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TOWARDS A POWER-SHARING AGREEMENT IN NEW CALEDONIA?

After three referendums on self-determination that left the country ethnically divided and without a strong majority, there is no doubt that we cannot be content with the provisions of the Nouméa Accord which states that "*If the answer is [definitely] No, the "irreversibility" of the political organization is being constitutionally guaranteed.*" In concrete terms, the expression means that a revision of the French Constitution would necessarily be required to move on. It is therefore a difficult scenario.

The FLNKS (the Kanak Liberation National and Socialist Front) does not want to "get out" of the Nouméa Accord, which it sees as an impassable floor. On the other side, the French government does not want to unilaterally leave the Nouméa Accord by taking responsibility for breaking off the dialogue. That's why both sides are talking to each other.

What are the starting positions? Where do things stand? Where are we heading? 1.16

1. The starting positions

On the French government's side, the government guarantees "*the irreversibility of transferred powers and the constitutional right to self-determination*". However, the French government "*rejects the partition of the territory*" and wants to "*partially open up the electorate for provincial elections*".

This is an initial relief for the FLNKS: the French government does not want to change much in the Nouméa Accord, unlike the Loyalists. The Minister suggested "*a small agreement*": maintain the right to self-determination and in exchange get the Kanaks to open up the electorate to French newcomers.

What does it mean by opening up the electorate? French citizens who settle in New Caledonia after 1998 can no longer become Caledonian citizens. Being a decolonization agreement, the Nouméa Accord put an end to French settlement, but did not prevent free movement and free establishment of the French people. So, the perimeter of the Caledonian people was fixed.

These seemingly modest proposals nonetheless go to the very heart of the Nouméa Accord. The irreversibility defined in the Constitution goes beyond "*transferred powers*" and relate to "*political organization*". What, in a nutshell, is political

organization? It is the transformation of a people into institutions, so it encompasses the citizen electorate, the voting system, the number of seats and their distribution between Congress and provinces...

On the pro-independence side, it should be noted that, in legal terms, the consultation is not a referendum that would be legally binding on the French government. This is why the FLNKS is calling for the signing of a "*treaty between Kanaky-New Caledonia and the French Republic on accession to full sovereignty and freely defining interdependencies*". This associated State's status is directly based on UN Resolution 1541 of 15 December 1960.

At a so-called "partners' convention" held without the FLNKS in Paris in April, Prime Minister Elisabeth Borne tried to broaden the scope of the discussions and established 8 working groups beyond institutional issues. In so doing, the French government wanted to create "*trilateral talks*" bringing together the three former partners of the Accord: FLNKS, Loyalists and the French government. The FLNKS refused to take part in these meetings. It can be explained simply: with three successive "No" votes, the Loyalists refused to accept the building of a country together. So, the FLNKS is pursuing its quest for independence on its own and the "others" are lining up "*behind their State of choice*". The format is therefore that of "*bilateral talks*". 4.39

2. How did the discussion evolve?

After several visits by Minister of Overseas Darmanin, the French government succeeded in June 2023 in getting the FLNKS to discuss the "*small agreement*" enabling provincial elections to be held in May 2024. Roughly speaking, France recognizes the Kanak people's right to pursue the dream of independence on condition that they relinquish political power to the Loyalists.

The FLNKS added one point: the transfer of powers must continue as written in the Nouméa agreement. The Minister accepted the principle of discussing them.

This does not mean that the demand for a treaty of interdependence has been abandoned.

Discussions have therefore begun on three points:

- The new transfers of powers;
- The right to self-determination;
- The provincial electorate.

On new transfers of powers

The FLNKS firstly called for the Nouméa Accord to be completed before moving on to another stage: the transfers so-called "under Article 27" of the Organic Law

(administrative and budgetary control, audiovisual and higher education and research) have firstly to be done. The FLNKS is also asking for more autonomy in terms of foreign relations. At this stage, this is more a symbolic amendment to the Nouméa Accord than a new deal.

On the right to self-determination

The FLNKS proposed a final transitional stage before independence that should take place during the next provincial term of office, i.e. five years. The FLNKS wants an automatic referendum during this period on a non-binary question: a question relating to an associated State with France. The government's counter-proposal is to introduce a period extending over one or two generations (20 to 40 years) burying the dream of independence. Moreover, the French government would like the referendum to be triggered by a two-third majority in Congress, so the FLNKS would ask the Loyalists for authorization to become independent...

On the provincial electorate

Seen from Paris, the electorate is "restricted". The word alone sounds like an exclusion. That is the French point of view. Seen from Nouméa by the FLNKS, it is conceived as an inclusion of "others" in the Caledonian people. The Kanak colonized people have accepted recognition of the right of others (the colonizing people) to live in the country as equal citizens: it is the "perimeter of the Caledonian people".

First of all, there is a point of agreement: opening up the right to citizenship to all children born in the country when they turn 18, even if their parents are not citizens. People would become Caledonian citizens either because they were locally-born (so, by birth, *jus soli*), or because they were born elsewhere and have a parent with citizenship (so, by descent, *jus sanguinis*).

There is a deep disagreement on the other points. The minister suggested 7 years of residency before to be allowed to vote, then 10 years of residency. That's what we call a "sliding" electorate. The official objective is democratic by "*relegitimizing the institutions*".

The "sliding" electorate does not comply with UN Resolution 35/118 (1980), which calls for a freeze on immigration for a country in the process of decolonization. Moreover, a "sliding" electorate reopens the door to French colonization. Finally, a "sliding" electoral body would restore political power to the French of New Caledonia at the cost of the Kanak people.

According to information provided by the High Commission, opening up a "sliding" electorate to 10 years of residency would add more than 10% of the electorate in the Southern province, which would swing 2 to 3 seats at each election to the loyalist parties. This would prevent the FLNKS from retaining a majority in Congress for 10 years. That is the French government's main objective: to buy political time so that New Caledonia remains French. 9.17

3. Where are we heading?

The FLNKS has agreed to discuss without having approved any of the points. There is no certainty of success. There are still some very strong reservations.

The first reservation is mistrust between partners. The French government campaigned for the No vote in December 2021. It ignored the FLNKS's refusal and encouraged the "other" people to do without the Kanaks by going to the polls. France is not a referee, it is the colonizer.

The second reservation is that the French government's proposals would weaken the unity of the country. The increase in the electorate in the Southern province would favor the hold of the French people ("white people" in local parlance) over political life, whereas in the "Kanak" provinces, there would be no impact. The next move could be the "Mayotte coup", i.e. the partition.

The third reservation is to take into account the sensibility of the activist base, which is not inclined to compromise. Independence is a quest for dignity and in many ways is irrational. The Caledonian Union DNA (it is the main party of FLNKS) is more in refusal. Why sign a backward-looking agreement and not resist and mobilize? Electorally, by mobilizing, the pro-independence parties would limit their losses in the Southern province and guarantee the elimination of the Loyalists in the Northern and the Loyalty Islands province. The country would be ungovernable and, as a result of a certain amount of disorder, would lose its attractiveness to migratory flows.

Civil peace can never be taken for granted. Three ingredients are needed to build an agreement: respect, trust and hope. Let's ask ourselves: are these three ingredients present today?