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France in the South Pacific: Countdown for New Caledonia – Review of Implementation of the Noumea Accord

Denise Fisher



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ANU Centre for European Studies
ANU College of Arts and Social Sciences
1 Liversidge Street, Building 67C
Australian National University
Canberra ACT 0200
Australia
W: <http://ces.anu.edu.au/>
F: +61 2 6125 9976

France in the South Pacific: Countdown for New Caledonia – Review of implementation of the Noumea Accord

Denise Fisher

Centre for European Studies, Australian National University

denisemfisher@gmail.com

Abstract

This paper is a companion to an earlier ANUCES Briefing Paper,¹ which noted the importance for regional stability of resolving New Caledonian decolonisation issues within the UN decolonisation framework, both for long-term acceptance of the French Pacific entities in the region, and for peace within the ‘arc of instability’ to Australia’s northeast. It argued that the litmus test for the future of the French entities in the Pacific would be the full implementation of New Caledonia’s 1998 Noumea Accord.

The Accord, signed by the French State and the pro-France and pro-independence political groupings in New Caledonia, provided for a deferral of a promised vote on independence to 2014-2018, before which there would be a progressive transfer of specified responsibilities from the French State to a local New Caledonian government. It defined an innovative New Caledonian ‘citizenship’ within France, with special voting and employment rights, to respond to fundamental local concerns about the effect of immigration from other parts of France over many decades. It was backed by economic re-balancing efforts, principally the construction of major new nickel projects, and promises of fair distribution of the returns.

Two years before the 2014 deadline, the current paper assesses implementation of the Accord so far, and flags issues for the future. It concludes that, while much progress has been made, there have been slippages, and mixed messages from France. France has invested heavily in financial and political resources to make the Accord work. Many transfers have been made, but there remain problems with sensitive responsibilities, such as secondary education and land, and economic re-balancing has not occurred within expected timeframes. In the core area of immigration, France has been seen as slow to act and unhelpful in its handling of different interpretations of a restricted electorate for local elections, and in disrupting the collection of important ethnic demographic data. It has also been seen as taking premature action in areas specifically assigned by the Accord to be considered by referendum. In the remaining three years of the scheduled handovers, tough outstanding issues must be addressed, while at the same time conducting difficult negotiations and discussions on the promised referendum process and the future of New Caledonia.

¹ Denise Fisher, ‘France in the South Pacific: Countdown for New Caledonia – Options for the Future.’ *ANU Centre for European Studies Briefing Paper*, Vol. 3, No. 1 (March 2012).

1. Introduction

New Caledonia has been a French possession since 1853. Local calls for greater autonomy and even independence for New Caledonia, although evident earlier, gained ground after World War II. The Defferre Law of 1956 set a basis for self-determination of France's overseas possessions, only to be followed by a series of retractions in the many statutes for New Caledonia that succeeded it (ten from 1956 to 1988). At the same time, the French State conducted a policy of importing French nationals from other parts of France to outweigh the voting power of the local pro-independence community.² By the early 1980s the frustrated, mainly Kanak, independentists were sharpening their calls for a promised vote on independence, leading to violence and death on both pro-France and pro-independence sides. The Pacific Islands Forum ran an international campaign for New Caledonia's decolonisation within the United Nations, succeeding in its re-listing as a non-self governing territory with the UN Special Committee on Decolonisation in 1986, which France fought and subsequently ignored.³

To restore peace, by 1988, the French State succeeded in brokering the Matignon/Oudinot Accords, symbolised in a historic handshake between pro-independence leader Jean-Marie Tjibaou and his pro-France counterpart Jacques Lafleur. The Accords created three provinces, two of which (Northern and Loyalty Islands) were predominantly Kanak and pro-independence, the remaining largest and wealthiest Southern Province, mainly pro-France and European. The Accords provided for yet another deferral of a vote on independence until 1998, by only those with at least 10 years residence. When that time came, however, recognising that the pro-independence vote would not prevail and fearing consequent violence, Lafleur led a move to defer independence further, and all three sides agreed to the Noumea Accord of 1998, implemented in the Organic Law of March 1999.

The Noumea Accord explicitly recognised the wrongs of colonial history and defined a common destiny for New Caledonia's peoples. It provided for a further deferral of a vote on independence until 2014-2018, establishing new institutions, and a scheduled series of handovers of specified responsibilities from the French State to a local collegial government before then. The government would be elected on the basis of a 'restricted' electorate of only longstanding residents. The post-2014 referendum process would focus on three things: the five remaining reserved '*regalien*' or sovereign areas (foreign affairs, defence, the currency, justice, and law and order); the future international status of New Caledonia; and the future of the innovative 'citizenship' created by the Accord with its special voting and employment protection rights.

Underpinning the Accord, as for the Matignon/Oudinot Accords before it, were economic 're-balancing' agreements. These mainly relate to the development of the rich nickel ore deposits in New Caledonia, and a more equal distribution of the benefits from mining, principally through

² With then Prime Minister Pierre Messmer declaring as much, see A. Sanguinetti, 'La Calédonie, *summum jus summa in jura*', *Politique aujourd'hui*, 1985, p. 26.

³ Until 2004, when France quietly took on its reporting responsibilities as Administering Authority.

the construction of two large new nickel processing plants, one in the North and one in the South, each with an investment of over \$US 2 billion.

Scheduled handovers are to take place by the end of the third five-year mandated term of the local Congress (*i.e.* before the May 2014 elections). At this point, in early 2012, after two full terms and midway through the third, what progress has been made in implementing the principal areas of commitment under the Noumea Accord? This evaluation will examine briefly the establishment of new institutions and the promised transfer of responsibilities, and related issues including the handling of fundamental immigration-related questions, development of the nickel resource, and general respect for the Accord. It will refer on occasion to a September 2011 report by the UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya,⁴ one of the few public reports by outside reviewers who have visited New Caledonia since the Accord. Other visits have taken place but without issuing public reports. The Pacific Islands Forum mandated Ministerial visits in 1999, 2001 and 2004. The conclusions of these visits were reflected in subsequent Forum Communiqués.⁵ The Melanesian Spearhead Group visited in 2010, when Vanuatu's Prime Minister Edward Natapei expressed concern at the slow rate of implementation of the Accord.⁶ France has not hosted a Pacific Islands Forum Ministers visit since 2004 and the idea of a Visiting UN Special Committee on Decolonisation investigating mission in May 2010 was not implemented.⁷

2. Immigration

One of the fundamental contributors to the violence that New Caledonia experienced in the 1980s, which led to the especially-defined electorates that accompanied agreement to defer a vote on independence in the 1988 Matignon Accords and the 1998 Noumea Accord, was local concern at the French policy of encouraging immigration from other parts of France, including from other overseas French territories. Census figures summarised in Table 1 show that, even taking the period only from 1969 to just before the Noumea Accord was signed, the respective proportions of the population that are Kanak and European (generally meaning longstanding, originally continental French residents) declined: the Kanaks from 46% of the population that year to 44% in 1996, and Europeans from 41% (1969) to 34% (1996). 'Others' increased from

⁴ Report of the Special Rapporteur on the Rights of Indigenous Peoples James Anaya on The situation of Kanak people in New Caledonia, France, UN Human Rights Council, UN Document A/HRC/18/35/Add.6., 14 September 2011.

⁵ These visits have informed positions in Pacific Islands Forum Communiqués affirming support for self-determination, encouraging implementation of the Accord, welcoming greater integration and participation by New Caledonia with the Forum, and repeatedly confirming a continuing monitoring role for the Ministerial Committee, see especially Communiqués in 2002, 2005, and 2010, on the Pacific Islands Forum website, <http://www.forumsec.org/>

⁶ Ronald May, 'The Melanesian Spearhead Group: testing Pacific island solidarity', *Policy Analysis*, Australian Strategic Policy Institute, 8 February 2011, p. 6.

⁷ France invited the Committee to hold one of its regional seminars in Noumea, which the Committee agreed to do, but nothing came of the counter-suggestion that it conduct an investigatory visit at the same time, Personal communication by a member of the Committee to the author, 2010.

13% in 1969 to almost 22% (1996). These included longstanding non-French-origin communities whose numbers have not changed much (Indonesians around 3% and declining, Vietnamese just over 1%, and ni-Vanuatu around 1%); ‘Tahitians’ (presumably meaning ethnic Polynesians) on a declining trend, growing numbers of people originating from the French Pacific possession Wallis and Futuna (Polynesian Wallisians), and a growing number of undefined ‘Others’, many of whom can be assumed to be French nationals from other parts of France not falling into the named categories. Thus, the long-term trend is one of indigenous Kanak and longstanding French local ‘*Caldoches*’ declining in numbers relative to newcomers from other parts of France.

There are no comparable census figures for the ethnic composition of the population of New Caledonia since the Noumea Accord was signed. This is a retrograde step since the signature of the Accord, given the importance of the issue and its explosive nature. And it has occurred as a result of deliberate policy, not by accident or oversight. Figures on the ethnic composition of the population had been collected from 1887 until 1996. From 1996, problems with comparability emerged.

On the eve of a scheduled population census, during an official visit to New Caledonia in 2003, then President Jacques Chirac professed shock at the fact that ethnic breakdowns were the subject of local censuses and banned that category from future censuses.⁸ The ethnicity question was duly removed from the 2004 census, rendering that census useless for comparison with earlier ones on ethnic composition. Some Kanak groups boycotted that census, in protest about the omission. Official statistics continued to draw upon 1996 figures as the most recent reliable figures right up to early 2011.

Under local pressure, France reversed Chirac’s decision in late 2008, including ethnicity again in the 2009 population census. But the results were held up for publication until April 2011. Even then, the ethnic composition figures were reported in a way which rendered direct comparison with earlier figures impossible, since the 2009 census included extra undefined categories that had not existed before.⁹ To confuse the issue further, when the results were published, the census authorities arbitrarily reassigned some of the people in the ‘mixed race’ category and added them to the Kanak, European and Wallisian groupings, without explaining on what basis they did this.¹⁰ Looking at the figures before and after ‘reallocation’ (see Table 1), it is difficult not to conclude that the figures have been manipulated to show larger proportions of the longstanding Kanak, European and Wallisian communities. In the 2009 figures, the Kanak proportion before reallocation is a low 40% (44% after reallocation), the European share is 29%

⁸ At a public meeting, a European New Caledonian asked how she should describe herself on the census form, not being Kanak, Wallisian, or Asian but ‘just’ being a French citizen. Professing outrage, Chirac described these questions in the census as irresponsible and illegal, saying ‘There is only one reply to such a question, you are all French and there are French people of all ethnic origins’ (RFO TV News, 24 July 2003). He instructed that the New Caledonian census thenceforward not seek information about ethnic origins. The census had to be deferred for a year while forms and procedures were reviewed.

⁹ Under the ‘Others’ category, they added ‘*métis*’, an undefined term generally meaning mixed race, ‘Caledonian’, not defining what that meant, and ‘non-declared’, a category not used before.

¹⁰ Pascal Rivoilan et David Broustet, *Synthèse - Recensement de la Population 2009* Institut de la statistique et des études économiques (ISEE) website www.isee.nc, accessed 17 October 2011.

(33%) and Wallisian 8% (10%). The pre-reallocation Kanak share is amongst the lowest percentages for Kanaks ever recorded in New Caledonia and would be of great concern to their political representatives, which may explain the effort to reallocate. The increase in numbers of Wallisians is also a concern, as there has been ethnic conflict erupting into violence between Kanaks and Wallisians since the Noumea Accord was signed.¹¹

This treatment of a subject central to the Noumea Accord local parties, both Kanak and *Caldoche* alike, has heightened sensitivities. Pro-independence leaders Paul Némaoutyine, Déwé Gorodey and Roch Wamytan put the French on notice that this is a key issue.¹² UN Special Rapporteur Anaya was highly critical of the handling of ethnic data collection in his report on New Caledonia in 2011. He said the data collection policy, and the ‘formal equality’ underlying it, ‘mask ongoing discrimination.’¹³

3. Economic re-balancing

The other principal concern underpinning the Accord has been developing the nickel ore deposits and ensuring fairer redistribution of the revenues to the people of New Caledonia. New Caledonia has over a quarter (and possibly up to 40%) of world nickel ore reserves, and is the third-largest nickel producer in the world. The French State is the largest contributor to New Caledonia’s budget, contributing \$A 1.5 billion in 2009,¹⁴ but nickel is by far the largest single source of income, returning over \$A 2 billion in 2007, a boom year.¹⁵

The French-owned *Société le Nickel* (SLN) operates a nickel plant at Doniambo on the outskirts of Noumea in the wealthy, European-dominated south. It is one of the biggest mining ventures in France. From 1947, the French State has been a major owner.¹⁶ By 1983, it had 70% of SLN shares through state-owned company ERAP (originally *Entreprise de recherches et d’activités pétrolières*), increasing to 85% by the late 1990s in a new conglomerate, Eramet (*Entreprise de recherches et d’activités métallurgiques*). The pro-independence coalition *Front de libération nationale kanak et socialiste* (FLNKS) has long sought a majority 51% share in SLN for New Caledonia. In 1999, as background to the Noumea Accord, the French State

¹¹ Principally at St-Louis on the outskirts of Noumea from 2001-3, when Wallisians were re-located elsewhere to stop the violence.

¹² See comments by Gorodey and Wamytan, Jean-Marc Regnault and Viviane Fayaud, *La Nouvelle-Calédonie Vingt années de concorde 1988-2008*, Paris, Publications de la Société Française d’Histoire d’Outre-Mer, 2008, pp. 25 and 47 ; and by Némaoutyine in *Relevé de conclusions*, 7th Meeting, Committee of Signatories, December 2008 p.7.

¹³ Report of Special Rapporteur James Anaya 2011 op. cit..

¹⁴ 136 b. Cfp or \$A 1.54 b. (converted 17 October 2011), 2009 provisional figures, ISEE website op. cit. accessed 17 October 2011.

¹⁵ Nickel mineral and matte exports were worth an estimated 184 b Cfp (\$A 2.07 b. converted on 17 October 2011) in 2007, when prices were high, contributing around a quarter of New Caledonia’s economic growth between 1998 and 2006, ISEE Tableaux de l’Économie Calédonienne (TEC) édition abrégée 2008 p. 91, *Bilan économique* 2009 p. 5; and ISEE website accessed 17 October 2011.

¹⁶ Described as exclusive owner with 50% share, Leah Horowitz, ‘Towards a viable independence? The Koniombo Project and the political economy of mining in New Caledonia’, *The Contemporary Pacific*, 2004, 16, pp 292.

facilitated a portion of SLN profits going to the government of New Caledonia, which was increased from 30% in 2000 to 34% in 2006. But the majority of SLN's profits still accrue to French interests, notably the French State. Following several changes in the ownership structure since the 1980s, SLN is currently 56%-owned by Eramet (in which the French State holds about 26% share and an allied group a further 37%).¹⁷ Ten percent of SLN shares are owned by Nishin Steel Japan, and as indicated, 34% by the New Caledonian company *Société territoriale calédonienne de participations industrielles*, which also retains 4.1% of Eramet.

The dividend for New Caledonia has been high, particularly when nickel prices peaked in 2007 and 2008. The FLNKS continues its efforts to secure a 51% share in SLN for New Caledonia. However, in a major speech in New Caledonia in August 2011, President Nicolas Sarkozy clearly stated that the French State would retain control of Eramet.¹⁸

Also underpinning the political agreements of the Accord were pledges of investment in new nickel projects of breathtaking scale. The principal elements were the construction of two massive new processing plants. One plant was established at Goro in the mainly European south initially through Inco Canada (which later became Vale), involving investment that grew to \$US 4.3 billion by 2011. Another plant is planned in the mainly Kanak north at Koniambo with investment of \$US 3.8 billion, owned 51% by the Northern Province company *Société Minière du Sud Pacifique* and 49% initially by Canadian company Falconbridge, subsequently by Anglo-Swiss Xstrata. At the time of writing, after years of delays and revised timetables arising from high local costs, and local employment and environment concerns, the plant at Goro was virtually complete, albeit with production still delayed. In the north, massive infrastructure is being constructed to support the Koniambo plant, which itself is yet to be constructed. Its production dates are slipping. Other planned projects are suffering delays (see summary in Table 2). One of these, at Prony, also in the south, provoked controversy when pro-France leader Jacques Lafleur arbitrarily allocated a development license to Canadian company INCO in 2004. Pro-France *Calédonie Ensemble* leader Philippe Gomès put the project to tender in 2008 when he was President of New Caledonia. This resulted in French-owned company SLN winning the rights to the project; an outcome that was in turn questioned by pro-independence leaders.

The two principal ventures have involved extensive financial and political investment by the French State which it has delivered amidst an array of complex issues. These include legal issues; local environmental and employment concerns and indigenous land issues; exogenous factors such as volatility in nickel prices and demand fluctuations arising from the global crisis;

¹⁷ Through a strategic nuclear-power company called Areva in which the French state holds 93% share, see www.eramet.com accessed 20 October 2011. Other Eramet shareholders include the French Duval family (37%) who agree to vote and act together with the French state. At the time of writing, negotiations were under way for the purchase of the Areva share of Eramet by the French state-owned Fonds stratégique d'investissement ('Areva négocie la vente de ses 26% dans Eramet au FSI', website Latribune.fr accessed 12 January 2012).

¹⁸ President Sarkozy told New Caledonians: 'Nickel is the economic base on which all political evolution would repose, whether within or outside of France ... you will be in several years the second largest producer of nickel in the world. And you will see many friends come to you, not all without interests ... This is why I want to tell you that France will keep control of the capital of Eramet, today and tomorrow'. 'Appetites are too strong and numerous for France not to stay present as is its duty'. Nicolas Sarkozy, *Déclaration sur le présent et l'avenir de la Nouvelle-Calédonie*, Païta, New Caledonia, 28 August 2011.

and the collapse of Lehman, one of the backers of the northern project; as well as the sheer difficulty of establishing units of the scale and technological capacity of the two plants simultaneously and in difficult environments. While these difficulties are complex and unsurprising, and the French commitment to resolving them impressive, the fact remains that at this point, just two years before the decisive final term of government under the Noumea Accord period, the only producing nickel plant remains the 150 year old Doniambo plant in the wealthy south. Moreover, the Goro plant in the south is far more advanced than the Koniambo one in the poorer, Kanak north. Given the perennial volatility of the international nickel market, now overlaid with demand questions emanating from the global financial crisis, there is no guarantee that the projects under development will start production before the critical Noumea Accord deadlines set in from 2014.

Besides nickel, there are signs of hydrocarbon deposits within France's exclusive economic zone offshore of New Caledonia, although these are still being measured and assessed for viability.¹⁹ In the case of both nickel ore and hydrocarbon deposits, there are significant ambiguities in the Noumea Accord over responsibility for minerals, as between the French State and the local authorities and between the provinces and Congress. Although the Accord apparently gives New Caledonia responsibility for exploring, exploiting, managing and conserving its natural resources (Article 3.1.1), it nonetheless lists minerals under 'shared responsibilities', *i.e.* indicating that New Caledonia shares this responsibility with the French State, and provides that 'the State's responsibilities [for minerals] will be transferred' but without specifying when or how (Article 3.2.5). Ambiguities also arise from French laws on matters engaging national strategic resources, which would include nickel and hydrocarbons.²⁰ Foreign companies interested in engagement in these sectors have found information opaque, and it was the French State, not the local government, that controlled the processes of identifying foreign participation when Canadian partner Falconbridge, formerly involved in the Northern Province nickel project, foundered. And, as indicated, Sarkozy has recently asserted that the French State would retain control of Eramet/SLN.

A related issue has been the constant deferral of a long-promised review of the mineral assets of New Caledonia. As recently as August 2011, President Sarkozy renewed a promise to produce this review.²¹

¹⁹ Roland Vially, Yves Lafoy, Jean-Marie Auzende, Roy France, 'Petroleum Potential of New Caledonia and its offshore basins', *AAPG International Conference*. Barcelona, Spain, 2003.

²⁰ The 1999 Organic Law refers to the *State's* responsibility under a French Decree, No. 54-1110 of 13 November 1954, for strategic substances linked to national defence, see Jean-Yves Faberon and Jacques Ziller, *Droit des collectivités d'Outre-mer*, Librairie Générale de droit et de Jurisprudence, Paris, 2007, p. 380. Eramet's company profile refers to France declaring nickel a strategic resource in the 1970s, in entry in Reference for Business, 'Encyclopedia for Business', 2nd edition, at www.referenceforbusiness.com accessed 30 April 2012.

²¹ Sarkozy, *Déclaration*, Païta, 2011 *op. cit.*

4. Political Institutions

The Noumea Accord set up a collegial (*i.e.* including all parties) government of New Caledonia based on three provincial governments, each returning members to the entity-wide Congress, who in turn elect an Executive (or cabinet) of up to 11 members. The new Congress has legislation-making powers, unique among all of France's overseas possessions, albeit subject to review by France's Constitutional Council. At the same time, a Committee of Signatories was set up to facilitate consultation and monitor implementation. Considering the depth of differences between pro-independence and pro-France groupings, the new political institutions have generally worked well. Three sets of provincial elections have been held peacefully. However, there have been challenges which have strained the fledgling institutions' structures.

4.1 Restricted electorate issue

An early difficulty arose from differences over interpretation of ambiguous wording in the Accord about defining the electorate for provincial elections, which in turn determine the composition of Congress. The 'restricted electorate', as noted above, was devised as a response to local concerns, indigenous and longstanding white *Caldoche* alike, at the effect of immigration on the weight of the local vote. It was a remarkable creation and a concession by the French State, given the indivisibility and equality of each person under the French Constitution (Article 1). Establishing the idea of special New Caledonian 'citizenship', the Accord provided essentially for only those with ten-year residence to vote in the provincial elections. The pro-independence group believed this meant ten years residence to 1998 ('frozen' interpretation), whereas the pro-France group claimed this meant 10 years up until the time of each provincial election (to be held 1999, 2004, 2009, 2014) and thus including successive waves of generally pro-France newcomers ('sliding' interpretation).²²

Discontent amongst the pro-independence group, particularly the Kanaks, escalated to the point that, when President Chirac visited Noumea in 2003, he promised to resolve the problem before the end of his mandate in 2007. In 2003 the Melanesian Spearhead Group focused the attention of the Pacific Islands Forum on the 'lack of implementation of certain provisions of the Noumea Accord, in particular the electoral process and issues relating to New Caledonia's referendum process', urging the Forum Ministerial Committee to focus on the issues in a planned

²² This is a simplified explanation of a complex legal issue. Article 2.2.1 of the Accord defined the electorate for the local provincial and Congress elections as including (a) those able to vote in 1998, (b) those on an annex list who had ten years residence '*at the date of the election*' (*i.e.*, without specifying which election was referred to, my italics) ; and (c) those reaching voting age after 1998 who either had *ten years residence to 1998*, or a parent either eligible to vote in 1998 or a parent on the annex list as having ten years residence '*at the date of the election*' (again unspecified, my italics). The implementing Organic Law, Article 188, referred to (a) those able to vote in 1998, (b) those on an annex list and resident in New Caledonia for ten years '*at the date of the election to the Congress and to the province assemblies*' and (c) those attaining majority age after 1998 either with ten years residence in 1998, or having had one of their parents fulfilling the conditions to be a voter in the 8 November 1998 referendum, or having one of their parents registered on the annex and with ten years residence in New Caledonia at the date of *the election*' (*i.e.* unspecified election, my italics).

visit in 2004.²³ In October 2005, FLNKS leader Roch Wamytan included concerns about the restricted electorate in a speech he made to the UN Fourth Committee on Decolonisation.²⁴

It was only in 2007 that France endorsed the (pro-independence) ‘frozen’ interpretation through legislative amendment.²⁵ This occurred only after France’s Constitutional Council had originally decided in favour of the (pro-France) ‘sliding’ interpretation (residence to the date of each planned election),²⁶ and after French newcomers backed by the pro-France parties had lodged appeals against a restricted electorate to the French State Council, which in 1998 rejected their claims, as did the Appeals Court (*Cour de cassation*) in response to similar claims in June 2000, and again the Administrative Appeals Court in October 2003. Aggrieved French nationals also took their cases against a restricted electorate to international courts, which likewise rejected their appeals. The European Human Rights Court, on 11 January 2005, recognised the validity of the statutory requirement taking into account ‘local necessities’ which justified it. And the UN Human Rights Committee, on 15 July 2002, judged that the dispositions of the New Caledonia statute relating to voting rights were not contrary to the International Civil and Political Rights Convention.²⁷ Thus, all these arbitrations ultimately found in favour of the pro-independence ‘frozen’ interpretation.

The challenges and innovation involved in introducing the concept of a New Caledonian restricted electorate were many, and understandably complex, especially in the context of the French Constitution’s provision for one person, one vote. Still, it is difficult to understand how the French State drafters of the Accord could have left any room for differing interpretations over the wording on this subject which, after all, addresses the fundamental demands of the longstanding residents. The protracted apparent resistance by French authorities, and resolution of the issue only after international arbitrators had ruled on it, added to suspicion in the pro-independence group. The differences over this issue, and its handling, have undermined pro-independence confidence in the Accord process.

The bitterness of the divisions was a major factor leading to driving apart the fragile coalition of different parties brought together in the collegial government, described in section 4.3. During the first years of the first term, the pro-France President of New Caledonia was always seen with the pro-independence Vice-President, to the point of amusing cartoons showing the tall Pierre Frogier with the diminutive Kanak independence leader and poet Déwé Gorodey. But by the end of the first term, the two sides literally could not stand to be in the same room together outside the Congress.²⁸

²³ Melanesian Spearhead Group Attachment, Pacific Islands Forum Leaders Communique, Auckland 2003.

²⁴ See UN Document A/C.4/60/SR.5, October, 2005, p. 11.

²⁵ Although an earlier attempt was made by the French State to attach a constitutional amendment to another piece of unrelated legislation that failed.

²⁶ Alain Christnacht, *La Nouvelle-Calédonie*, Paris, Documentation française, 2004, p. 65.

²⁷ Faberon and Ziller 2007 *op. cit.*, p. 393-4.

²⁸ From personal observation by the author, both sides regularly attended social functions with each other during 2001 and 2002 but by the end of 2003 for at least a year they would do so only for formal events. Déwé Gorodey declined to move from her office when the government moved to new premises in 2002, closer to the office of pro-France leader Jacques Lafleur.

4.2 The flag issue

A second, later, issue that tested the fledgling political structures, also involving different interpretations over wording of the Accord and the Organic Law, was a bitter difference over the question of the flag. While not as fundamental as differences over the restricted electorate, developments surrounding the flag added to political fragmentation (discussed in the next section) and muddled the waters for cooperation in the forthcoming important years preparing for the referendum.

A Committee set up in 2007 to address the important issues of symbols, relatively quickly agreed on an anthem and motto by 2008, based on an entity-wide competition, and even a banknote for New Caledonia, but ground to a halt over the central issue of a flag. In February 2010, the leader of the pro-France R-UMP (*Rassamblément – Union pour un Mouvement Populaire*), Pierre Frogier, proposed that the Kanak and French flags be flown together as a gesture of recognition in the context of talks about future institutions.²⁹ Philippe Gomès of the pro-France *Calédonie Ensemble*, and Némaoutyine of the pro-independence Palika, alike rejected the idea as contrary to the Noumea Accord, which, Némaoutyine pointed out, called for ‘one’ identity sign.³⁰ Article 1.5 of the Noumea Accord provides for common discussion of identity signs, including of ‘a flag’ in the singular, whereas Article 5 of the Organic Law provides for New Caledonia to ‘mark its personality alongside the national Emblem and signs of the Republic’ under certain conditions, including the agreement by 3/5 of the Congress.

Nevertheless, the Committee of Signatories agreed on 24 June 2010 that both flags be flown together noting the forthcoming 2011 Pacific Games to be held in Noumea, but clearly with an imminent visit by French Prime Minister François Fillon in mind. The same day, President Sarkozy endorsed flying both flags above the French High Commission building in Noumea, provided the New Caledonian Congress endorsed the idea by a resolution. He recognised that the recommendation had not been easy for the parties, and that it was one preliminary step in a longer process that would result in the choice of one flag that would be accepted by all.³¹ On 13 July the Congress passed its first resolution, with a strong majority (42 of the 54 members) in favour of flying the two flags,³² just days before Prime Minister Fillon, arrived in Noumea to witness the flying of both flags over the French High Commission building.

Despite the resolution of the Congress, some (pro-France) municipalities declined to fly both flags. The pro-independence *Union Calédonienne* took exception to this, and resigned from the Government on 17 February 2011, precipitating a vote for a new Government (executive) by the Congress. Article 121 of the Organic Law provided that, if one member of the collegial Government resigned, all resigned, and a new Government should be elected by the Congress

²⁹ Les Nouvelles Calédoniennes 9 February 2010.

³⁰ Les Nouvelles Calédoniennes 15 and 29 April 2010.

³¹ Relevé de conclusions, 8th Meeting of Committee of Signatories, June 2010; and Nicolas Sarkozy, Discours à la réception des signataires de l’Accord de Nouméa, Paris, 24 June 2010.

³² Congrès de la Nouvelle-Calédonie, *Voie* No 1, 13 July 2010.

within fifteen days. On 3 March, following the election of a new Government, the ousted President Philippe Gomès authorised one of his (pro-France) *Calédonie Ensemble* members to resign, once again triggering another election on 17 March, following which a *Calédonie Ensemble* member again resigned, with another election on 1 April. In all three elections Gomès' pro-France rival Harold Martin was elected President with his R-UMP/*Avenir Ensemble* grouping winning the most seats, displacing Gomès. The latter claimed that the initial UC action had been taken in concert with Frogier's R-UMP in order to oust him. The French Overseas Minister Marie-Luce Penchard relatively speedily negotiated support for amendment of the Organic Law to prevent future chain resignations, but not before both sides had called public demonstrations, which the French High Commissioner banned.

When the Committee of Signatories to the Accord met in July 2011, it seemingly stepped back from the two-flag proposal by explicitly authorising the parties to research together a flag expressing the Kanak identity and future shared by 'us all', with the two flags flying in the meantime as a significant and symbolic step towards reconciliation. Visiting New Caledonia to open the Pacific Games in August 2011, Sarkozy re-stated this view, noting that the two flags would fly as long as no other solution will have been found. Betraying his preferences, he also symbolically equated the two-flag idea with the Matignon Accord handshake between Lafleur and Tjibaou.³³

These developments were important as they showed the underlying emotion surrounding the issue of the flag, and the risks associated with precipitating action outside of the Congress (*i.e.* through the Committee of Signatories) without adequate consultation and under pressure from external and French domestic events, such as the visits by the French Prime Minister in 2010 when Frogier proposed the idea, and by the French President in 2011 to open Noumea's Pacific Games. The heat and emotion surrounding the issue suggests that even when the majority of the Congress voted for a particular action, if underlying concerns were unresolved, progress would not occur, an important lesson for addressing key questions in the future.

4.3 Party fragmentation on each side

Perhaps unsurprising in the face of the pressures of differences on such an important issue as the restricted electorate and the more emotional issue of the flag, not only have the years since 1998 been marked by greater differences *between* the pro-France and pro-independence groups, but also by bitter differences *within* each grouping. Table 3 summarises election results and demonstrates this fragmentation. The two groupings have tended to retain their respective electoral strengths over the years since 1999, with pro-France groups winning 31 of the 54 Congress seats in 1999 and in 2009 (albeit winning 36 in the intervening 2004 election) and the pro-independence groups 23 seats in both elections (dropping to 18 in the 2004 election). However, of their 31 seats in the 1999 provincial elections, 24 of the pro-France seats were won

³³ Relevé de conclusions, 9th Meeting of Committee of Signatories, July 2011; Sarkozy, *Déclaration*, Païta, 2011 *op. cit.*

by one party, the then RPCR (which later became the R-UMP), headed by the then aging but all-powerful leader Jacques Lafleur. Of the pro-independence parties' 23 seats, 18 were won by the mainstream FLNKS coalition and their traditional partner, UNI Palika. But by the third mandate, in the 2009 elections, the pro-France group's 31 seats were divided into the R-UMP (which had loosely succeeded the RPCR) with only 13 seats, and breakaway groups *Calédonie Ensemble* and *Avenir Ensemble* returning 10 and 6 seats respectively, and Lafleur's new RPC mustering only 2 seats. The pro-independence group in 2009 also won 23 seats, but FLNKS and Palika returned only 9, with the *Union Calédonienne* having broken away from FLNKS to win 8, and with a new more radical leftwing party, the Labour Party, winning 4 seats. Such fragmentation, with the polarisation that accompanies it, inevitably has complicated government in a collegial system. Against the background of these changes, it is again a testimony to the flexibility of the Noumea Accord political structures that they have worked as well as they have to date.

4.4 Other institutions and transfers of responsibilities

The Accord (Article 3) provided for four categories of responsibilities, the first to be transferred to local authorities within the first mandate (by 2004); the second by the end of the third mandate (2014); the third defining responsibilities to be shared with the French State; and the fourth, the five *regalien* responsibilities, to be considered in the referendum process after 2014. The Congress could by 3/5 vote seek to modify these deadlines. Many difficulties have become apparent as this process of transferring responsibilities started and gathered momentum.

Committee of Signatories. The annual Committee meeting has generally been effective in focusing the work of the Congress, although its meetings have been fitful and criticised by some of the players, *e.g.* over its role on the symbolic issue of a flag, which was seen as pre-empting the Congress.

Over time, with the growing differences between the major groupings and within them, and the complexity and sensitivity of the issues, not only for the local parties but also for the French State, even regularly convening the Committee each year became a problem. After 2008, the Committee did not meet until June 2010, Paris twice deferring scheduled meetings, citing pressing domestic preoccupations.

The published conclusions of the 2008 and 2010 Meetings reveal a hesitation and slippage in implementation, particularly on the key issues. By December 2008, the Committee recognised there would be a need for flexibility in meeting Noumea Accord specified deadlines. While agreeing that transfers in the key areas of secondary education and land should proceed, and stipulating that no transfer should be partial, it agreed that transfers could be 'progressive', *i.e.* that the pace of transfer could be negotiated. The meeting decided that certain other powers, specifically civil security, and civil and commercial law, should be treated with flexibility.³⁴

Before the June 2010 meeting, the New Caledonian Congress sought in May 2010 to endorse a convention on the transfer of responsibilities to be signed by President Gomès when

³⁴ Relevé de conclusions, 7th Meeting of Committee of Signatories, December 2008.

the Committee of Signatories met. However, pro-independence *Union Calédonienne* members absented themselves from the vote and instead sought a review of progress under the Accord.³⁵ The 2010 meeting established a number of sub-committees to handle ongoing issues: a Pilot Committee on the Transfers of Responsibilities, to assess progress so far; a Strategic Industry Committee to continue the work of a mining assessment team; and a Committee to prepare for the post-2014 vote provided for in the Accord.³⁶

As if to remind all parties of the importance of the matters they had been discussing since 1999, the July 2011 meeting explicitly underlined, with a paragraph entirely in bold script, the unprecedented magnitude and technical complexity of the transfers which impacted on the daily life of all New Caledonians, and cautioned that the State and local authorities needed to cooperate to prevent negative fallout for the people.³⁷ Palika leader Paul Némaoutyine expressed frustration after that meeting, emphasising the need to progress the transfer of responsibilities.³⁸

Land issues and customary law. Other promised new institutions have been put in place. These include a Customary Senate, which is consulted in the legislative process and in judicial decision-making whenever issues touch on indigenous rights, processes which break new ground in the Pacific, interweaving French law with customary authority. A new Rural Development and Land Management Agency (ADRAF, *Agence de Développement Rural et d'Aménagement Foncier*) acquires and redistributes land. A major conference on land was held in Noumea in 2001. In 2008, in the context of development of the northern mine at Koniambo, agreement with customary leaders was secured for a housing estate to be built on customary land. FLNKS leaders however continue to monitor the land issue and claim few resources have been given to ADRAF in recent years to allow it to continue its work. The current schedule of transfers shows the handover of ADRAF as being one of the last, to take place by January 2014.³⁹ UN Special Rapporteur Anaya reported in October 2011 that there was continuing frustration amongst Kanaks over land issues, and that a promised land survey and registry had not been set up. He also urged further expansion of customary rights in law.⁴⁰

Training Kanak managers. The ‘400 cadres’ (400 managers) training program (later called ‘*Cadres avenir*’ or Future managers) was set up in 1988 to redress the chronic under-representation of Kanaks in the professions, then fewer than 6%.⁴¹ A report by the French High Commissioner indicated that by December 2009 there had been 1,058 trainees, of whom 69% were Melanesian; of 700 of these who had returned to New Caledonia, 490 were Kanaks who had been employed.⁴² Thus, over 30% of the intake was non-Melanesian. The inclusion of non-Melanesians itself is a shift from the original aims of the program, focused on providing

³⁵ Les Nouvelles Calédoniennes 20 and 24 May 2010.

³⁶ Relevé de conclusions, 8th Meeting of Committee of Signatories, June 2010.

³⁷ Relevé de conclusions, 9th Meeting of Committee of Signatories, July 2011.

³⁸ Interview on Youtube, 8 July 2011.

³⁹ *Flash d'Océanie*, 21 September 2010.

⁴⁰ Report of Special Rapporteur James Anaya 2011 *op. cit.*

⁴¹ See Les Nouvelles Calédoniennes 10 August 2009.

⁴² Relevé de conclusions, 8th Meeting of Committee of Signatories, June 2010 referring to French High Commissioner's report of 31 December 2009.

opportunity for Kanaks.⁴³ It is not clear where the returning trainees have been placed in employment. They are not evident in the upper echelons of government or industry. A report in mid-2009 suggested that the program had trained 41 engineers, 4 pilots, 3 doctors and 2 architects.⁴⁴ While an advance, this is a relatively low return for the investment in the program. UN Special Rapporteur Anaya wrote in 2011: ‘There are no Kanak lawyers, judges, university lecturers, police chiefs or doctors, and there are only six Kanak midwives registered with the State health system, out of a total of 300 midwives in New Caledonia’.⁴⁵

Kanaks are heavily engaged in government in the Northern and Islands Provinces, as designed by the Accord. But in 2009 the administration of these mainly Kanak provinces still included large numbers of French and *Caldoche* officials, teachers and advisers. One Kanak leader illustrated this by referring to the Northern Province official directory, where just three of the ten directors of departments were Kanak, all of the others European.⁴⁶ UN Special Rapporteur Anaya urged greater efforts at ensuring representation of Kanaks in the administration, saying that only 57 Kanaks were in positions of ‘middle or upper’ management, of a civil service of 3,660 people.⁴⁷

Protection of local employment. The Noumea Accord provided for this protection to be achieved by 2004. Progress has been slow, with differences over how to enshrine in local law the protection of employment for those with 10 years residence, a critical element in the concept of New Caledonian citizenship under the Accord, leading to the pro-independence FLNKS abstaining from a vote at one point in 2009.⁴⁸ However by July 2010, a text was belatedly agreed, with some reservations, and by July 2011 began to be put into practice.

Education. The Noumea Accord provided for transfer of primary school responsibility in the first term of the newly created New Caledonian Government (1999 to 2004), which was duly completed; and secondary schooling in the second and third terms (2004-2009 and 2009-2014 respectively). The transfer of secondary education to New Caledonia was repeatedly deferred, amidst concerns by some pro-France forces (but shared by some pro-independence elements) about changing the French national system with the risk that standards would not be maintained. When then President Gomès signed a framework agreement with French High Commissioner Dassonville in September 2010, the deadline had slipped to 1 January 2013.

The education issue is particularly delicate, as the French education system was a major issue in the 1980s when FLNKS supporters established Kanak People’s Schools. There has been some progress in responding to Kanak concerns. The primary school curriculum has been altered to cover local history, and an Academy of Kanak Languages was established in 2007. But,

⁴³ See for example the French Senate report noting that the program was designed to ‘contribute to the emergence of a *Melanesian elite* to be actively engaged in life, particularly economic, of the territory’ (my translation and italics) La Décollage Économique, Report of French Senate Commission, Mission to New Caledonia, Part II, No 212, 7 February 1997.

⁴⁴ Les Nouvelles Calédonienne 10 August 2009.

⁴⁵ Report of Special Rapporteur James Anaya 2011 *op. cit.*

⁴⁶ Personal communication to author, March 2009.

⁴⁷ Report of Special Rapporteur James Anaya 2011 *op. cit.*

⁴⁸ Adrian Muckle, No More Violence or War: 20 years of nation-building in New Caledonia, *The Journal of Pacific History*, 2009, 54, pp. 190-191; and *Les Nouvelles Calédoniennes*, 14 January 2010

whereas the local French system is one with universal access, in practice it remains two-tier in New Caledonia. Kanak children attend local primary schools in the provinces only by travelling long distances or by boarding at very young ages, or both. Schooling is conducted in French, a handicap for the indigenous people, who speak one or more of 28 indigenous languages. With the important exams, the '*brevet*', at the end of middle school, many Kanaks are funnelled into more technical areas while academic streams tend to be dominated by non-Kanaks. Most of the 30% of students who drop out of the school system are Kanaks.⁴⁹ Kanaks represented only 23% of candidates for the *baccalauréat* exam in 2009, compared to 69% Europeans.⁵⁰ The 2009 Census showed that in 2009, 54.1 per cent of Europeans had the *baccalauréat*, compared to only 12.5 per cent of Kanaks and 14.2 per cent of Wallisians.

Social and cultural factors. It is difficult to assess the social effect of the implementation of the Noumea Accord to date. As in neighbouring regional island countries, urban drift is a fact of life. But a two-tier society is particularly evident in the capital, Noumea.

The problems over the ethnic category in the census mean that from 1996 it is difficult to quantify the ethnic characteristics of Noumea. The 1996 census showed that of Greater Noumea's population of 118,823, the number of Melanesians (Kanak) totalled 25,613 (21%), Europeans 54,323 (45.7%), and others 38,887 (32%, including Wallisians, Tahitians, Indonesians, Vietnamese, ni-Vanuatu and others).⁵¹ Kanaks were clearly far outnumbered by Europeans and other islanders and ethnic groups in the wealthy capital. The 2009 census showed that the population of Greater Noumea had increased from 118,823 in 1996 to 163,723 in 2009; and the population of the Southern Province as a whole from 134,546 to 183,007 in the same period. The proportion of the population living in the Kanak provinces of Northern Province and Loyalty Islands declined from 21% and 10% respectively in 1996 to 18% and 7% in 2009; and the proportion in Noumea grew from 60% to 66% over the same period.

Noumea has clearly remained a European city. The council housing blocks on the outskirts of Noumea, while pleasant and of a high quality, are fully occupied by Kanaks, and the miserable squats in certain outlying areas are solely Kanak, and growing. A 2009 survey showed that the middle classes were deserting Noumea (15% decline from 1996 to 2002), which was showing a widening gap between the very well-off (who are generally European) and the squatters (mainly Kanaks).⁵² The new, small, efficient public buses that serviced the capital were almost exclusively used by Kanaks and occasionally by foreign tourists, rarely if ever by *Caldoche* or French residents.

In central Noumea in 2009, Kanaks were notable by their absence in meaningful employment in government, shops or business. They occupied low level service jobs, such as in garbage collection and domestic cleaning. The only other visible Kanaks were the aimless groups, mainly of young Kanaks, sitting and strolling around the Place des Cocotiers at any

⁴⁹ Nic Maclellan, Noumea takes control of education, *Islands Business*, 2009.

⁵⁰ De l'école coloniale à l'école d'émancipation, *Les Nouvelles Calédoniennes*, 22 March 2010.

⁵¹ ISEE TEC 2008 *op. cit.* p. 35.

⁵² SCAN Survey 2009 cited in 'Les classes moyennes désertent Nouméa', *Les Nouvelles Calédoniennes*, 22 March 2010.

given time. Many young people took refuge in music and drugs (mainly light hashish), and by returning to their villages periodically, rather than participating in modern life.⁵³ Such practices are of real concern when set in the context of Tjibaou's concerns about the reasons for, and effect of, alcohol consumption by Kanaks, which were important underpinnings for his leadership of the independence movement.⁵⁴

The creation of the impressive Tjibaou Cultural Centre on the Tina peninsula on the outskirts of Noumea, home of the Kanak Culture Development Agency, also reflects the society's dichotomies. These institutions certainly represent the financial commitment of the French State to encourage the evolution of Kanak culture. The Tjibaou Centre's beautiful main buildings, designed by Renzo Piano, were inspired by the concept of a *case*, or Melanesian house, in the process of construction and evolution. However, Kanak-sponsored performances in this elegant structure have been dwarfed by large-scale rock concerts which Kanak groups organise regularly in fields and stadiums elsewhere, featuring international and local indigenous artists. Young Kanaks flock to these rock concerts in large numbers.

UN Special Rapporteur Anaya, while recognising the programs France has put in place, concluded in 2011 that nonetheless the Kanak people 'are experiencing poor levels of educational attainment, employment, health, over-representation in government-subsidised housing, urban poverty ... and at least 90 per cent of the detainees in New Caledonian prison are Kanak, half of them below the age of 25.' He noted that the situation of Kanak children and youth was a particular concern and recommended affirmative action to address this.⁵⁵

Maritime and aviation affairs. The New Caledonian Congress agreed, in November 2009, that it would take over control of maritime affairs in its territorial waters on January 1, 2011 and control of domestic air transport and airport police in January 2013, although the international airport at Tontouta would remain under French control.⁵⁶ The 2011 Committee of Signatories meeting reconfirmed the 2013 deadline for aviation.

Civil and commercial law and regulations, and civil security. The Noumea Accord provided for these powers to be transferred by 2009, but gave some space for the French State to take measures if this was not achieved (Article 3.1.2.). In mid 2009, the transfer of these powers was deferred from 2009 to 2011. The 2011 Committee of Signatories spelled out a number of steps being taken, including France financing training and magistrates in charge of civil and commercial law transfers, sufficient to enable local legislation before December 2011.

External affairs responsibility. This remains a responsibility shared between the French State and the New Caledonian government. The Noumea Accord provided for New Caledonia to take over some aspects of external trade, air and maritime services. The French State specifically retains responsibility for foreign affairs, but with New Caledonia able to have its own representation in South Pacific countries, and certain South Pacific, EU and UN organisations,

⁵³ Personal communication by senior Kanak leader to the author, 2004.

⁵⁴ Eric Waddell notes this, in *Jean-Marie Tjibaou: Kanak Witness to the World, An intellectual biography*, Honolulu, University of Hawai'i Press, 2008, p. 82.

⁵⁵ Report of Special Rapporteur James Anaya 2011 *op. cit.*

⁵⁶ *Flash d'Océanie*, 1 December 2009.

and to negotiate agreements with these countries in areas of its responsibility under the Accord (Articles 3.1.1 and 3.2.1). Since 1999, New Caledonia is represented in its own right in a number of South Pacific organisations⁵⁷ and has been party to agreements with regional neighbours which its President has signed, on behalf of the French State.⁵⁸

The Accord specifically says that training will be provided to prepare New Caledonians for their new responsibilities in international relations (Article 3.2.1). Although a Unit for International Cooperation exists under the office of the President, it has few staff. The 2011 Committee of Signatories provided for ‘representation of New Caledonia within the French diplomatic network’, *i.e.* for New Caledonians to be placed within French Embassies in the region. However, without a solid and well trained Secretariat of their own, strong English-language skills, and their own identity separate to that of France, it is difficult for senior New Caledonian government members to participate meaningfully in the many specialised regional meetings they ideally should attend each year. Regional island governments will want to relate to their New Caledonian neighbours in their own right, not as part of a French Embassy delegation. There may be scope for assistance and cooperation by Australia, New Zealand and the bigger Pacific island countries in this area.

5. Action on post-Noumea Accord sovereign or ‘*regalien*’ powers

Apart from reviewing what has been done as stipulated by the Accord, there are two areas where action appears to have been taken in contradiction to what is in the Accord. The Accord provides that the transfer of responsibility for the final five sovereign powers, specifically foreign affairs, defence, justice, law and order, and currency (Article 3.3), will be addressed in the referendum process after 2014. But France has acted in two of these areas, defence and the currency, in ways which would bear on the future, post-Accord characteristics of New Caledonia.

In 2008 France constructed a large military complex in Noumea, for the first time bringing together the headquarters of all of its Pacific military forces under one roof. In its Defence White Paper that year, the Sarkozy government announced that New Caledonia would form the base for France’s military presence in the Pacific. The same year it installed a listening post facility near Tontouta, the international airport in New Caledonia.⁵⁹ Also in 2008, France announced a Mutual Logistical Support Arrangement with Australia, under which New Caledonia would give ongoing defence logistical support to Australia.

With the defence function one of the five responsibilities specifically to be subject to a vote after 2014, the timing of France’s defence activities raised questions about its commitments

⁵⁷ It is a full member of the Secretariat for the Pacific Community, the South Pacific Tourism Organization, Pacific Islands Development Program, South Pacific Regional Environment Program, Pacific Power Association, Oceanic Customs Organization; and Associate Member of the Pacific Islands Forum, Pacific Economic Cooperation Council, and South Pacific Applied Geoscience Commission, see ISEE TEC 2008 *op. cit.*

⁵⁸ These include a Trade and Economic Relations Arrangement with Australia in March 2002 and cooperation agreements with Vanuatu in 2002, 2006 and 2010.

⁵⁹ Les Nouvelles Calédoniennes 6 September 2009.

to the Accord, expressed by pro-independence leader Roch Wamytan at the time.⁶⁰ Indeed, this French action is reminiscent of a comment made by then President François Mitterrand about reinforcing Noumea as a military base in the troubled mid-1980s, designed to underline French military power to potential troublemakers.⁶¹

New Caledonia's current currency is the CFP (Comptoirs Français du Pacifique) Franc, or Cfp, a currency used by all three French Pacific territories since 1945.⁶² After the introduction of the euro in 1999,⁶³ the French State's position on the Cfp has been that it can be replaced by the Euro if all three French Pacific collectivities agreed to do so. Despite initial opposition, French Polynesia has agreed to this change, which is not an issue in Wallis and Futuna either. However, for the pro-independence parties in New Caledonia, the question of whether to change to the Euro is sensitive. They see the Cfp as a symbol of the colonial past. For FLNKS leaders, resorting to the currency of the *métropole*, let alone that of Europe, would be a backward step in the move to emancipation. Pro-independence leaders see discussion of this issue as premature, and point out that as one of the five *regalien* issues it can only be considered within any new political organisation resulting from the 2014-2018 consultations following a referendum.⁶⁴ They wonder why France has raised this issue and see it as divisive. The issue was sensitive within the Committee of Signatories. The December 2008 Committee meeting could only secure agreement for working groups to 'study' a possible move to replace the Cfp with the Euro.⁶⁵

6. Conclusion

This brief review of the complexities of implementing the Noumea Accord indicates the many issues which face the French State, and the pro-French and pro-independence political groupings in New Caledonia. There has generally been good progress, fuelled to a large extent by goodwill and intentions. The French State has provided the financial resources to implement decisions as they have been taken, and has invested substantial economic and political capital in backing the Accord. While it is not within the scope of this paper to make regional comparisons, it is nonetheless the case that, to the extent that cooperation between the main parties, and French

⁶⁰ Wamytan opposed the defence measures, saying that such steps were inconsistent for 'a country on the path to emancipation'. Acknowledging that defence was a French sovereign power, Wamytan noted that the French state was making decisions lasting five to twenty years in the future without involving the pro-independence signatories of the Noumea Accord, *Islands Business* November 2009.

⁶¹ Philippe Leymarie, Les enjeux stratégiques de la crise calédonienne, *Le Monde diplomatique* 1985 p. 1.

⁶² when it referred to '*Colonies françaises du Pacifique*' or French Pacific colonies, or '*Change français du Pacifique*' from 1947, although it has been defined variously as '*Cours*' or '*Comptoir français pacifique*', all loosely meaning 'French Pacific Currency'.

⁶³ France negotiated a special exception in the EU Maastricht Treaty when it adopted the Euro and stipulated 'France will retain the right to issue currency in its overseas territories ... and will be the only authority to determine parity of the Cfp', Special Protocol Number 13, Maastricht Treaty, see Laurent Tesoka and Jacques Ziller, *Union Européenne et Outre-Mers Unis dans leurs diversités*, Aix-en-Provence, Presses Universitaires d'Aix-Marseille, 2008 p.404. From 1 January 1999, the Cfp was linked to the Euro at a specified rate (EUR 1:120 Cfp).

⁶⁴ See for example Paul Néaoutyine, *L'Indépendance au présent*, Paris, Édition Syllepse, 2006, p. 78.

⁶⁵ Relevé de conclusions, 7th Meeting of Committee of Signatories, December 2008.

investment, have prevailed, New Caledonia, with all its uncertainties and unresolved issues, enjoys a standard of living and stability well above that of its independent island neighbours. But this stability and progress has occurred only on the basis of a hard-won agreed set of compromises embodied in the Accord, not all of which have so far been fulfilled. And the planning for the post-Accord period is just beginning, with all its uncertainties.

This review has shown that there have been areas where the implementation of measures has foundered, including in fundamental areas which provoked bloodshed and violence just 25 years ago, and which were only agreed in the Accord after long and difficult negotiation. Handling of the restricted electorate and ethnic composition issues has been disheartening for the local people, Kanak and longstanding European residents alike. While there has been significant progress in establishing another massive new nickel plant in the wealthy south, and impressive infrastructure for one in the north, progress in developing the nickel resource and sharing its benefits has been slow and affected by global economic conditions. There are also ambiguities in the ultimate allocation of responsibility for the exploitation of mineral deposits and, potentially, hydrocarbons. While a share of the nickel revenue has been handed to New Caledonia, France has signified at the highest level that it wants to retain control of the one processing plant that is in production to date. Economic and social differences between the Kanak and European communities remain stark. Progress in important transfers such as secondary education and land allocation has been slow. And action by the French State to consolidate defence and currency control, before the scheduled referendums on them, has raised questions about its intent.

These are complex and sensitive issues, many of which must be resolved in the next two years, before the May 2014 elections return a Congress for the final mandated term. At the same time, discussions have begun on the range of sensitive issues around the future of New Caledonia beyond 2018.⁶⁶ These processes and their outcomes will influence the stability not only of New Caledonia but of its South Pacific neighbourhood, including Australia. All three parties to these discussions will need the support and understanding of their Pacific neighbours at this time.

⁶⁶ These issues are canvassed in Denise Fisher, 'France in the South Pacific: Countdown for New Caledonia – Options for the Future.' *ANU Centre for European Studies Briefing Paper*, Vol. 3, No. 1 (March 2012).

Table 1: Ethnic composition of the population of New Caledonia, 1969-2009 (percentages)

	1969	1976	1983	1989	1996	2009*	2009**
Kanak	46.0	41.7	42.6	44.8	44.1	40.3	44.3
European	41.0	38.1	37.1	33.5	34.1	29.2	33.9
Other	13.0	20.2	20.3	21.7	21.8	31.5	
Of whom							
Wallisian (Wallis and Futuna)		7.2	8.4	8.6	9.0	8.7	10.4
Tahitian		4.8	3.8	2.9	2.6	2.0	
Indonesian		3.8	3.6	3.1	2.5	1.6	
Vietnamese		1.4	1.6	1.5	1.4	1.0	
ni-Vanuatu		0.8	0.8	1.0	1.1	0.9	
Other		2.1	1.9	4.4	5.0	16.3	
Of whom							
Other Asian						0.8	
Mixed or multiple race						8.3	
Caledonian						5.0	
Other						1.0	
Non-declared						1.2	

* Based on new census formulation with new categories for 2009 under 'Other', as shown.

** Main groups reallocated. Figures calculated by ISEE by reallocating some of the mixed race figures under 'Other', to the three main ethnic communities.

Notes: The comparability of the data for different years is limited, see the main text. The (sub) totals may be affected by rounding.

Sources: Pascal Rivoilan et David Broustet, *Synthèse - Recensement de la Population 2009* ISEE website accessed 12 May 2011 and 17 October 2011; Institut de la statistique et des études économiques de la Nouvelle-Calédonie website www.isee.nc.

Table 2: Planned Nickel Projects in New Caledonia

Location	Project, companies	Investment (billion US\$)	Projected production (tonnes/year)	Projected employment	Planned production date	Note
Southern Province	Doniambo expansion, SLN	0.4	75,000 nickel (up from 62,000 in 2007)	+ 200 over current 2,000	TBA	Delayed in part by changes in global demand
	Goro plant, Vale	4.3	60,000 nickel, 5,000 chrome	2,000 construction, 4-5000 temporary imported, 2,000 indirect at production	2013 (revised several times)	Delayed by higher costs than planned, local employment, environment concerns
	Prony, SLN	1.5	60,000 nickel, 6,000 chrome		Beyond 2023	Legal and political complications relating to license, opposed by pro-independence leaders
Northern Province	Koniambo plant, SMSP and Xstrata	3.8	54,000 nickel	2,000 construction, 1,000 direct and 2,500 indirect in operational phase	2012 to 2014	Progress in building infrastructure
	Poum, SLN	N/A	N/A	N/A	N/A	No details about future development

Sources: Company websites www.sln.nc; www.vale; www.vale.nc; www.aramet.fr; www.xstratanickel.com; www.koniambonickel.nc; Leah Horowitz, 'Towards a viable independence? The Koniambo Project and the political economy of mining in New Caledonia', *The Contemporary Pacific*, 2004, 16, pp 287-319.

Table 3: Distribution of Seats in the Congress of New Caledonia, 1999-2009

Party/grouping		1999	2004	2009*
Pro-France	RPCR	24		
	RPC			2
	R-UMP		16	13
	Front National	4	4	
	Alliance	3		
	Avenir Ensemble		16	6
	Calédonie Ensemble			10
Total pro-France		31	36	31
Pro-independence	UNI-FLNKS		8	
	FLNKS	12		3
	UNI Palika	6		6
	Union Calédonienne		7	8
	FCCI	4	1	
	UC Renouveau		1	
	LKS	1	1	1
	Parti Travailleiste			4
	Unon nationale pour le renouveau			1
Total pro-independence		23	18	23
Total seats		54	54	54

* Figures reflect a re-run of elections in Loyalty Islands in December 2009.

Source: 'Elections provinciales' on website www.congres.nc accessed 20 October 2011.

ANU Centre for European Studies
ANU College of Arts and Social Sciences
1 Liversidge Street, Building 67C
Australian National University
Canberra ACT 0200
Australia
W: <http://ces.anu.edu.au/>
F: +61 2 6125 9976