Addressing Inequality and Promoting Inclusive and Sustainable Development

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ABSTRACT

Self-determination continues to gather momentum in New Caledonia. Pursuant to the Noumea Accord, both Congress and the government are increasingly empowered via the gradual implementation of a transfer of power from France to New Caledonia. Key areas such as taxation, labour law, health, foreign trade, secondary school education and many others are already in the hands of the Territorial Congress and government. Further authority will be given to the Congress in the near future, such as civil law, corporate law, university, and radio and television. Ultimately, the French Republic should only remain in charge of “sovereign functions” like foreign affairs, justice, defence, public order, and currency. Pursuant to the Agreement, the Territorial Congress will have the right to call for a referendum on independence at any time of its choosing between 2014 and 2017. Before the vote however, Kanaks and Caledonians have to build together what the Noumea Accord calls “a common destiny”. This includes addressing ethnic inequalities. In June 2012, an important deal was reached in Congress between major political parties and trade unions to promote a large social policy through a consumption tax and an income proportional general taxation. But the so-called “loyalist” parties indefinitely shelved the bill as soon as the employers and the rich resisted. Sooner rather than later, New Caledonia will have to decide on policies to close the gap between the indigenous and the non-indigenous people, especially if a common destiny is to be realised.

Key words: governance; public policies; tax; inequality; Nation-building; decolonisation.
THE DROPPING OF THE TAX REFORM BILL IN NEW CALEDONIA

Constitutional Law in New Caledonia has been in line with the decolonisation process since the approval of the referendum in the Noumea Agreement (or Accord) signed in 1998 by both pro-French and pro-independence parties. New Caledonia was re-listed as a non-self-governing territory by the United Nations in 1986, as was French Polynesia on 17 May, 2013.

In accordance with the Noumea Agreement, the power of both Congress and the Government (of New Caledonia) is increasing through the gradual implementation of a transfer of power from France to New Caledonia. Key areas (e.g. Taxation, Labour Law, Health, Foreign Trade, Secondary Education and many others) are already in the hands of Congress and the Government. Further authority will be given to Congress in the near future (e.g. Civil Law, Corporate Law, even Broadcasting and Tertiary Education). Ultimately, before New Caledonia decides on its future, the French Republic should only remain in charge of Foreign Affairs, Justice, Defence, Public Order, and Currency, as one would say, the “sovereign functions”.

The Noumea Agreement provides two main guarantees to the United Nations: the first is that France plainly accepts that “the way to emancipation (independence) shall be brought to the attention of the United Nations”. The second is to ensure a means to determine the ultimate status of New Caledonia. Pursuant to the Agreement, Congress will have the right to call for a referendum on independence at any time between 2014 and 2017.

When the French Republic gave constitutional value to the Noumea Agreement in 1998, it recognised the Kanak as a singular indigenous people, distinct from the French people. For the first time in French history, an indigenous population is regarded as distinct from the French Nation. However, beyond mutual recognition and before the referendum on independence, Kanak and Caledonians have to together build what it is called by the Noumea Agreement “a common destiny”. This is a circumlocution for a new Caledonian Nation to be created with indigenous people and Europeans together, which is a serious challenge in a divided society.

For trade unions and major political parties represented in Congress, the priority of the changes is to move towards a significant decrease in inequalities along with an increase in purchasing power. A tax reform bill addressing inequalities would be an appropriate way to bring the two communities closer together.

However, the lack of a sense of belonging to a common body politic always makes things difficult in New Caledonia. This important aspect of political life in New Caledonia, which must be analysed in the context of a settlement colony, has some significant consequences and fuels a lot of political quarrels.

In essence, the acknowledgement of Caledonian citizenship first gives certain rights of political participation to the locals. The electorate for the Congress is made up of New Caledonian citizens. This comprises only some French nationals and designates all those who have the right to vote in the election of Congress. The original rule was that the individuals concerned had to prove that they had been residents continuously for ten years before the date of the election. However, this solution did not satisfy movements for independence, which denounced what
they called a “democratic drowning”. This situation, known as “the sliding electorate”, led to demonstrations and violence. President Jacques Chirac himself recognised that the rule was not in conformity with the terms of the Noumea Agreement. Hence, in 2007, he proposed to change the French Constitution and to “freeze” the Caledonian electorate. Under the new rule, only those residing in New Caledonia before the Noumea Agreement (i.e. before 8 November 1998) are accepted, if they can prove that they have been continuous residents for ten years. A French national who moved to New Caledonia after 8 November 1998 will never be able to become a Caledonian citizen, at least as long as the Constitution remains unchanged. This last point is still not totally accepted.

A second related consequence is: should Caledonian citizenship be the basis for affirmative action, as conducted by President Kennedy in USA to enhance racial equality? A provision of the Noumea Agreement authorises the implementation of safeguards for local workers. This safeguard addresses protection from overseas workers, namely French nationals. Moreover, the Noumea Agreement itself indicates that New Caledonian citizenship is a reference in the adoption of provisions to be implemented to preserve local employment. This issue is of major importance for both the Kanak independence movement and Europeans in New Caledonia. On 30 December 2009, a bill was approved by Congress to establish these safeguards. However, this bill is still far from being sufficiently implemented and a lot of French nationals freely continue to move to, and find jobs in, New Caledonia, although they are not entitled to New Caledonian citizenship.

The controversial flag raising ceremony also showed the weak sentiment of belonging to a common body politic. In February 2010, the raising of both the French national flag and the Kanak flag was surprisingly suggested by Pierre Frogier, President of the Southern province. Charles Pidjot, Head of the Caledonian Union, one of the political parties of FLNKS (Kanak Socialist National Liberation Front), instantly accepted the suggestion. The joint flag concept was said to be in line with the Tjibaou-Lafleur handshake, but also in perspective of the Pacific Games that New Caledonia hosted in 2011. The move was later endorsed by Congress, but it also accentuated divisions across the political spectrum. French Prime Minister François Fillon started his visit to New Caledonia on 20 July 2010 with a symbolic gesture: the official flag raising ceremony. For the first time both the French national flag and the local pro-independence banner, which had been the FLNKS symbol for the past twenty years, were raised together.

Some opponents to the idea of a joint flag had earlier favoured the idea of a new flag that would have promoted the notion of “common destiny” enshrined in the autonomy of the Noumea Agreement. The leading actor was the former President of the local government, Philippe Gomès, who was ousted in February 2011 because of his opposition to the joint flag. The Mayor of Noumea Jean Lèques was also reluctant to raising both flags in front of his town hall and schools, saying he was awaiting a memo from the French government on the matter, before making any move - this never came. Philippe Gomès politically surfed on the rejection wave of the joint flag concept and was elected as a Member of the French Parliament in June 2012. This was a political shock, and was immediately interpreted as a refusal of a unilateral concession to the Kanak. Political coalition or common proposals with the independent parties were out of the question.
Beyond these three aspects of Caledonian political life, Kanak and Caledonians together have to deal in promoting development, managing the country and building “a common destiny”. However, this common task turned out to be chaotic.

In May 2011, three demonstrations took place: in the capital Noumea; and Kone and Lifou; the administrative centres of the Northern Province and Loyalty Islands Province, to march against the high cost of everyday life. Overall, 25,000 people participated, that is almost 10 percent of the population of the country! However, the cost of living was not the sole reason for the protest. Rebalancing between the indigenous people and Europeans is happening very slowly. Reducing the large income and employment gap between the European-dominated greater Noumea and the mostly Kanak rural interior and islands was also an important reason. Other key reasons included concerns about continuing economic development and nickel exports. The disturbing observation is the failure of the French overseas territories policy, in which the French have mistaken a consumer society for economic development.

New Caledonia has one of the strongest economies in the South Pacific Islands region (because of its nickel exports), with a relatively high GDP per capita, comparable to New Zealand. Although New Caledonia has significant nickel resources, which account for 90% of its export earnings, it still is heavily reliant on financial transfers from France, which account for approximately 25% of GDP.

France has created a “fool’s economy”. The trade balance is structurally in deficit. The fixed exchange rate between the Pacific Franc and the Euro protects New Caledonia from any devaluation. The balance of payments is always in the red. To improve the balance of payments, New Caledonia needs capital input which comes from transfers from France. These financial transfers are for the most part military and civil servant salaries, not really investments. The icing on the top is the supplement for public salaries which ranges from 73% in Noumea to 92% in the rural areas. France also gives massive tax exemptions for people investing in French overseas territories. This policy has created a high standard of living, but also a high cost of living.

These days France is often labelled as one of Europe’s problem children. Indeed, France is one of the OECD countries which has recorded the weakest real per capita income growth over the last two decades. The high level of taxation and the burden of public spending (57% of GDP in 2013) weigh heavily on the economy. New Caledonia has followed this model.

The high cost of living, which is a result of small market size, heavy market protection and extravagant transfers from France, is more painful for low-income families, who are often Kanak. Moreover, the high inflation rate in recent years has had an even greater effect on the poorest households, because the increase in food prices has been much higher than for other goods. Common abuse of market dominating position has stifled competition among hypermarkets. The openness of the New Caledonia market is limited. The trade openness ratio actually increased between 1998 (18%) and 2006 (25%), but it remains small compared to the rate prevailing in the other Small Island States. The reason lies in heavy market protection, which contributes to high prices and crazy trading margins. The construction industry is strengthened by tax exemption while New Caledonia suffers from a strong housing bubble. There is an obvious imbalance...
between the too many highly paid civil servants and the too few industrial workers who are paid far less.

As a result, Caledonian society presents high inequalities of monetary revenue. 20% of the wealthiest households receive 55% of all the revenue declared to the tax department, compared to 40% in France, 41% in Australia and 43% in New Zealand. In 2006, the Gini index calculated for New Caledonia was 50. France has a Gini index of 33; for Australia and New Zealand, the Gini index is 35\textsuperscript{12}.

In June 2012, the president of Congress, Roch Wamytan – a pro-independence was elected one year before by the pro-joint flag coalition\textsuperscript{13}. At that time, exactly one year after the massive demonstrations, an important deal between major political parties and trade unions was made in Congress. It was called “the economic and social agreements” in a way reminiscent of the Noumea Agreement itself.

The Economic and Social Agreements signed in June 2012 are a new approach. For trade unions and major political parties represented in Congress, the changes have to move towards a significant decrease in inequalities along with a positive evolution of purchasing power.

New Caledonia will reduce its public deficit and promote a large social welfare policy by establishing a consumptive VAT (Value Added Tax). The VAT will pay for minimum pensions, which were adopted previously without any financing. An income proportional general taxation, based on all kinds of earnings, will be established. It will pay for the social welfare policy and will also correct the weaknesses of direct tax, which only affects salaried people in New Caledonia. The capital will be taxed through a real estate gains tax and a taxation of shareholders income\textsuperscript{14}.

From an economic perspective, VAT will lower customs duties promoting price cuts. The installation of an Independent Agency for Free Competition will struggle against the many abuses of market dominating position. More than only a social and economic perspective, it will be a somewhat new vision of society.

This commitment to the Economic and Social Agreement, however, did not last long. Philippe Gomès (leader of Calédonie Ensemble, one of the pro-France parties) was ousted as President of Government in February 2011 by the joint flag coalition. As a result, he surfed on the rejection wave of the joint flag concept and was elected as a French Member of Parliament in June 2012. This was a political shock in New Caledonia, and was immediately interpreted as refusal rejection of one-sided concession to the Kanak. The pro-independence President of Congress was defeated and a new pro-Gomès President elected. Political coalition or common proposals with the independent parties were judged to be a trap. The so-called “loyalist” parties\textsuperscript{15} together indefinitely postponed the VAT bill. The government did not fall, but was paralysed.

For this reason pro-independence activists and labour unions kept up the pressure to move closer towards fiscal and economic reforms. The Unions called for a General Strike. This paralysed the country: a lot of offices, civil services, businesses, means of transportation, schools were closed during a One week strike. A new agreement was signed on 27 May 2013 with the backing of the French High Commissioner in New Caledonia, who was worried about the potential mayhem.
Economic and Social Agreements made a comeback. The new agreement is a weak copy of the Economic and Social Agreements. The key measures are a freeze to prices for 18 months and a price cut of 10% for 500 essentials. New Caledonia will lower customs taxes on essentials and hypermarkets will reduce their trading margin. However, the fiscal reform was a light one. The VAT bill, which was postponed, will pass at a rate of 6%, but only after the general elections in May 2014! There was no word about the implementation of an income proportional general tax, based on all kinds of earnings, even though this specific tax is urgent and should be created to finance social policy. The problem of deficits remains unsolved as nothing was said either about real estate gains tax and taxation of shareholder income.

Silence does not mean forgetting the former Economic and Social Agreements. It simply means that a strong resistance remains among employers. The implementation of these Agreements will require more Trade Union demonstrations. For example, on 3 May 2013 just before the General Strike, Congress passed a Law establishing free competition for the main retail outlets with deterrent sanctions. An exceptional majority of members of Congress enacted the Law despite the opposition of the President of Government.

Using the same strategy, a majority of Congress members enacted a Law making tax evasion an offense. For the first time in New Caledonia, tax evasion would be punished by the Courts!

In an atmosphere of political decline, the Government rushed through a tax package. As a result, the President of the Government proposed an additional tax of 1.5% on shareholder income, and the abolition of some tax exemptions which were too profitable for the rich and therefore too controversial to be maintained. However, the president made some moves for the richest taxpayers. He suggested lowering direct income tax, which would be more advantageous for higher income earners. He proposed to make a new tax exemption for building, which would only be able to be used by the wealthiest. This tax package is not in line with the Economic and Social Agreements signed previously.

One person would be charged with all problems of the government: The President suspended the Head of the Tax Department. The reason is flimsy: the Head had spoken with members of Congress during a committee session of Congress, giving them information about tax exemptions and tax inspections the government did not want to reveal! This showed an increasing deterioration of political atmosphere.

The tax reform bill failed. At the end of 2013, a majority could not be attained in the Congress. Political life is becoming more chaotic every day and without a majority, Congress cannot settle any issues. The political debate for the election of Congress in May 2014 once again revolves around the question of independence rather than reforms. The aim of addressing inequalities is long lost and the country still presents a high level of inequality, which is superimposed on ethnic differences. After the general elections in 2014, New Caledonia will have to finally decide on policies aiming to close the gap between indigenous and non-indigenous people.
1 This United Nations list of Non-Self-Governing Territories is a group of countries, which are not decolonised yet. The list was initially prepared in 1946 pursuant to Chapter XI of the United Nations Charter and has since been updated by the General Assembly. Only permanently inhabited territories are considered for inclusion in this list, excluding many remote atolls (e.g., the French Island of Clipperton) and Southern Ocean territories (e.g., the French Southern and Antarctic Territories). In 1960, the General Assembly adopted Resolution 1514, called the “Declaration on the Granting of Independence to Colonial Countries and Peoples”. This Resolution declared that all remaining non-self-governing territories and trust territories were entitled to self-determination. The following year, the General Assembly established the Special Committee on the Situation with Regard to the Implementation of the Declaration. It is sometimes referred to as the Special Committee on Decolonisation or the “Committee of 24” (because for much of its history the Committee was composed of 24 members), which generally reviews the situation in each non-self-governing territory, New Caledonia included, and reports to the General Assembly.

2 The spelling of Kanak is invariable, whether singular or plural, masculine or feminine, as used in the official spelling in the Noumea Agreement. In that manner, it also better fits indigenous linguistic usage.

3 Organic Law n° 99-209, art 188. Art 4 of the Organic Law says: “Citizenship of New Caledonia is hereby established and benefits those French nationals who fulfil the conditions in Article 188”.

4 Constitutional Law n° 2007-237 of 23 February 2007, JORF (24 February 2007), 3354. These limitations of the right to vote have created severe political and judicial quarrels. Does the current situation, which deprives the French nationals in New Caledonia of a right to vote, violate a fundamental right? Or, on the other hand, may the French who are not Caledonian citizens only vote for the elections that they may be affected by? Because the French Constitution was expressly changed, no appeal before the Constitutional Council (the French Constitutional High Court) could be launched. But the issue has been referred to the European Court of Human Rights and before the Human Rights Committee. The Committee submitted its report on 15 July 2002. It considered that the Caledonian citizenship requirements were reasonable because they applied to a historical decolonisation process. Secondly, a complaint against France was filed in the European Court of Human Rights, established under the European Convention on Human Rights of 1950 to monitor compliance by 47 European member States. On 11 January 2005, the Court ruled that the limitations on the right to vote were also acceptable in a process of self-determination. However, the political problem is far from resolved.

5 Noumea Agreement, Point 3.1.1 and preamble; Organic Law n° 99-209, art 24.

6 Noumea Agreement, Point 2. Art 24 of Organic Law 99-209 deals with local employment “to the benefit of the citizens” but also addresses “persons able to justify a sufficient period of residency”.

7 Gaël Lagadec and Catherine Ris, Reform of indirect taxation and VA-based employer contribution ; New Caledonia on its way to social VAT?, LARJE Working paper n° 2010-1, p. 4. http://larje.univ-nc.nc


9 Gaël Lagadec and Catherine Ris, Reform of indirect taxation and VA-based employer contribution, mentioned above, p. 7.
Ibid, p. 5. The rate varies from 50 to 80%.

Ibid, p. 6. The most egalitarian countries have a ratio of approximately 25% (Japan, Norway). The least egalitarian countries (Brazil, South Africa, Haiti or Botswana) have a ratio of approximately 60%.

In February 2011, the pro-joint flag coalition, including pro-independence parties and Rassemblement-UMP pro-France, withdrew from the government then led by Philippe Gomès (who heads the Calédonie Ensemble party, pro-France), thus triggering the government’s demise.

The maximum rate of direct taxation in New Caledonia is 40%. The maximum rate of shareholder income tax is 13.25%.

Rassemblement-UMP (pro-France, affiliated to Sarkozy’s former ruling UMP party); Calédonie ensemble (Caledonia Together, pro-Gomès); l’Avenir Ensemble (Future Together, the party of the President of Government, Harold Martin).

Loi du pays n° 2013-xx du xx Août 2013, relative à la concurrence en Nouvelle-Calédonie (numbering is still unknown).

Loi du pays n° 2013-2 du 30 mai 2013 instituant des sanctions pénales réprimant les infractions à la législation et à la réglementation fiscale.

Tax exemption for life insurance, some tax exemptions for real estate and building construction sector, in particular.