

United Nations  Nations Unies

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Distr. RESTRICTED  
PRS/2012/DP.3

ORIGINAL: ENGLISH

THIRD INTERNATIONAL DECADE FOR THE ERADICATION OF COLONIALISM

Pacific regional seminar on the implementation of the Third International Decade for  
the Eradication of Colonialism: current realities and prospects

Quito, Ecuador  
30 May to 1 June 2012

DISCUSSION PAPER

PRESENTED BY

THE KANAK DEVELOPMENT AGENCY

(NEW CALEDONIA)

**Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples**

**Pacific regional seminar on the implementation of the Third International Decade for the Eradication of Colonialism: current realities and prospects.**

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**Statement by  
Sarimin Jacques Boengkih  
Kanak Developpement Agency  
New Caledonia**

Mr. Chairman, on behalf of my organisation, the Kanak Agency for Developpement, I thank you very much for extending us an invitation to participate in this so important seminar in the opening year of the Third International Decade for Eradication of Colonialism.

Your Excellency and members of this UN Committee, my name is Sarimin Jacques Boengkih and I am the director of the Kanak Agency for Developpement, and I am from the wonderful island of New Caledonia that we the indigenous people call Kanaky.

At the beginning of this presentation, I would like to make clear that I am not here to represent or advocate positions for any governments in this seminar, nor do I represent or advocate positions for the indigenous people of New Caledonia. My role here is technical from the standpoint of research and I strive to be objective on these matters. I was invited by this committee to attend and I was not sent by the Government of New Caledonia or by any other official authorities on New Caledonia.

I am pleased to be a part of this seminar and appreciate the invitation.

## **New Caledonia : current realities and prospects for decolonization under the Noumea Accord**

The situation of New Caledonia can be seen as a great challenge for the international community when considering the huge amount of works the United Nations have done in promotion and protection of human rights, especially standards to respond to peoples of the world who have waged the most persistent struggles for decolonization and self-determination, gender-based aggression and discrimination, denial of access to basic minimum needs, environmental degradation and destruction, systematic "benign neglect" of the disarticulated, disadvantaged and disposed including the Indigenous Peoples.

Nowadays, New Caledonia has a « rendezvous » with elections that could lead to independence for the Non Self Governing Territory. The rendezvous is based on the legal right to self-determination for which the United Nations General Assembly have attributed a wide scope and have brought many changes in International Law.

Three areas of rights offer the principles and practices that would allow the international community to succeed in one of its most laudable goals, the eradication of colonialism, of old and new sorts, in one of the Non Self Governing Territory of the United Nations' list :

- The area of rights defined by United Nations' Resolutions and Declarations with regards to decolonization;
- The area of right to self-determination of the peoples of the French overseas territories defined in the French Constitution, especially since it has been revised to give New Caledonia a status apart from the other overseas territories;
- The United Nations Declaration on the Rights of the Indigenous Peoples as New Caledonia has an indigenous population that represent over 40% of the total population and according to the 2009 census, is unfortunately decreasing.

Will be added to the above areas of rights, all declarations, decisions and standards created by United Nations affiliated organizations and by other international institutions or organisations such as the European Convention on Human Rights that can be of excellent guidance to reach the same goal.

When New Caledonia was inscribed – or re-inscribed – on the UN list of non-self governing territories on December 2, 1986, many hoped that all UN specialized agencies would provide the necessary assistance to prepare the population to exercise their right to self-determination. But France maintained its long resistance to UN involvement in its overseas departments and territories.

Qualified as an overseas territory under the French Constitution in the end of the 1950s, New Caledonia went through several years of turmoil from the 1970s as the challenge posed by the steady growth of radical Kanak demands was met with a direct response from the conservative French Government – massive immigration to the territory to swamp the Kanak independence movement<sup>1</sup>. As the 1970s decade ended, the polarisation over the issue of independence was evident

In 1988 the confrontation became extremely tense and turn into a colonial war engaging land, sea and air French forces against Kanak freedom fighters until the newly elected Government of France finally agreed that the “concerned population” of New Caledonia should determine by referendum their own future. The Matignon-Oudinot accord was signed between the parties, the Kanak Socialist Liberation Front and the Government of France with on its side the colons’ conservative party R.P.C.R. Ten years later a new agreement, the Noumea Accord, was signed between the same parties to say that there was a need for postponing the self-determination elections to avoid a too short difference between winners and losers but also under the pretext of “inadequacy of political, economic, social or educational preparedness of the concerned”.

However, The Noumea Accord (1998) and consequent Organic Law (May 1999) provided the constitutional framework under which New Caledonia is governed today and defined its institutions. The Accord and Organic Law also defined New Caledonia’s relations with metropolitan France for the following 15-20 years and set out a timetable for New Caledonia to assume responsibility for most areas of government. Economic affairs, industrial relations and external trade were among the first powers New Caledonia assumed in January 2000. A second group of powers was transferred in 2004 and a third is to be transferred in 2009. There has been some discussion in New Caledonia as to this timetable and this is currently the subject of a number of joint working groups formed between New Caledonia and the French State. The Congress voted to postpone the transfer of the third group until 2011.

The Noumea Accord provides for the Congress of New Caledonia (by a majority of 3/5, ie 32 members out of the 54) to conduct during its five-year mandate starting in 2014 as many as three referenda on whether New Caledonia should assume the final sovereign powers (justice, public order, defence, currency and foreign affairs) and become fully independent. If a date has not been proposed by Congress within the first four years of this mandate (ie by 2018), then the Noumea Accord commits France to conduct the referendum.

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<sup>1</sup> The precise nature of French Government intentions was set out in a 1972 letter from Prime Minister Pierre Messmer to his minister for Overseas Territories and Departments, Xavier Deniau.

Can the administering power conduct the referendum ?

Would it be acceptable to the international community that the administering power organize and conduct the self-determination referendum for New Caledonia ?

We learned from History and History of decolonisation tells us that a precedent case does exist, and the victim is another Indigenous Melanesian People, a Melanesian indigenous people being victimized, marginalized on its own land where violations of the fundamental human rights are taking place so often.

The exercise and implementation of the right of peoples to self-determination presupposes the free and genuine expression of their will. This is implicit in paragraph 2 of resolution 1514 (XV) and in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (Resolution 2625 (XXV) which provides that colonialism is to be brought to an end "having regard to the freely expressed will" of the people, and has been asserted with particular emphasis by the International Court of Justice in its 1975 report. A people under colonial and alien domination is unable to express its will freely in a consultation, plebiscite or referendum organized and controlled exclusively by the colonial and alien power. Only when it is really and genuinely free is the expression of a people's will capable of determining the politico-international status of the people in question.

The United Nations should also monitor the self-determination process as a masquerade of self-determination referendum happened few decades ago and the UN are still with a case to solve, that is of the island of Mayotte separated from the Islamic Republic of Comoro Islands.

For New Caledonia, the Matignon and Nouméa Accords should prevent any partitioning of the Territory, but we will also keep in mind that a law can be amended or changed by the administering power with the support of the local authorities.

The following is extracted from a statement made by Alain Christnatch, former High Commissioner in New Caledonia, artisan in chief of the Nouméa Accord, self promoted expert with thirty years experience of New Caledonia, when he attended the Seminar on the Future of political *collectivités* of Oceania that took place in Nouméa from 7th to 11<sup>th</sup> of March 2011.

He made a quite lengthy statement in which he gave, in many disturbing prospects, his perception of the institutional perspectives for New Caledonia. In Paris Mr. Christnatch, a high level prefect, currently Rapporteur for the Sector of finances of the State Council, has many ears in the newly elected Government. Therefore his views on the future of New Caledonia could be highly considered.

Mr Christnatch said that New Caledonia must have specifically created institutions and for him this raises 6 main questions and his answers to the questions are quite disturbing as he seems to try avoiding the forthcoming consultation or at least try to turn the consultation on self-determination and independence into a plebiscite favourable to maintaining New Caledonia within the French Republic as an autonomous territory.

Question #1 *"Is there an institutional solution for New Caledonia and for what duration ?*

his answer is the two accords Matignon and Noumea could have been simply armistices and that fears of new conflicts raises as the deadline approaches. To avoid another time of crisis or even violence's Mr Christnatch's proposal is a new accord agreed upon by the concerned populations of New Caledonia and confirmed by the Constitutional Council in the same procedure as for the Noumea Accord. The new agreement will set up a fixed term definitive solution and because the solution cannot be immutable, modalities for changes will be provided, as for any institutional systems.

Question #2, *How and when the citizens of New Caledonia must be informed on the proposed solution(s) ? and when must they choose from ?*

Mr Christnatch explains that in the exact interpretation of the Noumea Accord provisions are made for three consultations to take place between 2014 and 2023 if none of the first two consultations were negative. As it takes five years between consultation 2 and consultation 3, the consultations could be organised until 2023. The Accord Signatories Committee would meet after the third negative consultation. And if by 2018 consultations would still be unsatisfying, elections for a new Congress should be organised in 2019 with a mandature to go beyond 2023.

Article 216 of the 1999 Organic Law provides that "voters will be called for the self-determination vote by a decree adopted by the central Government after consultation of the New Caledonia Government. The decree provides the question to be asked and organizational modalities for the vote". Article 216 says also that the self-determination consultation will be on "access to full sovereignty", while the two last items of the Preamble of the Noumea Accord define what must be understood by "access to full sovereignty" that is : "At the end of the twenty year period the transfer of the sovereignty powers to New Caledonia, accession to an international status of full responsibility and transformation from citizenship to nationality will be proposed to the vote of the concerned populations. Their approval will be equivalent to the full sovereignty for New Caledonia."

For Mr. Christnatch the Noumea Accord refers to full sovereignty but no to independence, though article 2 of the 1988 Matignon Accord said that "the concerned populations of New Caledonia will be asked to choose from either maintaining the territory within the (French) republic or its access to independence". That question of 1988 was never asked but was replaced by the referendum on the Noumea Accord. The issue remains as opponents to the full sovereignty still refuse that choice to be in the question and they still outnumber

the pro-independence voters. The logic of the pro-independence groups is to reach an accord with a solution of full sovereignty. Otherwise it will be difficult not to ask the question.

Can the consultation be re-organized with added another and new question regarding relationship between a "partially independent" New Caledonia and France? The answer a new process should be organised to go around an expected refusal from the Constitutional Council with a vote by the full Parliament as it was organised to adopt the restrictions on the consultation electoral roll. Therefore the consultation can be re-arranged only through changes in the French Constitution with provisions for new principles of association and co-operation and ties with France.

Question #3 *"Who can be citizen of this country, that is to have full capacity to act in political, economic and social life? Should it be one category of citizens? Or more?"*

Mr. Christnatch's answer is that since 1984 the question has been raised about who can vote for the self-determination consultation that is to say who are the concerned populations in the meaning of Article 53 of the Constitution? If nobody can contest that a French citizen inscribe on the electoral rolls after six months residence is not legitimate to decide for the future of the country where he resides, how to determine the minimum duration of residence prior to the election? Three, ten, twenty years? The Matignon Accord limited the issue to elections for local institutions as these institutions' policies impact the consultation on the futures of New Caledonia. The Noumea Accord reinforced the restrictions to limiting the voters to those residing in the territory before 1998, restrictions confirmed by the French Parliament in 2007.

The issue is more of relationship between the communities than relationship with France, but one must look carefully at the problems in Fiji than at those of the Cook Islands to meditate on the future of New Caledonia.

Indigenous Peoples have rights recognized internationally, notably in the United Nations Declaration of September 13<sup>th</sup>, 2007. The international Law also provides rights to colonial countries and peoples to access to independence. Therefore, from these two rights, one cannot say that only Indigenous Peoples enjoy the citizen's rights in a political society having reached independence status. In North and South America, in Australia, in New Zealand, Indigenous Peoples do not make the demographic majority and they do not exercise alone political rights.

Of course the French principle of equality wants all people to be equal but also to be part of none other social community that the State, if that can be applied in New Caledonia.

Mr Christnatch also believes that hopeless is the debate on the superiority of Human Rights over Indigenous Peoples' Rights. There must be conciliation between these two rights. This means that it is juridically and politically as well to recognize the particular rights of the Kanak people, people and rights that the French Constitution recognized through the Nouméa Accord. It means that the perimeter of the citizenship and its evolution must be defined and that organizing the citizenship of New Caledonia must take place, should the territory accesses or not to full sovereignty. Must be determine who is citizen as well as in what condition one can have access to citizenship. That will be one of the most delicate discussions as these conditions determine who, within the republic as well as in a sovereign State, holds the democratic power.

Considering New Caledonia's history and situation, the control of immigration, everywhere necessary, must exist in particular terms as migrants are mainly of



French nationality. If New Caledonia cannot refuse external incomers, the territory cannot remain economically and politically opened to all. One cannot hide behind the issue of the Kanak proportion in the population. No agreement can be made on a solution not offering guarantees that the Kanak proportion of population will not diminish because of the economic immigration. Behind the issue lay serious problems with the French Law and the European Law.

Alain Christatch continued with his questions and answers but I will not mention all of them as we have had some difficulties in the translation work :

Question #4: *In a new institutional organization in whose name justice will be rendered and who will command the public force? More generally which competences should remain in the hands of the French State?*

Question #5 : *In the community of nations where will New Caledonia find its place tomorrow?*

*To what ensemble should New Caledonia belong to?*

*What alliances should New Caledonia be tied to?*

Question #6: *How to organize institutions after the consultation and how to qualify this organization?*

Mr. Christatch answers to his questions in a way that could be considered as in favour of a new status for New Caledonia in which the concerned populations would vote for New Caledonia to be in association with France as an autonomous entity with all competences except for the "regalian" competences that will remain in the hands of France.

He remains confident in the capacity of Caledonians to assume a multiethnic society viable because the situation of the original indigenous people will be fully accepted.

We support Mr Christnatch's remarks about immigration furthermore we call for a strict control of the immigration coming from France and from the overseas territories and departments.

In 2012 Immigration remains an important issue as migrants from "metropolitan" France or from other French Overseas Territories keep coming to settle in New Caledonia, and incitation measures to encourage new comers are still available under various forms.

According to studies done by ISEE, the National Institute for Statistics and Economic Studies, who also conduct every census, from 2004 census and 2009 census, 18,553 migrants settled in New Caledonia, of which 84% are French citizens coming from France or from overseas territories or departments. The 2009 census included data on ethnicity. This indicated that the Kanak indigenous population is now 40.34% of the total population when it was estimated 44.09% in 2004.

For this reason we recall The resolution 35/118 of December 11thn, 1980, Plan of action for the full implementation of the Declaration on Granting of independence to colonial countries and peoples, part 8 that says : *"States parties shall take the necessary measures to discourage or prevent the systematic influx of outside immigrants and settlers into territories under colonial domination, which disrupts the demographic compositions of those territories and may constitute a major obstacle to the genuine exercise of the right to self-determination and independence by the people of those territories."*

The important point is that Mr Christnatch is calling for a inevitable recognition of the Kanak indigenous people and their rights. Beyond having this position he should also call for a reform within the existing institutions to be organized in order to give the Customary Senate and Councils more powers and more independence from the Government control over the customary institutions finances.

Mr Christnatch did not mention any program of education of the concerned populations to prepare them for exercising their rights to self-determination.

The Importance of Human Rights Education

*"...The more people know their own rights, and the more they respect those of others, the better the chance that they will live together in peace. Only when people are educated about human rights can we hope to prevent human rights violations, and thus prevent conflict as well."* --Kofi Annan, Dec. 10, 2000

To achieve this vision, we wish that be provided human rights education, training, advocacy, and materials to help people learn about and apply international human rights standards in their daily lives, families, workplaces, schools, and communities and more importantly prepare the people and allow them to have the capacity to vote in the consultation with knowledge as full as possible of the stakes.

An important aspect is the fact that too many people no matter of which ethnic origin handle the French language enough to understand sufficiently what it is all about. Therefore it will be necessary to train trainers capable of speaking their mother tongs and act as facilitators.

My organisation will take the liberty to forward to the Committee a complete note on the program we can propose, a program based on the experience we have in organizing community based training programs such the Mother and Child Health Program we organized and run with the local communities few years ago.

Time is missing for more presentation from me here. We were expecting to say more about mining in New Caledonia as multinational corporations are asking permits to mine more mountains and also to mine the lagoons and bays the chromium deposit that came from mining the mountains during the last century mining exploitations. Corporations are also asking the possibilities to research and exploit rich multi-mineral deposits on the bottom of the ocean.

After mining our mountains, they also want to mine our lagoons and tomorrow mine the ocean within the limits of our Exclusive Economic Zone. Since France asked the United Nations affiliated organization in charge of the oceans to extend the limits of the Exclusive Economic Zone to three hundred and fifty nautical miles, one can understand while multinational corporations are knocking at the doors.

Of course, if the Committee wishes, our organization can forward more information on the current realities and the prospects for New Caledonia that we have worked on.

Mr. Chairman, I also wish to inform the Committee that prior to coming to this seminar I have wrote a letter to the newly appointed Minister for Overseas Territories and Departments to ask what his ministry will do as education programs for the concerned populations of New Caledonia in order to prepare the people to exercise their right to self-determination. I presume that this answer will come after my return from this seminar.

I wish to thank the personnel of the Secretariat of the Committee for their tremendous help and patience and efficient work to facilitate our travel, our stay and the last minute work we have had.

I thank you Mr. Chairman.