It is now up to New Caledonia to develop a policy allowing it to play a truly material role as EU strategic outpost.

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This paper is a revised version of the article by C. GRAVELAT, entitled "UN assistance in the emancipation process for New Caledonia"; presentation to the Forum organized by the Pacific Islands Political Studies Association (PIPSA), "Democracy, Sovereignty and Self-Determination in the Pacific Islands", June 2019, Noumea. It was originally published as Discussion Paper 2020/4, Department of Pacific Affairs, Australian National University, (https://www.dpa.bellschool.anu.edu.au).

The Matignon-Oudinot Accords[1] – signed in 1988 by the French government and New Caledonia's political forces – laid the foundations for restoring peace in New Caledonia by promising a referendum on self-determination in 1998 for the benefit of "concerned" inhabitants, namely New Caledonians with at least 10 years' residence in the territory. This involved setting up provincial authorities, two of which, by virtue of the composition of electoral districts, would inevitably be led by pro-independence majorities. This 10-year transition period was accompanied by a proactive policy of economic, social and cultural rebalancing whose main beneficiary was the "Melanesian community, native to the Territory of New Caledonia, the main victim of the imbalances arising from colonization".[2] The issue of the composition of the electoral body called upon to determine the future of the territory has been at the heart of pro-independence concerns and claims since the movement was born in 1975.

With the Noumea Accord, signed on 5 May 1998[3] by the French government and pro-independence and anti-independence movements, this issue assumed a significant dimension, made even more crucial for the Kanak people because the general intent was to pursue the decolonization process begun in 1988. At this stage, the key issue was strengthening the autonomy of institutions still organized in line with a federal model but henceforth exclusively led by New Caledonian representatives: the three provinces, whose organization remained unchanged, and the country of New Caledonia which replaced the previous territory. The members of the provincial assemblies and the congress were henceforth elected by an electoral body restricted to persons who could prove a real and long-standing tie to New Caledonia, brought together in New Caledonian citizenship, the foundation of a common destiny.

1 The Matignon-Oudinot Accords relating to New Caledonia were concluded on 26 June 1988. The complete text of these accords is available online: http://www.mncparis.fr/uploads/accords-de-matignon_1.pdf

2 Explanatory memorandum for the draft bill that would become Law no. 88-1028 of 8 November 1988 containing the statutory and preparatory provisions for self-determination in New Caledonia in 1998.

3 The text of the accord and its preamble can easily be consulted on the Government of New Caledonia's website: http://www.gouv.nc/AccordNea.htm. For an understanding of the Noumea Accord, see Jean-Yves Faberon, 2002, "La Nouvelle-Calédonie : vivre l'accord de Nouméa", *Revue française d'administration publique*, 2002/1(101), p. 39–57. DOI: <10.3917/rfap.101.0039>, https://www.cairn.info/revue-francaise-d-administration-publique-2002-1-page-39.htm

The Noumea Accord specified a 15–20-year period, at the end of which a decisive referendum on accession to full sovereignty would be held, with the proviso that further referendums could be held if the first ballot did not result in a majority vote for independence. All Kanak and all New Caledonian residents settled in the country prior to 1994 were eligible to vote. A Committee of Signatories, which met annually with the Prime Minister and/or the Minister for Overseas Territories in Paris, was tasked with monitoring implementation of the Noumea Accord. Lastly, as a gesture of appeasement and as proof of New Caledonia's progress on the path to decolonization, the Accord explicitly provides that "the progress towards emancipation shall be brought to the attention of the UN".

Whereas the FLNKS pro-independence movement[4] turned to the United Nations (UN) in 1986 to make its voice heard and to put pressure on France to work towards decolonization, the UN was ignored and even vilified by the anti-independence camp. Yet, over the decades, the UN has managed to assert its position as an undisputed player in New Caledonia's emancipation process. Several mechanisms available to the UN were mobilized to help ensure that the self-determination referendums in New Caledonia were held in conditions of integrity and calm: two visiting missions by the Special Committee on Decolonization (also known as C-24), technical support by the United Nations Office for Project Services (UNOPS)[5] for the drawing up of electoral rolls, and the presence of members of the Secretary-General's office during and around the self-determination ballot held on 4 November 2018.[6]

The UN has not only been present but has, in fact, played a legitimizing role in the face of the opposing claims advanced by pro- and anti-independence movements, thereby contributing to general appeasement.

I. ACTIVITIES OF THE COMMITTEE ON DECOLONIZATION

A. A history of relations between New Caledonia and the C-24

Resolution 41/41 A of 2 December 1986 included New Caledonia on the list of non-self-governing territories under article 73 of the UN Charter, despite very strong opposition from France, which unsuccessfully mobilized all its diplomatic power to avoid this re-listing.[7] The resolution affirms "the inalienable right of the people of New Caledonia to self-determination and independence in accordance with the provisions of resolution 1514 (XV)". Consequently, as viewed by the UN, New Caledonia's status was that of a territory to be decolonized, and the exercise of French government powers no longer escaped international attention.

4 Front de Libération Kanak et Socialiste [Kanak and Socialist National Liberation Front].

5 UNOPS is an operational body of the United Nations providing a large range of services, particularly in terms of technical advice and project implementation, to assist the UN and its partners in implementing humanitarian projects and projects for the development and consolidation of peace and security.

6 First referendum on self-determination as part of the emancipation process provided for in the Noumea Accord of 5 May 1998. Provision is made in the Accord for up to three referenda, in the case of a negative outcome in the first two.

7 New Caledonia, like French Polynesia, originally appeared on the list of self-governing territories supplied by France and was the subject of a de facto removal from that list, following the adoption of the Constitution of the 4th Republic on 27 October 1946.

Against this backdrop, after decades of French opposition to the Committee on Decolonization and to the UN General Assembly on the subject of New Caledonia[8], based on the view that New Caledonia did not constitute a non-self-governing territory as defined by article 73 of the Charter, as from 1998, France fully embraced international law on decolonization and the adoption of the Noumea Accord. Article 3.2.1 of that Accord makes explicit provision that the "path towards emancipation shall be brought to the attention of the UN".

While the relationship between France and the Committee on Decolonization mellowed following the Matignon-Oudinot Accords in 1988, the French government only engaged in active collaboration with the C-24 from 1998 onwards. Thus, each year, France provides a report on the implementation of the decolonization process, prior to the adoption of the resolution on New Caledonia by the General Assembly at the end of the year. France regularly receives the seal of approval during the general debate in the Fourth Committee on the situation in New Caledonia.

In accordance with the action plan adopted by the UN General Assembly, the President of the New Caledonia government is consistently encouraged by the Committee on Decolonization to participate in its annual meeting, as well as in its regional seminar, held either in the Caribbean or in the Pacific, and to take part in the work of the Fourth Committee. New Caledonia participated for the first time in 2000, but it was only in 2009 that the President of the New Caledonia government, accompanied by a delegation representing the entire political spectrum, made an address to the UN General Assembly.[9] By speaking with a single voice before the UN General Assembly, the collegial Government of New Caledonia rekindled a dialogue with the UN. During his stay in New York, President Gomes invited the UN's Committee on Decolonization to hold its regional seminar for the Pacific in New Caledonia.[10] His purpose was to outline to the UN General Assembly the progress made along the "path towards the emancipation of New Caledonia".

The seminar held in Noumea in 2010 gave New Caledonia's political forces the opportunity to present a comprehensive and consensual picture of the situation in the territory. The point was made that the process ongoing for over 20 years was based on three pillars: the legitimacy of the communities that coexist in the country; the emancipation of New Caledonia within the context of "sharing sovereignty with France" over the duration of the Noumea Accord; and political, economic and social rebalancing. The spirit of cooperation was underpinned by the joint presence of the President of the Congress, the president of the North Province and several members of local government.

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8 For a complete history, see J.-M. Regnault, 2013. *L'ONU, la France et les décolonisations tardives, l'exemple des terres française d'Océanie*. Aix-en-Provence, Presses Universitaires d'Aix-Marseille, coll. Droit d'Outre-mer, 2013.

9 See, on the United Nations' website: Coverage of meetings and media releases, Fourth Committee Hears from Petitioners on Questions of New Caledonia, United States Virgin Islands, Western Sahara, as Decolonization Debate Continues, press release, 6 October 2009, https://www.un.org/press/en/2009/gaspd423.doc.htm; and the website of the Legal and Economic Research Laboratory (LARJE), Le document préparatoire 2009 de l'ONU sur la Calédonie : https://larje.unc.nc/fr/le-document-preparatoire-2009-de-lonu-sur-la-caledonie/.

10 See the speech by Philippe Gomes, president of the Government of New Caledonia, to the UN General Assembly, 6 October 2009. https://caledonie-ensemble.com/wp-content/uploads/2016/08/Discours-de-Philippe-GOMÈS-–-Assemblée-Générale-de-l'ONU-–-New-York-–-6-Octobre-2009.pdf

In the years that followed, New Caledonia was represented at meetings of the Fourth Committee, either by the President or the Vice-President of the government. It is noteworthy that, in 2013, only the President of the Congress, Roch Wamytan, a pro-independence leader, made the trip, speaking both as a representative of New Caledonia and as a petitioner for the FLNKS. This attitude created confusion regarding the origin of the message and was a departure from the practice of collegial and consensual expression of the New Caledonian institutional voice.[11]

The FLNKS, in accordance with its policy for seeking international support, was almost always present at the various meetings of the Fourth Committee and it was a petitioner each year before the UN General Assembly. Meanwhile, the anti-independence movement only joined the UN process in 2015. Since the Fourth Committee's action was perceived as a weapon in the hands of the FLNKS to force New Caledonia's independence, it was only in the last few years that it began to attract favourable attention from anti-independence political parties.

B. Visiting missions by the Committee on Decolonization

1. The visiting mission of 2014: take-over by the anti-independence parties

Strong tensions were emerging between some pro-independence parties, the French government and the anti-independence parties regarding the special electorate for provincial elections, which formed the basis of New Caledonian citizenship. Against this backdrop, the Committee on Decolonization (C-24) proposed a visiting mission to New Caledonia for the purpose of monitoring implementation of the Noumea Accord.

Based on the Matignon-Oudinot Accords scheme for restricting the electorate, established in 1988, the Noumea Accord established New Caledonian citizenship, the outcome of two decades of struggle by the pro-independence movement. In 2014, the dispute related to the composition of this special electorate for the election of members to the provincial assemblies and the congress. In 1999, due to a proviso in interpretation imposed by the Constitutional Council[12], the definition of the electorate was deemed to be "stretchable"; in other words, it was open to people who could prove they had 10 years' residence in New Caledonia, with no other conditions imposed. The constitutional revision of 2007[13] restored a cumulative condition that the pro-independence movement considered as having been enshrined by the Noumea Accord: residence in New Caledonia before 8 November 1998, evidenced by actual registration on the electoral roll in 1998. Some pro-independence leaders considered (and continue to consider) that some people had been wrongly registered on the special electoral roll because they did not appear on the general electoral roll drawn up in 1998. Even though this did not relate to the electoral roll for the referendum on accession to full sovereignty, which

11 See the speech by Roch Wamytan on 11 October 2013 to the UN General Assembly, http://dirgnito.over-blog.com/article-discours-a-la-4eme-commission-de-l-assemblee-generale-des-nations-unies-octobre-2013-120595863.html, accessed on 20 April 2020

12 Decision no. 99-410 DC of 15 March 1999, Organic Law relating to New Caledonia (Partial non-conformity — proviso — organic reclassification). Online: https://www.conseil-constitutionnel.fr/decision/1999/99410DC.htm

13 Constitutional Law no. 2007-237 of 23 February 2007 amending article 77 of the Constitution [Electoral body of New Caledonia].

was different again, this special electorate, as defined for provincial elections and congress, had particular significance for the pro-independence movement because, on the one hand, it allowed the country's leaders to be chosen and, on the other hand, it listed all the citizens who were entitled to become nationals of New Caledonia in the event of independence.

The visiting mission had been instigated by Roch Wamytan, President of the Congress, in the name of the UC-FLNKS group in congress, who denounced the fraud perpetrated by the French government in drawing up the electoral rolls. The mission was finally accepted and even desired by France in the interests of transparency.[14] On the ground, as elections became imminent, some political parties, particularly but not exclusively the anti-independence parties, reluctantly witnessed the arrival of the C-24 delegation in New Caledonia.

Various political players gradually began to pay attention to the C-24 mission, responding to the clarity of its message regarding its mandate (which consisted of observing implementation of the Noumea Accord, with special focus on the drawing up of the provincial electoral rolls), as well as its desire to meet all stakeholders and its impartiality. In the end, the mission met all the political groups and was able to judge for itself the progress made in terms of rebalancing, economic development and the training of New Caledonians, as well as the difficulties encountered and persisting inequalities.

The mission report invited France to continue its presentation of all elements relevant to the unfolding situation in New Caledonia. It underlined the extent to which opportunities to address the C-24 must be seized by all the parties, to enable their points of view to be heard. With regard to the process of revising the electoral rolls, the report did not comment on the substance but it did enumerate all the issues which seemed to raise questions. The report insisted on the fact that it was indeed up to the parties to the Noumea Accord to reach agreement on remedying the malfunctions noted, and suggested a reassessment of the way the special administrative commissions in charge of reviewing electoral rolls worked.[15] These recommendations were taken into account and political compromises were found during the meetings of the Committees of Signatories (steering committees for the Noumea Accord) in 2015 and 2016.[16]

While it is difficult to evaluate the real impact of the C-24 report's conclusions and recommendations on how problems were perceived by New Caledonia's political leaders, it may be argued that that the visit had the effect of instilling calm, or rather dedramatizing the issue, and probably of bringing encouragement. Indeed, the C-24 was careful to mention the existence of a "common destiny" for all New Caledonians, the fundamental idea behind the compromises underpinning the Noumea Accord. With this in mind, the C–24 expressed concern regarding the "fragile" sociopolitical context and invited all parties to engage in peaceful dialogue to envisage and address the situation after 2018.

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14 The French government communicated very little about this visit, thereby aiming to preserve its neutrality. However, its attitude towards this visit is set out in part I relating to the history of the visit, contained in the report on the United Nations' visiting mission to New Caledonia, 18 June 2014 (AC.109/2014/20/Rev.1).

15 Modified Organic Law (LO) no. 99-209 of 19 March 1999 relating to New Caledonia, article 189 II.

16 See the statements of conclusions of the Committees of the Signatories to the Noumea Accord on the website of the French High Commission in New Caledonia. http://www.nouvelle-caledonie.gouv.fr/Politiques-publiques/Avenir-institutionnel-de-la-Nouvelle-Caledonie/Comite-des-signataires

As regards implementation of the Noumea Accord, the C–24 recommended that France continue with initiatives to promote vocational training and expand the skills and capability of the New Caledonian people with a view to the transfer of powers, so that they would be in a position to "decide on their future" and, finally, it called for the increased integration of New Caledonia into the Asia-Pacific region. It is interesting to note that several of these recommendations have been followed-up over recent years, including in the area of management training and regional integration, with New Caledonia joining the Pacific Islands Forum.

This visit, more specifically and in historic fashion, laid the foundations for a relationship of trust between the UN and the anti-independence parties, while at the same time triggering a realization by the leaders in favour of New Caledonia remaining within France of the importance of getting their voice heard by the international community. From 2014 onwards, apart from a few exceptions, the anti-independence movement was also one of the petitioners addressing the Fourth Committee of the General Assembly. In the same vein, following the visiting mission, France was represented in the annual seminars of the Committee on Decolonization. However, it was no longer represented by diplomats for whom this sort of thing was routine, but by officials from the French High Commission in New Caledonia, who were in a position to provide pertinent insights into the development of the situation on the ground.

2. The visiting mission of 2018: confirmation of trust and an objective take on the situation

The second visit by the Committee on Decolonization was the result of an initiative by the committee itself. After being endorsed in a consensual manner by the Committee of Signatories on 2 November 2017, the visiting mission began in New Caledonia in March 2018, a few months before the referendum on self-determination, and ended in Paris with a meeting with the Minister for Overseas Territories. The mandate that the mission had set itself was to "collect information first-hand on the situation relating to the various aspects of the application in New Caledonia of the Noumea Accord of 1998, and to assist the territory, in accordance with the Accord, in the preparation of the referendum on self-determination". The delegation, led by Cuba, stressed that the mission was impartial and did not intend to interfere in the referendum. Any resolution of the New Caledonia question remained the prerogative of the parties involved, particularly the New Caledonian people.

As regards the mission's observations, beyond stating that, in terms of security, the situation was "calm and peaceful", the report[17] noted that the overall situation was "uncertain and fragile", attributable to a heightened level of criminal activity. The preparations for the referendum were deemed to be "on a good path and well underway" (a clear improvement compared to 2014), with a view to achieving a result that would be acceptable to everyone. The report went into detail regarding the measures taken over the previous few years to ensure the referendum would take place in the best possible conditions, and repeatedly praised efforts in this area as well as, more generally, the political will to remedy the economic and social imbalances that had been observed in New Caledonia.

17 Report of the UN mission visit to New Caledonia, 2 April 2018, UNGA (2/4/2018) (A/AC.109/2018/20).

The observations and recommendations did not reopen the electorate-related issue which had been central to political concerns in 2017 and which had been addressed at the Committee of Signatories meeting in December. The Committee on Decolonization noted that several of the recommendations had already been implemented following the conclusions reached by the Committee of Signatories on 27 March 2018 (awareness campaign, presence of UN agencies during the referendum, implementation of a security framework). The representatives of Cuba, Indonesia, Papua New Guinea and Iraq, who were members of the mission, expressed some concern regarding the (under discussion) choice of the wording of the question voters be asked in the referendum and the lack of communication regarding the consequences of the result. While they observed progress in economic and social areas following implementation of the rebalancing policy, they considered that "much still needs to be done to eliminate inequalities" and noted "the persistence of thinly veiled racial discrimination, particularly towards the Kanak".

II. ELECTORAL ASSISTANCE IN NEW CALEDONIA

The UN was called upon both for the drawing up of the electoral rolls and for the observation, or rather "non-observation" of the referendum on self-determination.

A. The drawing up of electoral rolls

Within the framework of the select working group on electoral rolls set up by the French government in 2014, the representatives of the Union Calédonienne[18] requested that the French government allow the UN to participate in electoral work. This request came, on the one hand, within the context of suspicions of fraud regarding enrolments on the special provincial electoral roll, suspicions held by part of the pro-independence political groups, and on the other hand, from a desire by New Caledonian stakeholders to see some change in the format of the special administrative commissions tasked with revising the electoral rolls. The composition of these commissions was indeed regarded as unbalanced, engendering a risk of inconsistence in decisions based on the whims of questionable majorities (for the record, they comprised a judge, a French Government representative and four voters appointed in a balanced manner by political stakeholders). This difficulty had been highlighted in the conclusions of the C–24 mission report in 2014, following discussions with the pro-independence parties[19] and with the judges responsible for revising the electoral rolls.[20]

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18 Pro-independence political party, member of the FLNKS.

19 See visit report UNGA (18/6/2014), point no. 68 in the section relating to the conversations with the Political and Citizenship Commission of the FLNKS: "Another speaker stated that the special administrative commissions had a political rather than a legal operation, which explained their entirely dysfunctional nature. The fact that they are presided over by a magistrate was not a sufficient guarantee. The majority system meant that, in the special administrative commissions in the South province, where immigrants were particularly numerous, the votes were almost invariably distributed in the same manner, namely three to two, with the State and anti-independence representatives often on one side and the magistrate and the representative of the FLNKS on the other". A/AC.109/2014/20/Rev.1.

20 See visit report UNGA (18/6/2014), point no. 73 in the section relating to the conversations with magistrates: "The mission was informed that the commissions made their decisions by majority vote and that the magistrate, in his capacity as chair, had the power to decide in the case of a tied vote. The members of the commissions did not all interpret the criteria for enrolment on the 1998 electoral list in the same way. In the event of contradictory

Against this backdrop, the members of the extraordinary Committee of Signatories of 5 June 2015 proposed the additional inclusion of "an independent, qualified individual" in each of the special administrative commissions. A political consensus emerged around the idea that these individuals could be experts appointed by the UN.[21] There were, therefore, 14 experts in total who each sat on special administrative commissions as "an independent, qualified individual", in accordance with decree no. 2015-1753 of 23 December 2015.

These experts were tasked, firstly, with observing the process of revising the special electoral roll for the election of members of the provincial assemblies and congress (known as "LESP - liste électorale spéciale provinciale [provincial special electoral roll]")[22] and, secondly, with preliminary work on establishing the special electoral roll for the New Caledonian referendum to decide accession to full sovereignty (known as "LESC – liste électorale spéciale consultation [referendum special electoral roll]"). They were asked to draw up an activity report on the progress of work, to be forwarded to the Minister for Overseas Territories and the President of the Congress of New Caledonia no later than one month after each revision of each of the two special electoral rolls in question.

Although these electoral experts were officially appointed by the French government, they were selected and coordinated by UNOPS, which is in charge of supplying services to the UN system and its member states, including operational and logistical support and other forms of support for the electoral process. The experts were well received and carried out quality work. They were happy to make themselves available to the political groups who wished for advice but declined to extend their expertise to political opinions. Their presence meant that work was carried out in an atmosphere of calm, even if some litigation proceedings were taken in court at the end of the electoral rolls revision process.

The results were deemed positive by both the French government and by the New Caledonian stakeholders. The reaction to the mission report confirmed this assessment. Although improvements to the way the commissions functioned were suggested, the UN experts did not detect any electoral fraud and the recommendations that were set out were largely followed by the French government (outreach campaign for enrolment on the rolls, updating of some databases useful for revising rolls, training of municipal officers in charge of the elections). Further UN expert missions were carried out in 2017 and the following years, in a climate of relative indifference. The New Caledonians became accustomed to the presence of the UN, although many had initially seen it as interference. Further reports, which occasioned neither objections nor political comments, noted the progress that had been achieved.

interpretations within a given commission, the magistrate needed to adhere to the final decision receiving the majority of votes. Consequently, it was impossible to uphold a position or an interpretation of the law that was strictly legal." A/AC.109/2014/20/Rev.1

21 In accordance with decree no. 2015-1753 of 23 December 2015, independent, qualified individuals must, in addition to being French speakers, be experienced in electoral m"atters. Above all, they must present guarantees of impartiality and independence as well as a sound knowledge of electoral procedures in New Caledonia.

22 On the provincial electoral body see especially: Olivier Gohin, 2006, "La Nouvelle-Calédonie à l'épreuve d'un suffrage toujours plus restreint", *JCP A 2006*, act. 1107; M. Verpeaux, "La révision de l'article 77 de la constitution ou la « cristallisation néo-calédonienne »", *La semaine juridique*, 7/3/2007 no. 10 ; N. Clinchamps, 2008, "Distorsions et corps électoraux en Nouvelle-Calédonie", *Pouvoirs*, 2008/4(127):151-65. DOI: <10.3917/pouv.127.0151>; V. Hipeau, 2014, "Les ambiguïtés de la citoyenneté" calédonienne dans la République française", *Revue française de droit administratif*, no. 6, November-December 2014.

The September 2018 report states that "the experts have noted that real efforts were made this year to bring the LESC to a state of completeness". This statement is to be linked to the recommendations made by James Anaya, special rapporteur on the rights of indigenous peoples, in the report on his visit to New Caledonia in 2011. Anaya had argued that "efforts should be made to increase the participation of the Kanak in electoral life and to eliminate anything that could prove a hindrance to such participation. Special attention should be paid to enrolling Kanak in the electoral lists for the purposes of future referendums on the status of New Caledonia".[23] This issue had been addressed by the partners of the Noumea Accord who agreed, in late 2017[24], to automatic enrolment on the referendum electoral roll of all persons with customary civil status (i.e. the Kanak), without any need for administrative steps.

B. The "non-observation" of the self-determination ballot

From 2017 onward, as political stakeholders became fearful that the results of the referendum might not be accepted, the notion of UN oversight of the ballot became obvious. The UN had earned the trust of everyone, including France, which had been displeased in 1987 by criticisms expressed by some States, including Pacific Islands Forum member countries, who had wanted the referendum to be monitored by the UN.[25] The situation was very different in 1987 because the referendum in question had been imposed on pro-independence supporters. The FLNKS contested the conditions for enrolment on the electoral rolls and particularly the fact that this was open to residents who could prove three years' residence only. They launched a call to boycott the poll and the situation deteriorated very quickly, ending with the 1988 hostage-taking in the Ouvéa cave. Although France claimed otherwise in 1987, today no-one still considers that referendum to have been an act of self-determination.

One of the paradoxes of the New Caledonian political landscape is that, on the one hand, France is asked to take sides, and on the other hand, it is criticized for its lack of impartiality. The presence of the UN not only strengthens France's stance of neutrality but also has the merit of acting as an additional guarantee of the integrity of the ballot.

The question of the type of electoral assistance to be set in place then arises. The Noumea Accord placed New Caledonia within a decolonization process likely to justify UN involvement via observers, as had been the case in the past. The case of Samoa is the regularly cited regional example of this. However, the Samoa independence referendum took place in an end-of-trusteeship context which served as the legal foundation for UN involvement. In Tokelau, the referendum was held in the presence of a Committee on Decolonization member. The electoral observation mission currently carried out by the UN must not only be undertaken in response to a request made by the relevant State but must also be mandated by the Security Council or the General Assembly, most often as part of a peacekeeping operation or a peacebuilding process.

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23 HRC (Human Rights Council) 14 September 2011. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. CDH (14/9/2011), A/HRC/18/35/Add.6, para. 76.

24 See the statement of conclusions of the 16th Committee of Signatories to the Noumea Accord of 2 November 2017.

25 Repertory of Practice Followed by the United Nations Bodies, Supplement no. 7, vol. V, Articles 73 to 91 of the Charter, 1 January 1985 to 31 December 1988, United Nations.

Ultimately, the mechanisms for electoral assistance within the framework of supporting democracy and human rights were mobilized to endorse implementation of the referendum procedure and, more specifically, deployment, under the coordination of UNOPS, of a group of electoral experts before and during the referendum. The purpose of the mission was to observe implementation of the referendum and to report to the UN Secretary-General on the political environment and technological organization of the referendum.

Although this assistance mission forms part of overall UN monitoring of New Caledonia's decolonization, as called for by the FLNKS and formalized by the Noumea Accord, it has no legal link to the Committee on Decolonization and falls within the purview of processes of democracy supported by the UN. To demonstrate this, reference can be made to the resolution relating to New Caledonia adopted in December 2018[26] in which the General Assembly "welcomes the fact that the administering power has communicated to the Special Committee the final report of the mission of electoral experts who were sent to New Caledonia". It was therefore up to France to convey (or not) to the C-24 the conclusions of the electoral assistance missions.

The mission report submitted a few weeks after the referendum of 4 November reviewed the background, the standpoints of the various political players and the measures taken to facilitate organization of the referendum. It included a positive assessment of the way the electoral campaign was run (§32 and 74), credited to the French government ("the French government has played an especially decisive role in the success of the referendum, particularly through the personal involvement of the Prime Minister […]"). While pointing to the flaws in the ballot, especially on exercising the right to vote by proxy and the non-enrolment of potential voters on the electoral rolls, the report recognized that "electoral operations took place transparently and legally". Seven recommendations were made, most of which aligned with measures already taken at a national level or related to cooperation with the UN (dialogue with all the parties, implementation of an economic, social and cultural policy targeting the reduction of inequalities, improvement of electoral databases, a campaign raising awareness of the issues at stakes in the elections).

Ultimately, the UN's support for the process of New Caledonia's emancipation is generally beneficial to all the stakeholders. The UN, and particularly the Committee on Decolonization, regard it as a validation of UN action, whereas the process is making little progress in the 17 other non-self-governing territories the UN is tasked with monitoring. For France, the emancipation process provides a means of legitimizing and demonstrating the impartiality of its action both in the eyes of local parties and of the international community, which regularly cites New Caledonia as an example of positive decolonization. For New Caledonia's political groups, it offers a safeguard against the risks of extremist excesses and a guarantee that implementation of the Noumea Accord will be closely watched.

The UN provided exactly the same support for the 2020 referendum as it did for the 2018 referendum.

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26 UN General Assembly Resolution 73/115, Question of New Caledonia, A/RES/73/115 (7 December 2018).

At the end of the Noumea Accord referendum process, the Committee on Decolonization will be faced with a sensitive issue: whether to remove New Caledonia from the list of non-self-governing territories under article 73 of the UN Charter. The answer is clear in the case of accession to independence, but not so obvious in the case of a triple victory of the "No" vote. In the latter case, the New Caledonian people, to whom reference is made in the annual resolutions of the General Assembly relating to New Caledonia, will have exercised their right to self-determination and will have decided to remain part of an independent state. Negotiations must subsequently be scheduled with the aim of reaching agreement on institutional organization and ties to the French Republic. The anti-independence supporters, who call for an enduring agreement, state that they are nevertheless not opposed to a compromise featuring a mechanism allowing New Caledonians to initiate a referendum with a view to acceding to independence. In such a scenario, will the UN, having supported the emancipation process and having expressed no reservations regarding the validity of the ballot, apply its own resolutions containing the provision that "a non-self-governing territory can be said to have reached a full measure of self-government by: … c) Integration with an independent state"? The UN may also take the view that maintaining the ability to opt for independence in the new institutional framework legitimises keeping New Caledonia on the list of the territories to be decolonized, or that the situation is frozen by the persistence of the pro-independence demand supported by part of the New Caledonian people. In other words, for the UN, is independence ultimately the only valid path to decolonisation?

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CONCLUSION

EXITING THE NOUMEA ACCORD

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The Accord signed in Noumea on 4 May 1998, in keeping and in consonance with the 1988 Matignon-Oudinot Accords, put the concept of independence on hold for a 15 to 20 year period, during the course of which a gradual transfer of so-called "shared" sovereignty would take place. The Noumea Accord states in its Preamble: "The past was the time of colonization. The present is the time of sharing, through rebalancing. The future will be the time of identity, within a common destiny".[1] The Accord posits New Caledonia's future as a pathway towards emancipation. 2014 heralded the start of the period during which the elected representatives of New Caledonia's Congress could launch the first ballot on self-determination. The Accord provides for the holding of two further referendums, should each preceding ballot not result in a vote for independence. The Noumea Accord process would then have reached an end.

During the 2014 to 2018 period, the French government, as the authority charged with holding the ballots, set in place a special electoral law to guarantee the fairness and transparency of the referendum process, attended by a spirit of consensus amongst New Caledonia's political forces. At a very early stage, the French government was concerned about preparing for the "day after", and set up forums for discussion and expert missions designed to guide and inform thinking and probably avoid the holding of such public votes, by definition divisive or, at the very least, limit their negative impacts (I). On the eve of the third and final referendum provided for by the Accord, scheduled to take place on 12 December 2021, the time for setting rules for the vote or finding a way to avoid further confrontation between communities with conflicting aspirations has come and gone. Given that positions adopted have proved inflexible, the goal now is to create conditions conducive to respectful dialogue, and to chart a future course acceptable to all parties, and to achieve this in a highly fraught political and social climate (II). A renewal of the "bet on intelligence" at the heart of the Matignon-Oudinot Accords is New Caledonia's only way of emerging from the situation in constructive fashion and in peace.

I. THE GENERAL FRAMEWORK FOR EXITING THE NOUMEA ACCORD

A. The referendum provisions

In accordance with point 5 of the Noumea Accord, Heading IX of the Organic Law of 19 March 1999[2] provides, in articles 216 et seq., for a series of public ballots allowing the

1 Noumea Accord, 5 May 1998, point 4.
2 Organic Law no. 99-209 of 19 March 1999 relating to New Caledonia.

New Caledonian people to express their views on independence. The first referendum was mandatory. The Congress could set the date for the referendum by 3/5 majority vote (33 members), no later than 14 May 2018. Once this date had passed, the French government was required to set the date. The referendum was finally requested by Congress, and took place on 4 November 2018. 56.4% of voters voted against independence. In the event of full sovereignty being rejected, a second referendum could be held at the request of one third of Congress members (19 members). This second ballot took place on 4 October 2020 at the request of 18 anti-independence elected representatives. 53.2% of voters voted against independence. The second referendum was optional, as is the third, which will be held, at the request of FLNKS party elected representatives, on 12 December 2021. The date was fixed by the French government, which could have set a date at any time up to and including 3 October 2022, the final deadline.

The electoral roll of voters called upon to determine the future of New Caledonia is a specific electoral roll defined and constituted for this sole purpose. It comprises persons proving sufficiently strong ties to New Caledonia, namely people who had qualified to vote in the referendum of 8 November 1998 approving the Noumea Accord, and people who, while they had not voted in this referendum, meet the required criteria: persons with customary civil status (Kanak), persons born in New Caledonia for whom New Caledonia represents the centre of their moral and material interests, together with their children, and people proving 20 years' continuous residence in New Caledonia as from 31 December 1994 at the latest.

One of the specificities of this electorate, in a singular instance of derogation from the general electoral system, is the fact that the vast majority of these individuals, particularly persons with customary civil status, are automatically registered on the roll, with no formalities required. French government decisions as regards registration procedures are governed by the requirement for electoral rolls to be comprehensive; considerable effort was needed to identify everyone eligible to vote, particularly people with customary status. The special administrative commissions responsible for making decisions on individual registrations are chaired by a judge brought in from Paris and include representatives of voters put forward by both pro- and anti-independence political parties, thus ensuring a balance of nominations based on affiliation to one or the other movement. United Nations electoral experts are also involved in the registration process. In 2020, 180,799 people had a right to vote: 117,379 in the South Province, 41,349 in the North Province and 22,071 in the Loyalty Islands Province. 154,918 people cast a vote, out of a total population of 271,400 as per 2019 census data.

The question put to voters needed to be simple and, of necessity, require a "yes" or "no" answer, in line with Constitutional Council legal precedent. The wording used in the Noumea Accord – "Do you want sovereign powers to be transferred to New Caledonia, for New Caledonia to accede to international status with full responsibility and for New Caledonian citizenship to become a nationality?" – did not therefore appear clear enough. Pro-independence supporters wanted the question to be about "full sovereignty", rejecting the term "independence", while anti-independence supporters set store on the use of "independence", the term indisputably at the centre of New Caledonians' concerns for several decades. Following over 10 hours of negotiations, in 2018, the Committee of Signatories[3]

3 The Noumea Accord sets up a body known as "the Committee of Signatories" to "monitor implementation of the

reached a compromise on the following wording: "Do you want New Caledonia to accede to full sovereignty and become independent?"

The Noumea Accord provides that the question should remain the same for the second and third referendums. A change to the meaning of the question would have required a local consensus, followed by an amendment to the (French) Constitution to derogate from the Noumea Accord.

B. The consequences of the referendum process

The sustainability of the institutional system established under the Noumea Accord was the first issue to arise, even before the first referendum was held. The Accord provides, in its Preamble, for the setting in place of "a solution (which) defines, for twenty years, the political organization of New Caledonia", i.e. four terms of the New Caledonia Congress. The period covered by the Accord should therefore, in theory, be brought to an end by the final term of Congress, in May 2019. Accordingly, should the result of the first referendum be a majority of votes for "No", could there be a fifth term and, if so, according to which rules? In an opinion issued on 4 September 2018, the (French) Council of State confirmed that, in view of the date of the first referendum, the Noumea Accord could apply over and beyond the twenty-year period and that the political structure "will remain in force, in its final stage of development, with no possibility of reversal, such irreversibility being constitutionally guaranteed".[4] Therefore, elections should be held in 2019 to renew the Provincial Assemblies and the Congress, under the same terms and conditions and according to the same rules as previous elections, the electorate being restricted to citizens registered on the electoral roll for provincial elections.

Should one of the referendums result in a majority of "Yes" votes for accession to full sovereignty, New Caledonia becomes an independent State, without any requirement for confirmation by the French parliament. The French government made known, in its official communiqué on the implications of the first two referendums, that "France, bound by history and in spirit to New Caledonia, answerable to the New Caledonians and the United Nations for the present process, will not suddenly withdraw: France will continue to ensure security, public order, currency and justice during an indispensable transitional period which will follow the referendum". The communiqué states that "the authorities of France and of New Caledonia will reach agreement on a timetable and on terms and conditions for the transfer of powers from France to the new State" and that on "a jointly appointed date, a French law will record, in French national law, the end of New Caledonia's attachment to the French Republic, while the authorities of the new State will make a unilateral declaration of independence on the international stage with a view to establishing diplomatic relations with other States".

Should the New Caledonians reject full sovereignty three times, the Noumea Accord is evasive, providing only for the political partners to meet to "assess in detail the situation thereby created". The Accord also provides that "for as long as the referendums have not

Accord". As partner and guarantor of the Accord, the French government heads up this committee, which meets annually in Paris with the Minister of Overseas Territories or Prime Minister as chair.

4 Point 5 of the Noumea Accord Guidance Document, 5 May 1998.

resulted in the proposed new political structure, the political structure implemented by the 1998 Accord will remain in force in its final stage of development, with no possibility of reversal, such 'irreversibility' being constitutionally guaranteed". The implication is that, although the Noumea Accord has ended in "political" terms, it remains in force until repealed and replaced by another set of provisions. That being so, a particularly sensitive issue makes its reappearance: that of the electoral roll of those entitled to vote in elections for Provincial Assemblies and Congress, which is restricted to people who settled in New Caledonia prior to November 1998 and cannot be extended to any other category, including young adults who were born in New Caledonia but have parents who cannot vote, and the spouses or civil partners of New Caledonians, who are not themselves New Caledonian citizens.

Finally, the Noumea Accord stipulates, to counter any temptation to partition New Caledonia and to nullify the case-law established by the Constitutional Council in the case of Mayotte, which approved the process of accession to independence of the Comoros with the exception of Mayotte, that "no one part of New Caledonia may alone accede to independence or remain within the French Republic on the grounds that the outcome of the self-determination referendum would have been different, in such part of the country, from the overall result".

C. Initiatives to plan for the post-Noumea Accord period

As early as 2010, conscious of the theoretical closeness of the referendum deadline, the Committee of Signatories to the Noumea Accord decided to set up a steering committee on the country's institutional future, with the aim of "providing New Caledonian political leaders with information to help them jointly master the theoretical and legal tools, develop their thinking and play an active role in ensuring the population is fully informed as to New Caledonia's institutional future".[5] A (French government) State Councillor, a university professor and a representative from the Ministry of Overseas Territories were tasked with setting up a "forward-thinking mission on (New Caledonia's) institutional future" to fuel steering committee discussions.[6]The Committee of Signatories, meeting on 6 December 2012, expressed a wish that the mission "[…] use simulation modelling to study various key hypotheses of institutional development and map the use of sovereign powers based on the principal prospective options depending on the outcome of the referendum provided for in the Accord".[7] The experts put forward four scenarios for the outcome of the Noumea Accord. Two flesh out prospects for New Caledonia's access to full sovereignty, the other two pertain to statuses of autonomy within the French Republic.

The first scenario is plain and simple access to full sovereignty, without establishing any special relationship to France: this supposition is perfectly in line with the spirit of the

5 Statement of conclusions issued by the 8th Committee of Signatories to the Noumea Accord, 24 June 2010. URL: https://notreavenir-nc.fr/wp-content/uploads/2021/01/08-VIIIème-comité-des-signataires-24-juin-2010.pdf

6 Jean Courtial, Ferdinand Mélin-Soucramanien, 2014, "Réflexions sur l'avenir institutionnel de la Nouvelle-Calédonie", Rapport au Premier Ministre, La documentation française, p. 3. URL: https://notreavenir-nc.fr/wp-content/uploads/2021/01/2013-10-Rapport-avenir-institutionnel-Courtial-Melin-soucramanien.pdf

7 Statement of conclusions issued by the 10th Committee of Signatories to the Noumea Accord, 6 December 2012.URL:https://www.nouvellecaledonie.gouv.fr/content/download/4924/38000/file/10%20relevé%20de%20conclusions%20du%20Xème%20comité%20des%20signataires%20-%206%20décembre%202012.pdf

Noumea Accord, whereby "the French government recognizes New Caledonia's entitlement to achieve, at the end of this period, full emancipation".

The second involves full sovereignty whilst maintaining a special relationship between sovereign New Caledonia and France: a partnership agreement, concluded at the outset between sovereign New Caledonia and France, could be enshrined in the Constitutions of both States. New Caledonian nationals could, in this case, enjoy the rights of free movement and freedom of establishment in France. The difficulty lies in the fact that the Noumea Accord does not appear to allow the submission of a pre-drafted document to the New Caledonian public in the context of a referendum. An amendment would first have to be inserted in the French Constitution to legally circumvent the Noumea Accord.

In the third scenario, New Caledonia would enjoy a status of augmented autonomy; it would not accede to full sovereignty. This would require assessing the leeway for increased autonomy, already well advanced.

The fourth scenario involves a status of autonomy which merely makes the current provisional status permanent. The authors of the report nevertheless state that the status quo is not in keeping with the letter and spirit of the Noumea Accord, which assumes adoption of a new status. Moreover, the Accord could not be retained as it stands since many institutional provisions would prove obsolete. In addition, the French courts and the European Court of Human Rights ruled that major derogations from the principles of equality of all before the law and of universal suffrage provided for in the Accord, including in matters of electoral law, were conditional on their being temporary measures.

As a further step in this process, taking into account the legal complexity of the issues involved, the French Prime Minister suggested setting up a group of experts tasked with the mission of listening to concerns and offering advice. This was agreed by the 12th Committee of Signatories at their meeting on 3 and 4 October 2014; the group of experts comprised public figures reputed for their knowledge of New Caledonia and its institutions. The group thus reviewed the scope of sovereign powers as currently exercised by the French government and went on to outline avenues for the future, regardless of the relationship with France, and to identify potential issues. The report, submitted in October 2016, highlights the differences and similarities between political groups as regards the institutional future, and proposes a Charter of Shared Values, based on suggestions contributed by the groups and comprising the fundamental principles, shared by all New Caledonians, which form the foundations for a possible social contract bringing all communities together.

Work on this was hindered by a lack of real engagement on the part of the political groups, whose views and positions were more influenced by immediate political issues, such as drawing up electoral rolls, rivalry within each faction and the composition of the steering group.

Meanwhile, in 2015, the French National Assembly set up a cross-party information mission on the institutional future of New Caledonia and the Senate established a "contact group" to provide full and regular updates on the situation in New Caledonia, including the current thinking of the local political partners.

In late 2017, less than a year before the first referendum, the French government launched a fresh initiative for discussions with New Caledonian political forces. The Prime Minister's

stated goal was to "sketch out a route for living together" which "endures hereafter" (i.e. beyond the period of the Noumea Accord). "A way of living together, specific to New Caledonia, forged by its history, forged by the Kanak identity and by its exchanges with other cultures, forged also by its relationship with France".[8] Exchanges should be shaped by four principles: respect, humility, responsibility and trust. The approach is based on "close dialogue with ten representatives, appointed by name, from political forces, […] a time for discussion with no time limits, like Oceanian-style palavers, […] meeting points". Four working themes are suggested: an assessment of implementation of the Noumea Accord, starting with thoughts on what a common destiny means; the question of powers transferred or to be transferred; New Caledonia's place in the world; the keystone of values and projects on which everyone agrees and which forms the bedrock of New Caledonia now and in the future.

This initiative got a positive reception from New Caledonian policymakers but was stymied by the political reality which deems that making the first move towards rapprochement is a losing gambit. The group known as "On the Path to the Future" included two leaders from each representative political party (Calédonie Ensemble, Le Rassemblement – Les Républicains, Les Républicains Calédoniens on the anti-independence side, and UNI and Union Calédonienne on the pro-independence side). Initial aspirations were thwarted by rivalry within the anti-independence camp against a backdrop of failures to comply with confidentiality. Although the group succeeded in drawing up a review of the Noumea Accord and drafting a Charter of New Caledonian Values, this was only achieved by consensus after two of the three major anti-independence political parties (Le Rassemblement – Les Républicains and Les Républicains Calédoniens) had withdrawn from the group.

In a statement made directly after announcement of the result of the second referendum in 2020, President Emmanuel Macron called on stakeholders to commit to a more frank and open dialogue and transparency *vis-à-vis* the New Caledonian people:[9]

> *The future also entails preparation, whatever happens – with or without a third referendum – for exiting the Noumea Accord by 2022. Eventually, the transitional provisions enshrined in the Constitution will need either to be replaced by permanent provisions – if the choice of remaining within the French Republic is confirmed; or to be removed – if New Caledonia chooses independence.*
>
> *It is up to all of us to come together to prepare for this future. The time has now come to provide responses and to reach full understanding of the real implications of all scenarios. And the French government, without departing from the impartiality guaranteed by the Matignon Accords, will move in this direction.*
>
> *New Caledonia's political forces must step up, "Yes" supporters must agree to consider the possibility and the implications of "No"; and "No" supporters must agree to consider the possibility and the implications of "Yes".*

8 Speech given by Prime Minister Édouard Philippe before the New Caledonia Congress, 5 December 2017.

9 Statement made by French President Emmanuel Macron in relation to the referendum on New Caledonia's accession to full sovereignty, Paris, 4 October 2020. URL: https://www.vie-publique.fr/discours/276580-emmanuel-macron-04102020-nouvelle-caledonie

Accordingly, in October 2020, the Minister for Overseas Territories set up a new discussion group known as the "Leprédour Group", the name of the islet where he held discussions with the key political leaders of both camps. The French Government is intent on renewing the process of dialogue eroded by months of acrimonious referendum-related campaigning.

II. PROSPECTS FOR EXITING THE NOUMEA ACCORD

A. Review of outcomes for the first referendums

From 1988 to 2018, no-one analyzing the situation in New Caledonia would have seen any reason to query the evidence that pro-independence supporters were clearly in the minority. This conviction grew stronger throughout the Noumea Accord implementation process, some people considering that the quest for independence had given way to a form of common destiny which, although far from harmonious or even real, stemmed from logic and contentment generated by unprecedented development. Many Kanak were thought, as a personal choice, to have relinquished independence in favour of a level of freedom and quality of life that only France could guarantee. With the approach of 2018, there was a palpable heightening of tensions and feelings of ethnic identity, yet polls pointed to a 70% vote for "No".

Ultimately, the issue at stake in the referendum held on 3 November 2018, an historic ballot, was the degree of margin between the "Yes" and the "No" vote. With a 43.6% vote in favour of independence, the pro-independence camp rose impressively to a challenge viewed as a lost cause, and emerged as the real winners. Despite a relatively comfortable lead of 18,000 votes, the anti-independence camp saw their win as a defeat and, above all, a threat for the future. The deafening silence of their political leaders and their appearance of "waking with a bad hangover" on November 4 eloquently reflected their shocked reaction. This ballot made it clear, in no uncertain terms, that the vote for independence was a vote for identity and community, a people's vote, and that the desire for independence, seen as a need for dignity, had lost none of its vigour. "The electoral geography of this referendum is in line with that of previous provincial elections: the vote for independence is fundamentally a Kanak vote".[10] The unusually higher turnout, compared to that for provincial elections, was due to pro-independence voters turning out in significantly greater numbers, and pro-independence voters benefiting proportionally more from measures to make voter registration easier.

The outcome of the second referendum, held on 4 October 2020, was even tighter – 53.26% for "no" and 46.74% for "yes", with a margin of just 10,000 votes between the two –[11] and confirmed conclusions drawn from the first ballot. There was an impressive increase of over 5 points in turnout (85.69% of 180,799 registered voters, compared with 81.01% in 2018). The anti-independentist camp was far more active on the ground and continued to highlight economic concerns, a strategy which again proved to have no effect on pro-independence

10 Pierre-Christophe Pantz, "La double impasse électorale", *Outremers360*, 20 September 2020. https://outremers360.com/politique/expertise-referendum-en-nouvelle-caledonie-la-double-impasse-electorale-par-pierre-christophe-pantz

11 81,503 New Caledonians voted "No" compared to 71,533 who voted for independence.

voters. Compared to 2018, the striking difference lay in the alliance formed by almost all anti-independence parties to create a "Loyalists" group committed to a joint campaign based on the vision of a firm "No", leading to a multi-facetted New Caledonia. Calédonie Ensemble, in the majority from 2004 to 2019, was the only party to conduct its own campaign for a "moderate no" based on the concept of "practical sovereign powers". The pro-independence camp, galvanized by the hope that mobilizing Kanak voters who had stayed at home would ensure a win, came up with a highly reassuring and inclusive campaign message aimed at persuading the doubters. The gist was that independence would have little impact on public services, that anyone who so wished could retain French nationality and enjoy all related benefits, such as free movement within the Schengen Area and access to higher education in France. Far removed from the Kanak Socialist Independence message of the 80s, their project was presented as being multi-ethnic and acknowledging New Caledonia's colonial journey. Priorities included respecting the natural environment, the sharing of wealth, and making democracy work. Most importantly, the FLNKS parties conducted a joint campaign based on a joint project.

The general atmosphere surrounding the second referendum was also very different. Whereas the first had taken place without incident, like any normal election, the referendum held on 4 October 2020, whipped "Yes" supporters into a froth of excitement. This led to sometimes large groups of Kanak, flaunting the "Kanaky" colours, gathering menacingly at polling stations. A few weeks earlier, the pro-independence camp had contested the French government's decision to waive, for this ballot, applicability of the Electoral Code provision prohibiting the juxtaposed use of the three colours blue, white and red if such use could lead to confusion with the national emblem, on posters and circulars having an electoral purpose or character. In other words, the French government took the view that the national emblem and its colours could be used on propaganda documents, provided there was no risk of confusion with an official document. This measure was designed to make the electoral debate fairer, since pro-independence supporters were able to use the FLNKS flag, made quasi-official[12] in 2010 and, since then, flown alongside the French flag on all public buildings. The Council of State had, at the time, thrown out the complaint by the pro-independence camp.[13] It was against this backdrop that the 2020 referendum campaign became the stage for a symbolic show of strength, with opposing flags raised high.[14]

The incontrovertible conclusion, after 30 years of common destiny, development, rebalancing, and shared governance is that the persuasive powers of both camps have no influence outside their own bases. The quest for independence remains fundamentally Kanak and is impervious to any other argument; for non-Kanak, their determination to remain French is a guiding

12 In 2010, the aspiration to see the French flag and the Kanak flag – or Kanaky flag or FLNKS flag (Front de Libération Nationale Kanak et Socialiste) – flown together, was adopted – without binding legal value – by the New Caledonia Congress. On 17 July 2010, Prime Minister François Fillon, on an official visit to New Caledonia, raised the Kanak flag and the French flag together for the first time at the headquarters of the French High Commissioner, in the presence of local authorities. See: *Le Figaro*, "Fillon hisse les drapeaux français et kanak à Nouméa", 17 July 2010. URL: https://www.lefigaro.fr/politique/2010/07/17/01002-20100717ARTFIG00310-fillon-hisse-les-drapeaux-francais-et-kanak-a-noumea.php

13 Council of State, No. 443429, 1st September 2020.

14 See: Anthony Tutugoro, "Un «Non» aux saveurs d'un «Oui» en Nouvelle-Calédonie", *Revue Multitudes*, 81, Winter 2020.

light, feeding into their distrust of the notion of independence, perceived as a desire for exclusion and leading to an obvious deterioration in the quality of essential public services.

B. The political situation in the run-up to the final Noumea Accord referendum

The 2019 provincial elections significantly changed the layout on the political chessboard. French MP Philippe Gomes' majority party "Calédonie Ensemble" was the big loser, dropping from 15 to 6 elected representatives in Congress. The alliance comprising Senator Pierre Frogier's Rassemblement-LR party, Sonia Backes' Républicains Calédoniens party, and two other smaller parties, known as Avenir en Confiance (AeC), were victorious in the South Province, gaining an absolute majority of seats, and now have 18 seats in Congress (compared to 13 under the previous mandate). The emergence of a new party, Éveil Océanien (EO), upset the usual balance between pro- and anti-independence parties. Éveil Océanien is a community-based party which aims to represent New Caledonia's Wallisian and Futunan community without taking a party position on the issue of breaking from or remaining within the French Republic. The 3 seats won by this small party in Congress mean it wields a balance of power, given that pro-independence parties hold 26 and anti-independence parties hold 25 of the total of 54 seats. From May 2019 to mid-2020, the EO maintained an alliance with the AeC grouping, thereby opening their way to the presidency of Congress; EO then changed sides, joining the UC-FLNKS and Nationalists grouping in Congress in July 2020. With EO backing, the pro-independence grouping currently – but probably for a limited period – holds the majority position in Congress, which explains the pro-independence majority in the new government elected by Congress in February 2021, after the previous government was toppled by the two pro-independence groups.

This government was elected following the collective resignation of the previous government's pro-independence elected representatives, against a backdrop of opposition to the proposed purchase of the South Nickel Processing Plant. Inability by the two competing pro-independence parties, Paul Neaoutyine's UNI-Palika and Daniel Goa's UC (Union Calédonienne), to come to an agreement on appointment of a president for the government prevented the current seventeenth government from taking office for five months. The AeC's Thierry Santa, as president of the previous government, thus remained in office until 7 July 2021, with reduced caretaker powers, to deal with routine business.

It is unprecedented for the presidents of both Congress and government to represent pro-independence parties. That this has occurred in the run-up to the final Noumea Accord referendum does not reflect a trend in public opinion and requires nuanced interpretation. The pro-independence vote has remained relatively consistent for the last 30 years, at around 40%. In the 2019 provincial elections, the pro-independence vote stood at 42.4%, down one percentage point compared to the referendum but up one percentage point compared with the 2014 provincial elections. Importantly, with 42.4% of the vote, the pro-independence camp gained 48.1% of seats in Congress, a situation attributable to rebalancing measures leading to a degree of representational distortion in Congress in favour of the North and Loyalty Islands Provinces. The distribution of seats in Congress favours provinces where there is a substantial pro-independence majority.

> *Consequently, the theoretical number of voters represented, on average, by each elected representative, differs according to province. For example, in 2019, a representative from the South Province elected to Congress 'theoretically' represented 3,385 voters, while a representative*

elected from the North Province represented 'only' 2,672 and a representative elected from the Loyalty Islands Province, 3,028.[15]

In the South Province, this institutional ruling also exacerbates the impact of the regulation specifying that any electoral list obtaining less than 5% of the vote in a given province is barred from gaining a seat. In the South Province, a minimum of 5,417 votes were required to gain a seat in 2019, whereas the number of votes required in the North Province was just 2,005. This measure is designed to benefit the major parties who have a clear-cut position on New Caledonia's future. Whereas, in the pro-independence provinces, the long-established parties continue to attract very strong support, in the South Province, there is a trend towards the increasing emergence of small parties, which inevitably fail to achieve 5% of votes and are eliminated. The votes they obtained are rendered worthless because they cannot be taken into account in deciding the distribution of seats. As a result, there has been a considerable rise in votes lost by anti-independence parties in the South Province. The composition of Congress does not therefore truly represent the electorate because this system creates an imbalance between electoral weight and the distribution of seats in Congress and the government.

Following a year of isolation due to the global health crisis, during which New Caledonia succeeded in protecting itself from the virus by closing its borders, the economic and budgetary situation is fraught. Public finances are in an alarming state and local government budgets can no longer cover the costs of various public policies. The absence of a fully functional government made it impossible to adopt New Caledonia's national budget, obliging the French government to take unilateral action setting an unambitious budget. An unprecedented situation, indicative of an attitude of political autism; the absence of government and lack of interest in adopting a budget, the most fundamental policy document of government, are cause for grave concern.

Finally, an increasingly strained atmosphere surrounds nickel mining issues; heated disputes on the subject of New Caledonia's key resource have been raging for decades. In New Caledonia, nickel is primarily a political topic. In late 2019, the focus was on the takeover of the Vale-NC industrial complex in the South Province by a consortium led by the Swiss Trafigura Group. As staunch supporters of the "nickel doctrine"[16], the pro-independence camp attempted to impose a takeover by Sofinor[17], the semi-public company owned by the North Province, in partnership with Korean company Korea-Zinc; neither Vale-NC nor the South Province considered Korea-Zinc's financial guarantee terms and conditions to be satisfactory. The key issues at stake were, firstly, protecting New Caledonia's interests in financial arrangements covering the ore processing plants and, secondly, the North Province's

15 Pierre-Christophe Pantz, "Auto-détermination et géographie électorale en Nouvelle-Calédonie : cristallisation politique ou indépendance ?", *Cahiers du LARJE*, 2019/9, Noumea, URL: https://larje.unc.nc/fr/cahiers/cahier-du-larje-n-2019-9-auto-determination-et-geographie-electorale-en-nouvelle-caledonie-cristallisation-politique-ou-independance/

16 The "nickel doctrine" is a non-formalised concept advanced by North Province president Paul Neaoutyine as justification for communities taking action on nickel industry issues. The concept appears to include three priorities: controlling nickel reserves, halting ore exports, except in the case of New Caledonian offshore companies, and the desire for New Caledonia to acquire a majority stake in the SLN.

17 Semi-public company Sofinor, established in September 1990, gave the North Province the means to purchase the SMSP. Sofinor is 85% owned by the North Province. In December 2013, the provincial assembly's elected representatives voted for Sofinor to be restructured to focus solely on the mining and metallurgy sector.

ambition to get control over the prerogatives and resources of the South Province. Following several weeks of violent protests and wrecking of equipment at the South Plant site, together with road blocks stopping north- and southbound traffic and blockades at most mining sites, not to mention a clash with police forces in central Noumea, policymakers eventually agreed on a takeover plan[18] under which the South Province retained ownership of the mining titles while leasing them to a consortium entitled Prony Resources, comprising Trafigura, New Caledonia's local authorities and the company's employees[19]. The ore processing complex, which employs a staff of 1,300 and 1,700 subcontractors, would remain closed from 10 December 2020 to 31 March 2021. These events, during which separatists whipped up memories of the "mining prerequisite" which, from 1995 onwards, stalled discussions on exiting the Matignon-Oudinot Accords, once again placed the people of New Caledonia on opposing sides. Faced with barricades on main roads and acts of vandalism carried out, almost exclusively, by Kanak, New Caledonia's, generally non-Kanak, population mobilized to protect houses, neighbourhoods and roads. To reclaim the balance of power, communities built their own barricades, including on roads giving access to tribal villages, and set up counter-blockades on main roads. Although the situation has been defused, it has left behind a disquieting conviction that the third referendum will very likely be a focus for the same sort of thing.

A few weeks after these incidents, the Territorial Chamber of Audit highlighted the inconsistencies and legal and financial risks attendant on the North Province holding stakes in mining companies, thereby calling into question the separatist rhetoric on nickel-based economic independence upheld for the past thirty years.[20] Strongly emphasized points included mining companies making no dividend payments to the community, socialization of losses by the North Province and lack of transparency. The Chamber of Audit criticized and called into question, on grounds of "vague wording which has no place in the determining of a strategic agenda", the economic model characterized as the "nickel doctrine" by the North Province authorities. Meanwhile, in mid-May 2021, New Caledonia's Commercial Court set safeguard proceedings[21] in motion for the SMSP[22] and Sofinor in response to their debt

18 The agreement was signed by senior South Province officials (loyalist), the separatist president of Congress, Roch Wamytan, and the leaders of the separatist "Usine du sud, usine pays" collective.

19 Trafigura, Press release, "Prony Resources announces completion of transfer of ownership and a new beginning for New Caledonia's Usine du Sud", 31 March 2021. URL: https://www.trafigura.com/press-releases/prony-resources-announces-completion-of-transfer-of-ownership-and-a-new-beginning-for-new-caledonia-s-usine-du-sud

20 Cour des Comptes, "Rapport d'observations définitives sur « les interventions de la province Nord dans le Nickel – exercices 2016 à 2019 »", 30 April 2021. URL : https://www.ccomptes.fr/fr/publications/province-nord-secteur-du-nickel

21 Safeguard proceedings concern companies which face difficulties but are not yet in a state of insolvency. The aim is to enable the company to continue operation, maintain jobs and discharge liabilities by reorganising the company under Court supervision. The safeguard process usually leads up to implementation of a safeguard plan.

22 Extracts from the report of final observations on the Société Minière du Sud Pacifique (SMSP) issued by the Chambre territoriale des comptes, 22 April 2021: "Société Minière du Sud Pacifique (SMSP) is a subsidiary of SOFINOR, a semi-public company owned by the North Province. SMSP is a holding company with majority holdings in the North Plant (KNS), the South Korea Plant (SNNC), the NMC (the mines supplying ore to the SNNC), SCI THYLACINE and COTRANSMINE. The SMSP maintains that its industrial strategy is grounded in the nickel doctrine model backed by the North Province. This doctrine, adopted by the FLNKS in January 2015, is based on three key principles: controlling nickel reserves, halting exports of crude ore (except for New Caledonian offshore companies), and the desire to get the STCPI declared a 51% majority shareholder in the SLN. An industrial group with the scope of the SMSP, which claims to be one of the world's leading nickel producers, is built on fundamentally political strategic foundations, defined neither in terms of precise expectations nor in practical terms".

repayment difficulties. Although the French Prime Minister's advisers have sounded the alarm several times in recent years[23], this is the first time the North Province's economic model has been officially and publicly called into question.

C. Perspectives outlined by the French government

As soon as the prescribed six month period after the second referendum had ended, the separatists in Congress were quick to request that the French government schedule the 3rd referendum, in accordance with the procedure laid down by the Statutory Law of 1999. This spelled the end of the loyalist camp's hope of reaching agreement on a consensual project, thereby avoiding a third referendum carrying connotations of "divorce on the ground of irretrievable breakdown of marriage".

Responding proactively to robust demands from elected representatives, to UN Decolonization Committee recommendations and, more generally, to a real public need in New Caledonia, the French government undertook to carry out a comprehensive review to enable consideration "in as neutral a way as possible" of the legal, economic, financial and political consequences of "Yes" and "No" outcomes. A non-definitive 46 page document was forwarded, on 11 May 2021, to members of the "Leprédour Group" with a view to the meetings scheduled for late May, headed by the Minister for Overseas Territories and bringing together New Caledonia's political leaders, the Prime Minister and all French government ministries concerned by issues relating to New Caledonia's future. These discussions were intended to stimulate and broaden thinking, adding the expectations and projects of political groups to the mix, in order to further develop the document, designed for distribution to all New Caledonians on completion. Despite French government precautions to secure confidentiality regarding the draft communication, it was quickly leaked on social media and gave rise to a number of somewhat anxious comments and discussions.

In the document, the French government lists its areas of involvement in New Caledonia, specifying the amount of funding provided for each area, both those under French government jurisdiction and those receiving funding despite being transferred to New Caledonia. Reading this unprecedented listing of every area of French government involvement is quite dizzying.

Looking at the consequences of a "Yes" vote, the French government begins by underlining that "New Caledonia's access to full sovereignty is a legal process which entails leaving France: at the end of a necessary but still-to-be-defined transition period, New Caledonia will cease to belong to the French Republic; French law will no longer apply; French institutions will no longer have a legal basis for action on the territory of the new State". The French government then indicates its willingness to sign, if the new State so wishes, a comprehensive association agreement or thematic agreements (defence, justice, security, etc.), while cautioning that such agreements would "be based on political negotiation" and that "neither State could impose anything on the other".

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23 See, in particular, the report drawn up by Michel Colin, "Project Manager for New Caledonian nickel attached to the Prime Minister's Office – a contribution to the debate on the development of a strategy for New Caledonian nickel", February 2016. https://issuu.com/la1ere/docs/contribution_au_d__bat_nickel_m_co__

In the event of a "No" vote, the French government states that "the choice to remain within France and the end of the Noumea Accord do not, in themselves, signify validation of the current status quo. The wish repeatedly expressed by voters to remain within the French Republic will mark the beginning of a new chapter, which will be jointly written by the French government, New Caledonia's policymakers and the French parliament". "The end of the Noumea Accord will therefore imply the definition of a new constitutional framework for New Caledonia". The French government makes it very clear that it will condemn any attempt to declare unilateral independence and will reject any suggestion to partition the territory.

Setting the date for the third referendum was the second issue addressed at the Paris meeting. Once the request for a third referendum had been triggered by the elected representatives of Congress, the French government was under an obligation to hold it within a maximum period of 18 months. Although the FLNKS had acted as soon as legally possible to request a 3rd referendum, they nevertheless voted for a ballot in October 2022, whereas the loyalist side thought it should be held as soon as possible, before the start of the French presidential election campaign.[24] Significant stakes lay behind this simple issue of setting a date. The separatist parties needed time to regain the credibility damaged by the governmental crisis they had been entirely responsible for causing. As it happens, the political climate in 2021, as described above, is relatively favourable to remaining within the French Republic. Moreover, in the long run, demographic factors, coupled with simplified conditions for electoral roll registration, are favourable to the demand for independence. Accordingly, setting the date, a decision falling to the French government, is strategic.

Despite a certain amount of hesitation and tension between the French government and the separatist parties, the discussions did take place in Paris in late May 2021. The UNI was the only party to refuse to take part, on the grounds that it needed more time for a thorough review of the document on the consequences of "Yes" and "No". The discussions, deemed constructive by all, concluded with a statement by the Minister for Overseas Territories. The French government's unilateral decision to set 12 December 2021 as the date for the referendum, given the lack of New Caledonian consensus, emerges as the most significant point. The French government then proposes an 18-month period of "convergence and stability", i.e. until 23 June 2023, to work on a consensual plan taking into account the outcome of the ballot. This plan for the future which, if the outcome is "Yes", will be the Constitution of the new State and, if the outcome is "No", will be a new status within the French Republic, will be submitted to a new referendum "which will constitute the first legislative act of this new post-Noumea Accord era". The minister also provided a few indications regarding the outlines and limitations of "Yes" and "No" outcomes as resulting from the discussions. For example, in a "Yes" scenario, there will be a "short transition period for some matters", including transfers of funds by the French government, while others will be subject to a "long transition period", such as "training the managerial and executive resources required for sovereignty". There will be genuine efforts to seek a partnership with France, however "there is no guarantee of success because such a partnership would be based on many variables contingent on the two States which, at this point, remain unknown". Dual nationality, possible subject to certain conditions, could not be granted to all inhabitants. In the event of a " No" outcome, the constitutional

24 The French national presidential elections are scheduled for May 2022.

right to self-determination will be guaranteed[25], as will the irreversibility of powers already transferred. There will be a partial opening up of the electorate for provincial elections "in compliance with Constitutional Council and European Court of Human Rights case law". An assurance as to "the maintaining of specific constitutional provisions (Heading XIII of the Constitution)" is also given. The substance of this last statement raises many questions.

Finally, the discussion attendees agreed to address, within an ad hoc framework yet to be defined, "the major projects which it has not proved possible to bring to fruition under the Noumea Accord and, more broadly, the long process initiated by the French government". These comprise "undertaking the decolonization audit as provided for by the Committee of Signatories held on 2 November 2017, in accordance with terms and conditions which need to be brought up to date; redressing inequalities to promote unity within the population, including a review of changes in taxation; the education system, a crucible for future generations and mainspring of the skills and knowledge needed by New Caledonia; the necessary diversification of New Caledonia's economy; continuing with rebalancing, incorporating new measures to better fulfil goals; continuing the work of building a shared New Caledonian identity, shaped by the culture of the Kanak people – the first people – and the contributions of the communities who arrived thereafter; the place of New Caledonia in its regional environment and, as may be, in France's Indo-Pacific strategy".

It would seem that the discussions between the French government and New Caledonia's political forces finally brought a degree of calm in a generally fraught atmosphere. The separatists did not make any forceful show of opposition to the chosen date of 12 December, and the draft decree calling on voters was favourably received by Congress.[26] Faced with a need for urgent action, the separatists set aside their differences and appointed the UNI party's Louis Mapou to the role of government president, thereby allowing the government to resume normal operation. The French government's report on the consequences attendant on the referendum outcome, revised and expanded by the inclusion of proposals made by the political groups, will be published in the coming weeks. The calm before another storm or genuine peace within a clear framework laid out by the French government?

CONCLUSION

With a few months to go before the final and most decisive referendum of the decolonization process laid down by the Noumea Accord, the New Caledonian public's confidence in the future has been eroded. According to the results, announced on 10 May 2021[27], of a study commissioned by the French government as part of the "deep-listening" strategy, 52% of the New Caledonians surveyed are worried. Concern is most acute amongst "No" voters and South Province residents and mainly relates to the issue of independence and its impact on

25 A right which, in any case, is already enshrined in the French Constitution, under article 53 paragraph 3, as applying to the people of French Overseas Territories.

26 Decree no. 2021-866 of 30 June 2021 calling on voters and scheduling the referendum on the accession of New Caledonia to full sovereignty. https://www.legifrance.gouv.fr/jorf/jo/2021/07/01/0151

27 See *NCPremière*, "Consultation citoyenne : ce qu'il faut retenir de l' 'écoute profonde'", opinion poll carried out in New Caledonia, 11 May 2021. URL: https://la1ere.francetvinfo.fr/nouvellecaledonie/consultation-citoyenne-ce-qu-il-faut-retenir-de-l-ecoute-profonde-menee-aupres-des-caledoniens-1004701.html

the economy, particularly health and social security funding, on the education system and on the safety and security of people and property.

While everybody knows that the outcome of the final referendum will be close, individual groups vary in their certainties and degree of awareness of the immutable nature of issues linked to the relationship with France. Some believe that independence will be achieved regardless of the outcome of the consultation, a belief long stoked by separatist rhetoric based on the view that the Kanak people have held out their hands to other communities to create one people but that if other communities failed to grasp the proffered hands by joining the Kanak people in a shared nation-building project, the separatists would negotiate the terms of independence directly with the French government. Other believe that the triple vote for "no" in the referendum will settle the issue of independence once and for all, and there will then be no foundation for the independence demand. This belief is based on a western democratic interpretation of the Noumea Accord. Finally, many people believe that the December 2021 ballot will mark a step forward in the emancipation process but will not resolve New Caledonia's central problem as epitomized by the pipe dream of a common destiny. In the event of a "No", the quest for independence will remain unresolved for a considerable majority of the indigenous population and, in the event of a "Yes," the New Caledonians opposed to independence will represent over half of New Caledonia's population (36,000 people are not eligible to vote). By implication, this situation revives the sensitive issue of the future shape of New Caledonian citizenship, and therefore the definition of the electorate eligible to nominate leaders and adopt a new statute whatever the outcome of the referendum on 12 December.

The key challenges of the post-election process therefore lie in accepting the outcome and in the ability of the New Caledonian people to unite around an identity which, while perhaps not being common to all, would find expression through ties shared across the past, present and future. In his speech at the Théatre de l'Île on 5 May 2018, the twentieth anniversary of the Noumea Accord, the French President urged the New Caledonian people to seek a union in memories:

> *You are these New Caledonians with very diverse roots, more intermingled with every day that passes, who each have a place in this amazing narrative and therefore in this past; the message I wanted to share with you today, this profound conviction, is that no-one should shut themselves inside a narrative which precludes connection with others.* [...] *this journey of recognition, this union of memories, is the point we are at, and this movement is irreversible and this point comes in a crucial year a few months before the coming referendum.*

The results of the 2021 "deep-listening" study reveal that people have not yet assimilated the notion of "living together", and that all communities still come up against rejection, racism, and inequality. It would appear that the issue of Kanak culture must be addressed "away from politics, against the backdrop of a narrative yet to be shared". 58% of the people surveyed said they were "in favour of a gesture to mark the end the colonial period". Bearing in mind the pain and unspoken fears and resentments at the heart of New Caledonian society, local policymakers and the French government have agreed to work on "defining a customary way forwards to help in achieving the reconciliation of memories".[28]

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28 See "Déclaration au terme de la session d'échanges et de travail du 26 mai au 1er juin 2021". https://www.gouvernement.fr/sites/default/files/document/document/2021/06/declaration_au_terme_de_la_session_dechanges_et_de_travail_du_26_mai_au_01_juin_2021_autour_de_lavenir_institutionnel_de_la_nouvelle-caledonie.pdf

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Michel Allenbach is a sedimentologist specializing in coastal systems. In 1990, following an initial period working on the Mediterranean Maghreb area at the University of Science and Technology – Houari Boumediene in Algiers (USTHB), he was appointed an Associate Professor in Geology in Noumea at the French Pacific University, and then University Professor at the University of New Caledonia (UNC). As a former Vice-President of UNC, in charge of the Scientific Council, he has overseen, in the role of chief scientist, a considerable number of environmental research and assessment programs on behalf of every local authority. He is currently Emeritus Professor at the Institut des Sciences exactes et appliquées - Institute of Exact and Applied Sciences (ISEA-EA 7484).

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Dominique Barbe is a university-accredited teacher, holds a PhD in the History of Early Christianity, and is an Associate Professor at the University of New Caledonia and member of the TROCA laboratory. He has devoted the past fifteen years to researching art history and Christianity in Oceania. Dominique is the author of a History of the Pacific published in 2008 by Editions Perrin in Paris, and has contributed to many publications, mainly focussing on Christianity and Oceanian art. His current field of research is Christian art in Oceania and various related theological issues.

Suzy BEARUNE
Suzy Bearune is an Associate Professor in Oceanic Languages and Cultures at the University of New Caledonia. She holds a PhD in linguistics, awarded for her thesis on "Linguistic expression of space in the Nengone language" at INALCO (National Institute for Oriental Languages and Civilizations – Paris) and her key fields of research since 2015 are Pwapwâ, a Kanak language spoken by around 80 people belonging to the Boyen Tribe in the municipality of Voh, and the relationship between songs and languages. She is also involved in collaborative research projects with institutions such as the CMDNC (NC Conservatory of Music and Dance) Department of Oceanian Traditional Music and Polyphonic Songs, working on the inventory of traditional songs in Kanak society (DO project); the Kanak Language Academy (ALK), working on, for example, Kanak languages standardization issues (writing system, editing work for publication, etc.); and the Service de l'Enseignement des Langues et Cultures Kanak (Department for the Teaching of Kanak Languages and Cultures - SELCK), working on integrating the teaching of Kanak culture into New Caledonia's education system.

Françoise CAYROL
Françoise Cayrol holds a PhD in Ethnology and Anthropology (University of Paris 1 Panthéon-Sorbonne). Having worked in New Caledonia, Fiji and Vanuatu as an ethno-archaeologist and ethnologist (CNRS-EHESS, Erasme), she formed part of the *Annales, Histoire, Sciences-Sociales* editorial secretariat at EHESS-Paris, before going on to join the team at the Museum of New Caledonia, and then the University of New Caledonia (CNEP/LIRE), where she set up the Presses Universitaires de la Nouvelle-Calédonie, PUNC, which she has coordinated for several years. She teaches at the University of New Caledonia and the National University of Vanuatu for Administration and Communication Faculty, Toulouse. Her key area of research is the anthropology of Oceanian societies but she also does work on cultural, public, community and association policies, particularly in relation to the Noumea Accord.

Étienne CORNUT
Étienne Cornut is a Professor of Private Law at Jean Monnet University in Saint-Étienne and Director of CERCRID – UMR 5137 (Research Centre for Critical Legal Studies). His previous position was at the University of New Caledonia, where he served as Vice-Chair of the Board of Directors. His research focusses, firstly, on legal pluralism and the conflicts between domestic and international law and, secondly, on the right to acquire nationality and citizenship, particularly within a context of decolonization. His research into the legal framework of French overseas territories centres on Kanak customary law and internal legal conflicts linked to the coexistence of laws with different sources: French national law, local law (as a result of transfers of legal jurisdiction) and customary law.

Pascal DUMAS
Pascal Dumas is an Associate Professor in Geography and Geomatics at the University of New Caledonia. His primary sphere of research and expertise is the characterization and management of risk in tropical island and coastal areas. His work therefore focuses on themes dealing specifically with soil water erosion modelling, on coastline and coastal erosion monitoring and on island vulnerability and the dynamics of land-use change. He favours a methodological approach using space-based Earth observation technology, drones and geographic information systems. His research covers sites in Oceania, principally in New Caledonia, and also in Vanuatu, Fiji, Tuvalu and French Polynesia; sites in the Indian Ocean – Reunion Island and Madagascar – and on Clipperton Island are also key areas of study. In recent years, his research interests have included issues linked to the social and environmental impacts of climate change in the South Pacific.

Jean-Marie FOTSING
Jean-Marie Fotsing has held the rank of University Professor in Geography, Development and Environment for over twenty years. As a specialist in tropical developing countries, he has taught students at the University of Orléans, the University of the French Antilles and Guyana and, since 2016, at the University of New Caledonia. He is Director of Graduate Studies for the *Planning and Development of Oceanian Territories* bilingual MA degree course taught at the Universities of Vanuatu and of New Caledonia. His key fields of research are human-environment relationships and associated land-use/cover changes in urban, rural and natural environments. As the key architect of the H2020 MSCA RISE FALAH (Family Farming, Lifestyle and Health in the Pacific) project, he is responsible for the scientific coordination of some 100 researchers from Europe (Germany, France), Australia and the Pacific Island Nations engaged in fieldwork in Fiji, the Solomon Islands, Vanuatu and New Caledonia (https://falah.unc.nc).

Samuel GOROHOUNA
Samuel Gorohouna is an Associate Professor in Economics at the University of New Caledonia and a researcher at the Legal and Economic Research Laboratory (LARJE). Inequalities in the labour market and access to housing constitute his key area of research. He is also involved in work on integrating indigenous communities into the market economy, on greening the tax system and on voting behaviour. He teaches microeconomics and development economics, with a focus on the growth of small regional economies. He is a member of the University Board of Directors and Head of the Baco Campus in Koné.

Caroline GRAVELAT
Caroline Gravelat is an Associate Professor in Public Law at the University of New Caledonia and is responsible for teaching courses in the Geopolitics of Oceania, Comparative Constitutional Law in Oceania and the French Overseas Territories, International Law and the Law of the Sea. She is a member of the Legal and Economic Research Laboratory (LARJE), and institutional issues in the Pacific States and Territories and regional relations are her key focus of research. From 2010 to 2016, she was diplomatic adviser to the French High Commissioner in New Caledonia and, from 2017 to 2019, adviser on political affairs and the follow-up to the Noumea Accord.

Léa HAVARD
Léa Havard is an Associate Professor in Public Law and has held the role of Visiting Scholar at the University of New Caledonia since 2019. Her speciality is constitutional law and she has a particular interest in how local identities are taken into account in a modern State structure. She addresses this topic from a comparative perspective, since she defended a PhD thesis at the University of Bordeaux on "L'État associé. Recherches sur une nouvelle forme de l'État dans le Pacifique Sud" (published by PUAM, coll. Droit d'outre-mer, 2017), and also within the context of French government structure. She has been working for over ten years on research into France's Overseas Territories legal system, with specific focus on the issues around New Caledonia's institutional future. Léa Havard led several field missions to prepare the ground for holding referendums on New Caledonia's accession to full sovereignty. Léa Havard is a founding member and treasurer of the Association des Juristes en Droit des Outre-Mer (AJDOM).

Louis LAGARDE
Louis Lagarde has a PhD in Oceanian Prehistory and is an Associate Professor at the University of New Caledonia, responsible for teaching courses in Pacific Archaeology and History. His research work in New Caledonia (Main Island, Isle of Pines) and in French Polynesia (Society Islands, Tuamotu) focuses on transformations in Oceanian societies over the course of time, from early settlement of the islands to the consequences of contact with Europeans. He recently acted as editor of the multiauthor volume *Le Patrimoine de la Nouvelle-Calédonie,* for the Fondation Clément, published by Éditions Hervé Chopin (2020).

Antoine LECA
Antoine Leca is a Law Faculties-accredited teacher and has been in post at the Aix-Marseille University since 1991. Since 2000, he has headed the DEA (Master of Advanced Studies) program, now retitled Master's Degree in Health Law, and is currently Association française de droit de la santé Vice-President. He has authored or co-authored around fifty books, including five on New Caledonia and three on New Caledonia's healthcare system.

Stéphane MINVIELLE
Stéphane Minvielle is an Associate Professor in History. Temporary administrator of the New Caledonia Institut National Supérieur du Professorat et de l'Éducation, he is also a member of the Laboratoire Interdisciplinaire de Recherche en Éducation at the University of New Caledonia. His key field of research is history and the teaching of history in New Caledonia, in Vanuatu and, more widely, in the French-speaking islands of Oceania. His work also includes citizenship education in schools and the inclusion of indigenous knowledge in teaching.

Gwenaël MURPHY
Gwenaël Murphy is a university-accredited teacher and holds a PhD in History from the École des hautes études en sciences sociales (Paris); he is an Associate Professor at the University of New Caledonia. A member of the TROCA team (Trajectoires d'Océanie), his specialist areas are gender history and the history of justice in the 18th and 19th centuries. He came to New Caledonia in 2017 and, since then, has been involved in research into New Caledonia's colonial history, leading him to publish three books and several articles (on justice, alcohol, cannibalism, convict histories, and New Caledonia's historic records).

Fanny PASCUAL
Fanny PASCUAL has held the post of Associate Professor in Contemporary History at the University of New Caledonia since 2011. She has acted as science expert to New Caledonia's World War II Museum since it was established in 2013; her key areas of research are the Pacific War and "*muséo-histoire*", that is, the study of the discourse of heritage and archival institutions in the Pacific. She is responsible, amongst other things, for the History of the Pacific and the History of New Caledonia courses of the degree program in 20th century history.

Catherine RIS
Catherine Ris is Professor of Economics at the University of New Caledonia. Following her PhD at the University of Lyon (France), she held a post-doctoral fellowship at the Research Centre for Education and the Labour Market (ROA) at Maastricht University (Netherlands). In 2014, she spent a year as Visiting Scholar at the University of Auckland Centre for Development Studies, New Zealand. As Director of the Legal and Economic Research Laboratory, she was involved in establishing the IUT (University Institute of Technology); formerly Vice-President of the University of New Caledonia, in charge of partnerships in recent years, she was appointed UNC President in August 2021. Her key areas of research are development economics and labour and education economics, with particular focus on social and ethnic disparities.

Laïsa RO'I
Laïsa Ro'i is a Research Professor in Economics at the Northern Branch Campus of the University of New Caledonia (UNC), and a member of the Legal and Economic Research Laboratory (LARJE). Her key areas of research are international economics and finance as applied to Oceanian regional development, and economic analysis and policy as applied to New Caledonia. From 2014 to 2017, she coordinated the program of research into the sustainability of New Caledonia's development path at the New Caledonian Institute of Agronomy (Institut Agronomique néo-Calédonien - IAC), and co-authored the book *La Nouvelle-Calédonie face à son destin : Quel bilan à la veille de la consultation sur la pleine souveraineté ?,* published in 2016.

Virginie SOULA
Virginie Soula is an Associate Professor in Modern Literature at the University of New Caledonia. Her specialist field is New Caledonian French literature and she holds a DESS in Intercultural Relations; the issue of the cultural representation of New Caledonia and its inhabitants is a key interest. Her main research focus is the literary output of the French-speaking Pacific nations, and she is now broadening her research to include all Oceanian literature.

Manual TIRARD
Manuel Tirard is an Associate Professor in Public Law and an accredited Director of Research at Paris Nanterre University; his expert field is public financial law, primarily from a comparative standpoint. He gained his PhD in 2009 with a thesis on Comparative French-American Law at Paris 2 Panthéon-Assas University, following three years spent as a business lawyer. He then held the role of Visiting Scholar at the University of New Caledonia from 2015 to 2019. His latest book is entitled "*Les relations financières dans les formes d'organisations étatiques*" (530 p.), Bruylant, 2021.

Anthony TUTUGORO
Anthony Tutugoro, born in the North-East of New Caledonia, is a PhD student in Political Science at the University of the Pacific Graduate School, and a part-time lecturer at the University of New Caledonia. His key field of study is the independence movement in New Caledonia and its strategies for reclaiming sovereignty. More broadly, his research areas include New Caledonian political life, political history, political sociology and political thought.

Wayuone Eddie WADRAWANE
Wayuone Eddie Wadrawane holds a PhD in Social and Human Sciences - speciality Education Sciences; he is an accredited Associate Professor in Education Sciences. He is a qualified specialist schoolteacher and holder of the Certificat d'Aptitude Professionnelle pour les Aides spécialisées, les enseignements adaptés et la Scolarisation des élèves en situation de Handicap - diploma in teaching children with special needs/disabilities - (CAPA-SH). He teaches at the University of New Caledonia's École Supérieure du Professorat et de l'Éducation (ESPE), is a former member of the Teaching and Anthropology of Science and Technology Education (DAEST) laboratory at the University of Victor Segalen Bordeaux II, and a former research team member at the Centre des Nouvelles Études sur le Pacifique (CNEP-EA 4242-UNC). He is currently a research member of the University of New Caledonia TRajectoires d'OCéAnie (TROCA) laboratory and an associate member of e-Toile, a Pacific-wide multidisciplinary research network in social and human sciences and the sharing of information on French language-based research work on Oceania.

Heimana A ANANIA
Heimana A ANANIA is in his second year of a Master's Degree in Law, Public Law Program. He did his internship at the Government of New Caledonia Regional Cooperation and External Relations Department, specializing in relations with the European Union.

PRESSES UNIVERSITAIRES
DE LA NOUVELLE-CALÉDONIE

As the only French-language university press in the Pacific, the purpose of Les Presses Universitaires de la Nouvelle-Calédonie (in short: Les PUNC) is to contribute to the publication of scientific books and journals. They play a useful role in the dissemination and promotion of research work – primarily from the University of New Caledonia – which is of interest to New Caledonia and beyond, to Oceania.
As a key tool for scientific promotion, Les PUNC is a real valorization tool for the University of New Caledonia in its mission to meet training and research needs as expressed by New Caledonia and as defined in 1998 by the Nouméa Accords. Les PUNC also aim to promote Francophone research in the Pacific region by fostering research and support to partnerships as well as the establishment of co-publications.
Les PUNC tend to facilitate communication in English, a language that is widely spoken and read throughout the Pacific.

The LARJE collection (Laboratoire de recherches juridique et économique – Laboratory of legal and economic research) intends to enhance original research work on New Caledonia and its regional environment, primarily from research topics identified within the LARJE team, attached to the University of New Caledonia, or those of the Consortium for Research, Higher Education and Innovation in New Caledonia (Consortium pour la Recherche, l'Enseignement Supérieur et l'Innovation en Nouvelle-Calédonie – CRESICA) or the Pacific Islands Universities Research Network (PIURN).
This collection aims to promote the publication and dissemination of work taking into account multiculturalism, a major factor in the South Pacific, which impacts economy and normative rules as well as the management.
In the legal field, in relation to multiculturalism, legal pluralism is one of the major themes highlighted in this collection insofar; it implies rethinking the models of creation, integration or articulation of norms on a regular basis and also influences the respective place and role of local institutions as well as the French State in the South Pacific region where different models of governance coexist.
Work in economics mainly concerns New Caledonia, French Polynesia and Wallis and Futuna, as well as their regional environment. The main topics of these research studies cover current and future resources, sustainable development, economic, social and human rebalancing, and development models in the context of remoteness or emancipation from metropolitan France.
In the area of management, research focuses mainly on assessing the impact of multiculturalism in human resources management, and more broadly on searching for intermediation tools between Pacific and international models.

PUNC : https://unc.nc/recherche/presses-universitaires/presentation/
- Director: Jean-Marc Boyer
- Editorial co-ordination: Françoise Cayrol
- Collection Director: Samuel Gorohouna

Popaï is a literary prize initiated by Mrs. Déwé Gorodey, then vice-president of the New Caledonian government and awarded within the framework of the SILO. A true guarantee of quality for the winning books, the prizes are awarded by a jury of book and by a jury of book and culture professionals.

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Tel.: (+ 687) 29 04 75 — Email : francoise.cayrol@unc.nc

COLLECTION LARJE

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Gaël Lagadec (dir.), Jéremy Ellero, Étienne Farvaque, 2016

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Mathias Chauchat (dir.), 2017

Le droit de la santé en Nouvelle-Calédonie : de la médecine traditionnelle à la bioéthique
Guylène Nicolas (dir.), 2017

La coutume kanak dans le pluralisme juridique calédonien
Étienne Cornut et Pascale Deumier (dir.), 2018

L'avenir institutionnel de la Nouvelle-Calédonie
Jean-Marc Boyer, Mathias Chauchat, Géraldine Giraudeau,
Samuel Gorohouna, Caroline Gravelat et Catherine Ris (dir.), 2018

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Antoine Leca, en coédition avec les Presses Universitaires d'Aix-Marseille (PUAM), 2019

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Caroline Gravelat (dir), 2021

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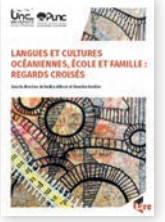

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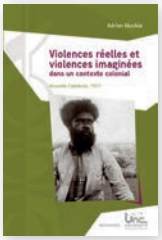

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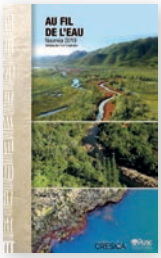

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Au fil de l'eau
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Workshop des 17 et 18 septembre, 2020

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Biodiversity, a pressing need for action in oceania
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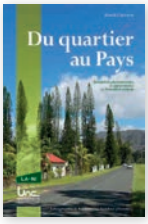

COLLECTION La-Ni

Du quartier au Pays, Sociabilités pluriculturelles et appartenance en Nouvelle-Calédonie
Benoît Carteron, 2020

Sous le ciel de l'exil
Autobiographie poétique de Marius Julien, forçat de Nouvelle-Calédonie
Gwénael Murphy, Louis Lagarde, Eddy Banaré, avec la contribution d'Aurélia Rabah Ben Aïssa, 2020

COUP D'OUEST

NOS ÉDITIONS, NOTRE RAYONNEMENT SCIENTIFIQUE

Les presses universitaires de Nouvelle-Calédonie :

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UNIVERSITÉ de la NOUVELLE-CALÉDONIE

PUNC
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UNDERSTANDING NEW CALEDONIA

Edited by Caroline Gravelat

Translated into English by Elaine Sutton – Editorial coordination, Françoise Cayrol

"We, the children of the country, the children of the peace accords, were born with peace, we want to live through peace and we hope to die in peace", this is the message addressed, in the Great Hut at the Maison de la Nouvelle-Calédonie (New Caledonia House) in Paris on 2 June 2021, by New Caledonia's young people to New Caledonia's political leaders who had come to Paris to discuss exiting the Noumea Accord with France's governmental authorities.

The Noumea Accord signed on 5 May 1998, following and in keeping with the 1988 Matignon-Oudinot Accords and the famous handshake between Jean-Marie Tjibaou and Jacques Lafleur which put an end to several years of bloody conflict, established a new political structure for a transitional period of 15 to 20 years and set out the terms and conditions for the emancipation of this French Pacific territory. The Accord is intended as a "prerequisite for re-establishing a social contract between all the communities living in New Caledonia" characterized by "shared sovereignty with France, on the path towards full sovereignty".

Often cited as a model of peace-building in a divided society, a source of inspiration in many similar situations around the world, New Caledonia's self-determination process is once again a focus for international community attention.

On the eve of New Caledonia's 3rd and final self-determination referendum as provided for by the Noumea Accord, the University of New Caledonia has taken on the task of offering insight and information in English via a multidisciplinary work covering the areas which best represent the varied facets which make contemporary New Caledonia unique.

Designed, encyclopedia-like, to instruct and enlighten, this collection of articles explores the fields of history, political and legal science, economics and geography, together with the humanities and social science.

"Understanding New Caledonia" aims to interest anyone and everyone wishing to gain greater insight into this complex and multifacetted country in the making.

PUNC PRESSES UNIVERSITAIRES DE NOUVELLE-CALÉDONIE
UNC UNIVERSITÉ de la NOUVELLE-CALÉDONIE
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