

Agreement on New Caledonia (Noumea Accord)

*Note: that this is an informal translation by the Pacific Community translation services.

Preamble

1. On 24 September 1853, when France claimed 'Grande Terre', which James Cook had named 'New Caledonia', it took possession of a territory in accordance with the conditions of international law, as recognised at that time by the nations of Europe and America. It did not establish legally formalised relations with the indigenous population. The treaties entered into with the customary authorities in 1854 and subsequent years did not represent balanced agreements but were, in fact, unilateral instruments.

This territory, however, was not empty.

Grande Terre and the outlying islands were inhabited by men and women now known as Kanaks. They had developed their own civilisation, with its traditions and languages, in which custom, which governed social and political life, prevailed. Their cultural and spiritual life was expressed through various forms of creativity.

The Kanak identity was based on a particular relationship with land. Each individual and each clan defined itself in terms of a specific link to a valley, a hill, the sea or a river estuary and carried in its memory the acceptance of other families on its land. The names attached by tradition to each element of the landscape and the taboos affecting some of these, as well as the customary ways, gave structure to space and exchanges.

2. The colonisation of New Caledonia occurred as part of a broad historical movement which saw the European countries impose their domination on the rest of the world. In the 19th and 20th centuries, many men and women came, either with the conviction that they were bringing progress, or inspired by their religious faith, or sent against their will or seeking a second chance in New Caledonia. They settled and started families there. They brought with them their ideals, knowledge, hopes, ambitions, illusions and contradictions.

Some of them, especially the cultured people, priests and pastors, doctors and engineers, administrators, soldiers and political leaders, looked differently upon the original inhabitants, showing greater understanding and genuine compassion.

Through their scientific and technical knowledge, the Territory's new communities participated in mining and agricultural activity, often under difficult circumstances, and, with the help of the State, in the shaping of New Caledonia. Their determination and inventiveness made it possible to use resources and lay a foundation for development.

The relationship of New Caledonia with the distant motherland long remained marked by colonial dependency, a one-sided relationship and a refusal to recognise specific characteristics, from which the new communities, in their aspirations, also suffered.

3. The time has come to recognise the shadows of the colonial period, even if it was not devoid of light.

The impact of colonisation had a long-lasting traumatic effect on the original people.

Some clans lost their names when they lost their land. Large-scale land colonisation caused considerable population movements, in which the Kanak clans saw their subsistence resources depleted and their places of memory lost. This process of dispossession engendered a loss of identity markers.

Kanak social organisation, even if its principles were recognised, was thus thrown into upheaval. Population movements damaged its fabric, while ignorance, or power strategies, all too often led to the negation of the legitimate authorities and the installation of leaders considered under custom to have no legitimacy, which aggravated the identity trauma.

At the same time, the Kanak artistic heritage was considered non-existent or looted.

To this denial of the fundamental elements of the Kanak identity, were added restrictions on public freedoms and a lack of political rights, despite the fact that the Kanaks had paid a heavy toll in the defence of France, especially during the First World War.

The Kanaks were relegated to the geographical, economic and political fringes of their own country, which, in a proud people not without warrior traditions, could not but cause revolts, which were violently put down, aggravating resentment and misunderstanding.

Colonisation harmed the dignity of the Kanak people and deprived it of its identity. In this confrontation, some men and women lost their lives or their reasons for living. Much suffering resulted from it. These difficult times need to be remembered, the mistakes recognised and the Kanak people's confiscated identity restored, which equates in its mind with a recognition of its sovereignty, prior to the forging of a new sovereignty, shared in a common destiny.

4. Decolonisation is the way to rebuild a lasting social bond between the communities living in New Caledonia today, by enabling the Kanak people to establish new relations with France, reflecting the realities of our time.

Through their participation in the construction of New Caledonia, the communities living in the Territory have acquired a legitimacy to live there and to continue contributing to its development. They are essential for its social balance and the operation of its economy and social institutions. Although accession of Kanaks to positions of responsibility remains insufficient, and needs to be increased through proactive measures, it is also a fact that the participation of other communities in the life of the Territory is essential.

It is now necessary to start making provision for a citizenship of New Caledonia, enabling the original people to form a human community, asserting its common destiny, with the other men and women living there.

The size of New Caledonia and its economic and social balances do not make it possible to open the employment market widely, and justify action to protect local employment. The Matignon Accords, signed in June 1988, demonstrated the will of the inhabitants of New Caledonia to put violence and rejection behind them and tread the path of peace, solidarity and prosperity together.

Ten years on, a new process needs to commence, entailing the full recognition of the Kanak identity, as a pre-requisite for rebuilding a social contract between all the communities living in New Caledonia, and entailing shared sovereignty with France, in preparation for full sovereignty.

The past was the time of colonisation. The present is the time of sharing, through the achievement of a new balance. The future must be the time of an identity, in a common destiny.

France stands ready to accompany New Caledonia on that path.

5. The signatories of the Matignon Accords have therefore decided together to come to a negotiated agreement, based on consensus, which they will, jointly, call upon the inhabitants of New Caledonia to endorse.

This agreement specifies the political organisation of New Caledonia and the arrangements for its emancipation over a twenty-year period.

Its implementation will require a Constitution Bill which the Government undertakes to draft for enactment by Parliament.

The full recognition of the Kanak identity requires customary law status and its links with the civil law status of persons governed by ordinary law to be defined, and provision to be made for the place of customary bodies in the institutions, particularly through the establishment of a Customary Senate; it requires the Kanak cultural heritage to be protected and enhanced and new legal and financial mechanisms to be introduced in response to representations based on the link with land, while facilitating land development, and identity symbols conveying the essential place of the Kanak identity in the accepted common destiny to be adopted.

The institutions of New Caledonia will reflect further progress towards sovereignty: some Congress Resolutions will be deemed to be laws and an elected Executive will draft and implement them.

During this period, signs will be given of the gradual recognition of a citizenship of New Caledonia, which must express the chosen common destiny and be able, after the end of the period, to become a nationality, should it be so decided.

The entitlement to vote in elections to New Caledonia's own local assemblies will be restricted to persons with a certain period of prior residence in New Caledonia.

In order to take into account the limited size of the employment market, provision will be made to give priority access to local employment to persons residing on a long-term basis in New Caledonia.

The sharing of responsibilities between the State and New Caledonia will signify shared sovereignty. This will be a gradual process. Some powers will be transferred as soon as the new arrangements commence. Others will be transferred according to a set timetable, which the Congress will be able to modify, according to the principle of self-organisation. The transferred powers may not revert to the State, reflecting the principle of irreversibility governing these arrangements.

Throughout the period of implementation of the new arrangements, New Caledonia will enjoy the support of the State, in terms of technical assistance, training and the funding necessary to exercise the transferred powers and for economic and social development.

Commitments will be applied to multi-annual programmes. New Caledonia will participate in the capital and operation of the main development institutions in which the State is a partner.

At the end of a period of twenty years, the transfer to New Caledonia of the reserved powers, its achievement of full international responsibility status and the conversion of citizenship into nationality, will be voted upon by the people concerned.

Their approval would mean full sovereignty for New Caledonia.

Policy document

1 The Kanak Identity

New Caledonia's political and social organisation must take the Kanak identity into account more fully.

1.1 The Special Civil Law Status

Some Kanaks have ordinary civil law status without having desired it.

The Special Civil Law Status is a source of legal insecurity and does not make it possible to respond appropriately to certain situations of modern life.

Consequently, the following policy has been set:

- the Special Civil Law Status will henceforth be called 'Customary Status'.
- any person entitled to Customary Status who may have renounced it or been deprived of it following such renunciation by his/her ancestors, or through marriage, or for any other reason (case of children whose births were registered in metropolitan France), will be able to recover it. The Constitutional Revision Act will authorise this exception under Article 75 of the Constitution.

- the rules pertaining to the Customary Status will be laid down by the institutions of New Caledonia, as set out hereafter.
- the Customary Status will make a distinction between property located in 'Customary Land' (new name for the Reserves), which, in the case of inheritance, will be transferred and allocated in accordance with the rules of custom, and property located outside Customary Land, which will be governed by the rules of ordinary law.

1.2 Customary Law and Bodies

1.2.1 The legal status of the 'Palaver Record' (which name may be changed) must be redefined, in order to give it full force of law, by determining its format and setting up an appeal process that will guard against subsequent disputes. The role of the Syndic des affaires coutumières (Recorder of Customary Affairs), at present held by the Gendarmerie, will be played by another agent, possibly a representative of the 'commune' or of the Customary Area.

The format of the Palaver Record will be defined by the Congress in consultation with the customary authorities (see below). The roll-call will take place before the Area Council and proceedings will be recorded by that council or the commune authorities.

1.2.2 The role of the Customary Areas will be enhanced, in particular by giving the Area Councils a say in clarifying and interpreting customary rules. Broadly speaking, New Caledonia's spatial organisation will need to take more account of their existence. In particular, the boundaries of the communes should be able to take the Customary Areas' boundaries into consideration.

1.2.3 The mode of recognition of the customary authorities will be specified in order to guarantee their legitimacy. It will be defined by New Caledonia's customary authorities (see below). It will be notified to the Representative of the State and to New Caledonia's Executive whose role will be confined to recording it. Their status will be specified.

1.2.4 The role of the customary authorities in the prevention of social ills and mediation in criminal sentencing will be acknowledged. Their role in respect of the latter will be included in the provisions of the legal instruments governing criminal procedure in New Caledonia.

The Customary authorities could be invited by the provincial assemblies or commune authorities to take part in the drafting of local assembly resolutions.

1.2.5 The Customary Council of New Caledonia will become a 'Customary Senate', consisting of sixteen members (two from each Customary Area), which it will be compulsory to consult on subjects relating to Kanak identity.

1.3 The Cultural Heritage

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1.3.3 Languages

The Kanak languages, together with French, are languages of education and culture in New Caledonia. Their place in school curricula and in the media should therefore be increased and extensive consideration should be given to how to achieve this.

Scientific research and university courses on Kanak languages should be organised in New Caledonia. The Institut national des langues et civilisations orientales (Institute for Oriental Languages and Civilisations) will play a pivotal role in this regard. For these languages to gain their rightful place in primary and secondary schooling, a substantial effort will be put into training of trainers.

An Academy of Kanak Languages will be set up as a local public institution whose Board of Governors will consist of speakers of Kanak languages, appointed by agreement with the customary authorities. The Academy will set rules for usage and development of the Kanak languages.

1.3.4 Cultural development

Kanak culture must be developed and enhanced through artistic training courses and in the media. Copyright must be effectively protected.

1.3.5 Tjibaou Cultural Centre

The State undertakes to provide, on a long-term basis, the technical assistance and funds required for the Tjibaou Cultural Centre to be able to fully play its part as a centre for outreach by Kanak culture.

On all these matters pertaining to the cultural heritage, the State will propose that a specific agreement be entered into with New Caledonia.

1.4 Land

Every Kanak's identity is defined primarily with reference to an area of land.

The task and operations of the Agence de développement rural et d'aménagement foncier — ADRAF (Rural Development and Land Management Board) will have to be thoroughly reassessed. It will require sufficient resources for taking action in suburban areas. Measures accompanying land grants will need to be strengthened so as to facilitate the beneficiaries' establishment and development of the land.

Customary Land must be surveyed and registered so that customary rights over any piece of land can be clearly identified. New legal and financial instruments will be introduced to promote development on Customary Land, whose status must not act as an obstacle to economic development.

Land reform will be continued. Customary Land will consist of Reserve Land, the land assigned to groupements de droit particulier local — GDPL (groups governed by special local law provisions) and the land that will be assigned by ADRAF in response to representations based on the link to land. Thus, all land will henceforth be either Customary Land or land

held under ordinary civil law. Lease arrangements specifying relations between the customary owner and the developer of custom land will be defined by the Congress, in consultation with the Customary Senate. Any disputes will be dealt with by the ordinary law courts, with the assistance of customary assessors.

A survey of State land and land held by the Territory will be undertaken with a view to assigning these land areas to other local government entities or to customary owners or private owners, either in order to restore land rights or to enable developments of common interest to be carried out. The issue of the maritime zone will be considered in a similar spirit.

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2 The Institutions

2.1 The Assemblies

2.1.1 The Provincial Assemblies will, respectively for the Loyalty Islands, Northern and Southern Provinces, consist of 7, 15 and 32 members who will also be members of the Congress, as well as of 7, 7 and 8 additional members, not members of the Congress, when the new institutions are set up. For subsequent terms, the Provincial Assemblies can, if they wish, reduce the number of members who are not Congress members.

2.1.2 The term of office of members of the Congress and of the Provincial Assemblies will be five years.

2.1.3 Some Congress Resolutions will be deemed to be laws of the country; the only way, therefore, that it will be possible to dispute them will be by submission before the Constitutional Council prior to their publication, by either the Representative of the State, or New Caledonia's Executive, or the President of a Provincial Assembly, or the President of the Congress or a third of the members of the Congress.

2.1.4 a) Draft laws of the country and draft resolutions will be referred to the Customary Senate whenever they concern the Kanak identity as defined in this document. When the draft submitted to it has the nature of a law of the country and concerns the Kanak identity, the Congress of New Caledonia will be required to re-examine it if it has not been endorsed by the Customary Senate. The Congress's vote will then be final.

b) New Caledonia's main economic and social institutions will be represented by an Economic and Social Council. It will be consulted on all Congress Resolutions of an economic or social nature. Its members will include representatives of the Customary Senate.

2.1.5 The boundaries of the Provinces and communes (municipal districts) should coincide, to ensure that every commune belongs to one Province only.

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3 Devolution of powers

The powers held by the State will be transferred to New Caledonia in the following manner:

- some will be transferred at the start of implementation of the new political organisation;
- some will be transferred in subsequent stages;
- some will be shared between the State and New Caledonia;
- some, termed reserved powers, cannot be transferred until after the poll referred to in Section 5.

The Congress, subject to the approval of a qualified majority of three-fifths, will be able to request changes to be made in the provisional schedule for the transfer of powers, with the exception of the reserved powers.

Throughout this period, the State will contribute to the funding of the transferred powers. This financial contribution will be guaranteed by the Constitution Act.

3.1 The new powers devolved to New Caledonia

3.1.1 Powers to be transferred immediately

The principle of transfer will apply as soon as the institutions provided for in this Accord have been set up: this decision will be implemented during the Congress's first term, in respect of the following powers:

- the right to employment: New Caledonia, in conjunction with the State, will take measures designed to offer special guarantees for its inhabitants' right to employment. Regulations on the entry of persons not resident in New Caledonia will be reinforced.

For self-employed persons, the right to set up business could be restricted for persons not resident in New Caledonia.

Where salaried workers in the private sector and for the Territorial Public Service are concerned, local regulations will be drawn up with a view to giving territorial inhabitants preferential access to employment.

- Aliens' right to work;
- External trade, including import regulations and approval of foreign investments;
- External communications through postal and telecommunication services, except government communications and regulations governing radio frequencies;
- Navigation and international shipping services;
- External communications through air services when their only stop in France is New Caledonia and in compliance with the international commitments entered into by France;
- Exploration, exploitation, management and conservation of living and non-living natural resources of the Economic Zone;
- Fundamental principles for employment law;

- Fundamental principles for vocational training;
- Customary mediation in sentencing;
- Setting of penalties for breaches of the laws of the country;
- Rules for the administration of the Provinces;
- Curriculum content for primary schools, teacher training and inspection of teachers;
- the public maritime zone, transferred to the Provinces.

3.1.2 Powers to be transferred as a second stage

The following powers will be transferred, as an intermediate stage, to New Caledonia during the second and third Congress terms of office:

- Civil registration rules, within the framework of the existing legislation;
- Policing and security regulations for domestic air and sea traffic;
- Drawing up of rules and implementation of measures for civil defence. However, a system will be set up which will allow the State to take the measures required in the event of shortcomings.
- Accounting and financial regulations for Territorial local government entities and their public corporations;
- Civil and commercial law;
- Fundamental principles governing land ownership and real property rights;
- Legislation on delinquent and endangered children;
- Rules for administration of communes;
- Administrative control over local government entities and their public corporations;
- Secondary education;
- Regulations pertaining to private school teachers under contract.

3.2 The shared powers

3.2.1 International and regional relations

International relations remain the responsibility of the State. The latter will take New Caledonia's specific interests into account in international negotiations conducted by France and will associate it to the discussions.

New Caledonia will be entitled to become a member or associate member of certain international organisations, depending on their constitutions (Pacific international organisations, United Nations Organisation, UNESCO, ILO, etc.). The UN will be advised that New Caledonia's emancipation is under way.

New Caledonia will be entitled to have representation in countries of the Pacific region and with the above-mentioned organisations and in European Union.

It will be entitled to enter into agreements with these countries within its areas of responsibility.

It will be associated with the re-negotiation of the Europe-OCT Association Decision.

Training will be initiated to prepare New Caledonians for exercising responsibilities in the sphere of international relations.

Relations between New Caledonia and the Territory of the Islands of Wallis and Futuna will be addressed in a separate agreement. The State's services will be organised separately in New Caledonia and in this Territory.

3.2.2 Aliens

The Executive of New Caledonia will be associated with the implementation of regulations regarding entry and length of stay of aliens.

3.2.3 Broadcasting

The Executive will be consulted by the Conseil supérieur de l'audiovisuel — CSA (French Broadcasting Authority) prior to any decision specifically concerning New Caledonia.

An agreement may be drawn up with New Caledonia to associate the latter with the CSA's broadcasting policies.

3.2.4 Law and order

The Executive will be informed by the Representative of the State of any measures taken.

3.2.5 Mining regulations

The State will devolve its powers with regard to fuel oils, potassium salts, nickel, chromium and cobalt to the Territory.

Responsibility for drafting regulations will be devolved to New Caledonia, responsibility for their implementation to the Provinces.

A Mining Council, consisting of representatives of the Provinces, whose meetings the Representative of the State will attend, will be consulted on draft Congress and Provincial Resolutions relating to mining matters. Should the Council not agree with the Resolution or the Representative of the State not be in favour, the final decision will be made by the Executive of New Caledonia.

3.2.6 International air services

The Executive will be associated with negotiations where responsibility has not been entirely devolved to New Caledonia.

3.2.7 Tertiary Education and Scientific Research

The State will associate the Executive with the preparation of contracts binding it to the research institutions working in New Caledonia and to the University, so that more appropriate consideration can be given to New Caledonia's specific requirements in the

fields of higher education and research. New Caledonia will be entitled to enter into agreements on policy and objectives with these bodies.

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5 Evolution of New Caledonia's political organisation

A poll will be held during the fourth (five-year) Congress term of office. The date of the poll will be set by the Congress in the course of the fourth term, by a qualified majority of three-fifths of its members.

If the Congress has not set such date by the end of the second-to-last year of this fourth term, the poll will be held, on a date set by the State, during the last year of the Congress term.

The poll will address devolution to New Caledonia of the reserved powers, access to international full responsibility status, and conversion of citizenship into nationality.

If the electorate votes against these proposals, the Congress, if at least one third of its members, so request, will be entitled to arrange for a second poll to be held in the second year following the first poll. Should a majority again vote against, a further poll may be held using the same procedure and the same time-frame. Should no majority in favour again be recorded, the political partners would meet to consider the situation thus arising.

For such time as the polls have not been in favour of the new political organisation proposed, the political organisation set up by the 1998 Agreement will remain in force, at its latest stage of evolution, without there being any possibility of reversal, such 'irreversibility' being constitutionally guaranteed.

The result of the poll will apply comprehensively to New Caledonia as a whole. It will not be possible for one part of New Caledonia alone to achieve full sovereignty, or alone to retain different links with France, on the grounds that its results in the poll differed from the overall result.

The State acknowledges that it is appropriate that New Caledonia achieve complete emancipation at the end of this period.

Source: *'Noumea Accord – Digest,'* Australian Indigenous Law Reporter 88, 7.1. (2002), <http://www.austlii.edu.au/au/journals/AILR/2002/17.html>