

Chapter 6

The French Overseas Territories in transition

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Introduction

France declared 2011 '*Année des outre-mer*' (the Year of the Overseas) in recognition that each of the French Overseas Territories (or FOTs) had reached a milestone in its relations with France. Having passed from colonies (or protectorates) to French Overseas Territories or Overseas *Départements* in 1946, they have evolved progressively at different speeds and degrees. If the initial changes suggested by the United Nations (UN) were mostly justified on political and ideological grounds (the right to independence, self-determination and sovereignty), the current changes, this time encouraged by France, in the main appear to be an attempt to alleviate economic dependency.

At the 2004 conference on the United Kingdom Overseas Territories (UKOTs), organised by and held at the Institute of Commonwealth Studies in London, I presented an analysis of the FOTs and the evolution of their statuses since the origins of this 'Overseas France'.¹ I will therefore give only a brief overview here of these territories and the main characteristics of their statuses in order to focus on the constitutional and institutional developments that took place, mostly in 2003 and 2008. I will also consider the statutory amendments adopted in July 2011 by the French Parliament to address the political instability that had recently emerged in two of the French territories in the South Pacific. Finally, in the light of these recent developments in the FOTs, I will question their institutional evolution. However, given the complexity of this subject, this chapter will simply sketch out the main points worthy of deeper reflection.

Immediately after the Second World War, and in a context of decolonisation promoted by the UN, the four oldest French colonies

1 See Mrgudovic, in Killingray and Taylor (2005), pp. 65–86.

of Martinique, Guadeloupe, Guyane and la Réunion became, in 1946,² four *Départements d'Outre-Mer* (DOMs or Overseas Departments). Their status was characterised by a legislative regime identical (with some minor adaptations taking into account their remoteness and tropical island status or territory) to the one applied to the *départements* in mainland France. They were organised around a local council (*Conseil Général*) and municipalities, and a *Préfet* representing the State. The DOMs were all represented in the French Parliament by locally elected *députés* and *sénateurs*. However, this DOM status contained an intrinsic flaw, only addressed quite recently, in that identical status had been bestowed on the four overseas entities with no real attempt to adapt it to their own specificities and needs. Guyane, in particular, located between Brazil and Suriname and both covered and surrounded by rain forest, was the DOM that suffered most from this uniform status.³

A few months after the law on integration (*loi de départementalisation*) was passed, the Constitution of 1946, implementing the Fourth Republic, was adopted. In the rest of the French Empire, with some exceptions, the colonies were transformed into French *Territoires d'Outre-mer* (TOMs or Overseas Territories). However after 12 years of constant governmental instability, the Fourth Republic collapsed. A referendum was organised in September 1958 to adopt the new French Constitution that was to establish the Fifth Republic. The inhabitants of the TOMs (therefore excluding the four DOMs) could choose either to remain within the Republic or to become independent. Only Guinea chose independence. All the other TOMs adopted the first solution and had then to opt for one of the three following options: they could choose either legislative integration and thus become a DOM, or they could decide to become a State in free association with France, a solution adopted by all the African TOMs. This was a non-official but understood transitional and peaceful evolution towards independence. Or they could remain a TOM, characterised by their legislative specificity – the French Parliament had to stipulate if a law was (and still is) applicable to one, some, or all TOMs. Besides this legislative distinction, there were two other major differences between a DOM and a TOM. First, each TOM was given a tailor-made status that would take into account its characteristics and needs and allow some degree of autonomy,⁴ reflected in the nature of its institutions and local powers. Second, the TOMs

2 Law no. 46–451 19 March 1946.

3 Deforestation, illegal immigration, illegal exploitation of gold, are three examples of what Guyane, and especially its indigenous populations, continue to endure partly as a result of being given a status not specifically designed to allow Guyane to better address these issues.

4 Although this degree of autonomy was seriously reduced in 1958 compared to what the 1956 Defferre Law had offered. See Mrgudovic (2005).

were given the right of 'free-determination' as enshrined in the Preamble to the Constitution of 1958.⁵

By 1962, and after the wave of independence in Africa, 11 French overseas territories remained;⁶ four DOMs (Martinique, Guadeloupe, Guyane and Réunion) and seven TOMs: New-Caledonia, French Polynesia, Wallis and Futuna in the South Pacific, the Comoros Islands, French Somaliland,⁷ the TAAF (*Terres australes et antarctiques françaises*/Austral and Antarctic French Lands) in the Indian and Antarctic Oceans, and St Pierre et Miquelon in the North Atlantic.⁸ Finally, the common and important result was that these overseas populations had all become French citizens, with the same legal status as any other French citizen (i.e. from metropolitan France)⁹ and in due course as any other European citizen.¹⁰

Besides these two categories of overseas collectivities, recognised in the 1958 Constitution, new statuses have developed since the 1970s. The Comoros Islands, as any TOM was entitled to, used its right to self-determination, held a referendum and gained its independence in 1975. However, of the four islands of the archipelago, Mayotte decided to remain French, and from then on it would never cease proclaiming its wish to become a DOM. In 1976 this island became a *Collectivité Territoriale d'Outre-mer* (CTOM), a status midway between a DOM and a TOM, and so, in 1985, did St Pierre et Miquelon solely for economic reasons.¹¹ New Caledonia and French Polynesia have also

- 5 As yet another sign of France's desire to distinguish itself from the rest of the world, the constitution's preamble spoke of 'libre-détermination' (free-determination), as if it defiantly wanted to avoid using the official expression of 'auto-détermination' ('self-determination') used by the international community.
- 6 The year 1962 is selected, instead of 1958, because Wallis and Futuna had exceptionally remained a Protectorate until 1961 and, in 1962, was the last French possession to become a TOM. For an analysis of this delay, see Allison (2010).
- 7 Côte des Somalis, renamed the French Territory of the Afars and the Issas in 1967 before its independence in 1977 when the name was changed to the Republic of Djibouti.
- 8 St Pierre et Miquelon, whose economy relied heavily on fisheries, saw its status changed over the years mainly because of the European fisheries policy. It became a DOM in 1976 and then, in 1985, a French Overseas Territorial Collectivité or CTOM, a hybrid status that allowed the FOT to keep all the benefits of integration while being exempt from the European fisheries regulations.
- 9 With regard to some social benefits, the populations from the FOTs and the DOMs, in particular, have not benefited automatically from the same level of benefits as their compatriots living in the metropole.
- 10 As implemented by the Maastricht Treaty in 1992 and the Amsterdam Treaty of 1997.
- 11 Mayotte has been requesting its 'départementalisation' since 1975 in order to secure its future within the French Republic for economic reasons, but also to be protected from the new Republic of Comoros that never accepted its secession. In the case

experimented with an evolution in their respective statuses as TOMs, gaining more and more autonomy from the late 1980s. However, this occurred in two totally different contexts: one through violence – in New Caledonia a near civil war erupted in the mid 1980s between pro- and anti-independence groups; the other, mostly due to political lobbying – the role and ambition of Gaston Flosse, who became the ‘President of French Polynesia’, was crucial in this. Because of these two different contexts, the statuses have led to two different perspectives: New Caledonia is now heading toward a referendum on self-determination whereas French Polynesia is not.¹²

Concerning the DOMs, two important constitutional reforms were introduced in 2003 and 2008 that addressed the evolution of the ‘*collectivités territoriales*’ (or ‘territorial collectivity’), both overseas and in mainland France. A territorial collectivity, an elected local council, benefits from a certain degree of power in administering the collectivity in question. Initially, the 1958 French Constitution listed as territorial collectivities the *communes* (municipalities), *départements* (counties) and *territoires d’outre-mer* (overseas territories). In the first constitutional reform on decentralisation in 1982, the regions were then added to this list and granted specific powers.¹³ In 2003, the second phase of the reform on decentralisation impacted on both the TOMs and DOMs. The former were to be replaced by two categories: the collectivities with a specific status (*collectivités à statut particulier*, although New Caledonia was already designated as such since 1999) and the Overseas Collectivities (‘*Collectivités d’Outre-Mer*’ or COMs) covered by a reformulated Article 74 of the Constitution. The DOMs, covered by the revised Article 73, were encouraged to implement a simplification in their administration.

Although the reform of 2008 seemed more focused on the DOMs, the reforms or acts of 2003 and 2008 concerned all the FOTs (except New Caledonia which had a special status) and revolved around the key notions of self-determination and autonomy. The status of the now 12 FOTs¹⁴ has therefore evolved since 1958, as has the constitution. The principal object of this chapter will be to demonstrate that the recent constitutional or institutional developments in the FOTs highlight the fact that the relationship France has

of St Pierre et Miquelon – TOM, then DOM – France changed its status again in order to avoid the strict fisheries policy developed by the European Community that applied to the DOMs (and all Outermost Regions).

12 Although New Caledonia’s situation and status is of course more complicated. See Mrgudovic (2003) and (2005).

13 A Département is in charge mainly of the social welfare issues, whereas the Région is more focused on economic and cultural development.

14 The Comoros is no longer a FOT, whereas St Martin and St Barthélemy became two new ones when they decided not to be administered any longer by Guadeloupe and became COMs.

developed with its overseas territories since 1946 might well have reached a new level.

2000–3: decentralisation, phase 2

Besides reformulating Articles 73 and 74 of the constitution (concerning the FOTs), the second phase of decentralisation implemented in 2003 introduced a new element: the possibility for the FOTs to organise a local referendum that would lead to a change in their status. This is particularly interesting for the DOMs as they could consider a status of autonomy. However, in 2000, as a precursor to the second phase of decentralisation, such a possibility had already been open to the DOMs.

Self-determination in 2000: too early for the DOMs?

In 1997, Article 227-2 of the Treaty establishing the European Community had been amended in accordance with the Amsterdam Treaty of June 1997. In France, the award decree (*décret d'attribution* no. 97-721 of 16/06/1997) had then redefined the objectives of the Ministry for Overseas Territories as split between a mission of sovereignty development, on the one hand, and a mission of economic and social development, on the other. This is what inspired the *Loi d'Orientation pour l'Outre-mer* (LOOM) (Overseas Act) of 2000 (Faberon and Ziller, 2007: 59; Belorgey, 2002: 87–8; Mrgudovic, 2005). This Act had two objectives: to increase decentralisation, and to open up new perspectives of institutional evolution for the DOMs.

The second objective led to the creation, in each DOM,¹⁵ of an ad hoc consultative body, a *Congrès*, composed of all regional and departmental councillors that would meet to discuss the institutional evolution of the territory. They could adopt a proposal to be submitted to the Prime Minister who would then decide whether or not to submit it to Parliament. This institution would then pass a law (or not) to authorise a local referendum on the proposed new status, which could include independence.¹⁶ Whatever the result of this consultation, it is the Constitutional Council that would have (and still has) the last word on whether to adopt any proposed new status.

This LOOM was the first encouragement made to all DOMs to consider a change in their old and somewhat inappropriate status. In initiating the LOOM, the then Prime Minister, Socialist Lionel Jospin, in a time of cohabitation under Conservative President Chirac, had given the DOMs, for the first time since their creation, the possibility to consider some evolution in their status including independence (see below). However, this attempt drew a blank due to a combination of two factors: first, the slowness of local councillors to agree

15 Réunion, however, would always refuse to consider any change to its status.

16 Although this option is not very popular in the DOMs (Gay, 2003).

upon a common proposal; and second, the objection of the populations of the DOMs to any change in their status which was perceived as a threat to the level of subventions received from the French State. Therefore, although in Martinique, for example, a pro-independence leader Alfred Marie-Jeanne has regularly been re-elected mayor, deputy and President of the Regional Council,¹⁷ independence was never the way forward for a large majority of Martinicans, for whom Marie-Jeanne's personality and integrity were the main reasons for his popularity (see Yang-Ting, 2000).

However, could the LOOM really have led to independence? Jurists such as Jean-Yves Faberon and Jacques Ziller did not consider independence as a possibility and, although they described the LOOM as a new perspective on the evolution of the DOMs' institutions, they limited this evolution to Article 73 (Faberon and Ziller, 2007: 60), i.e. with the exception of independence. I disagree, as Article 62 of the LOOM is very imprecise when it evokes 'any proposal of institutional evolution' without setting a limit (LOOM, 2000, Art. 62). To me, this 'loose' formulation was intentional, as Prime Minister Jospin did not want to exclude the possibility of the DOMs considering independence (Mrgudovic, 2005). However, within such a perspective, there were two major obstacles to overcome: first, this proposal had to be supported by the Prime Minister, then by the Parliament, and finally endorsed by the Constitutional Council; and second and most importantly, the DOMs' representatives did not react quickly enough to submit any kind of proposal before the forthcoming presidential elections, which, in a way, demonstrated their lack of enthusiasm for a change in status. However, later, in 2003, the victory of the conservatives at the 2002 presidential election led to some modifications to the LOOM and in particular clarified the possible options open to the DOMs.

2003: decentralisation or recentralisation?

When the first reform on decentralisation was introduced in 1982, and with it the creation of the region as a new territorial collectivity, a problem emerged with regard to the DOMs. A region was supposed to geographically encompass a few *départements*. However, in the case of the DOMs, geography was one major problem in this division of duties and powers as the new overseas regions (ROMs or *Régions d'Outre-Mer*) were to gather under their umbrella only one department each. The Regional Council and the Departmental Council were therefore to share the same electorate and the same geography. The proposal to create for each of these four DOMs a single collectivity that would incorporate the responsibilities of the department and the region was

17 Alfred Marie-Jeanne was the President of the Regional Council between 1998 and 2010 and has been Député at the French National Assembly since 1997. He was also the Mayor of Rivière-Pilote between 1971 and 2000.

rejected by the Constitutional Council for it was perceived as a violation of the principle of equality (with the metropolitan collectivities). This is why the four DOMs also had to become four ROMs (that in turn constituted four DROMs: *Départements et Régions d’Outre-Mer*). This new quite peculiar double status was in a way even more in contradiction with what existed in mainland France. This did not appear, however, to be the view of the Constitutional Council.

In 2003, the introduction of a second phase of the decentralisation policy established in 1982 led to changes to the French Constitution, particularly with regard to the Overseas Collectivities. This new Constitutional Reform on Decentralisation (to be applied at national level) aimed to create a better, more coherent, and more responsible administrative and political management of the regions, *départements* and municipalities. It was aimed at reorganising the FOTs into two new administrative categories. For this purpose, two ‘new’ Articles and a new Chapter were introduced into the constitution, dedicated to the ‘Overseas Collectivities’ (COMs) ruled by the new Article 74 (with a regime of autonomy and legislative specificity); the collectivities ruled by Article 73 (corresponding to the legislative identity of the DOMs-ROMs); and the collectivities with a special status (New Caledonia and Corsica). New Caledonia also benefited from a chapter in the constitution (chapter XII) entirely dedicated to its current status and its progressive evolution towards self-determination.

This reform also introduced the possibility of administrative ‘experimentation’ in two respects. First, the reform opened the possibility to all FOTs to swap status and adopt legislative identity (Article 73) or legislative specificity and autonomy (Article 74), although this second option differed from the previous TOM status as it did not give the right to hold a referendum on independence. This right had been solely maintained for the ‘old’ TOMs, French Polynesia, and Wallis and Futuna. It should be noted that New Caledonia had not been a TOM since 1999, its current status having been created to provide for and guarantee the best conditions to organise a referendum on self-determination (with the possibility of independence) between 2014 and 2018. Second, within Article 73, although the legislative identity that characterised the DROMs had been maintained, it was now possible to create a new *Collectivité* (with a new Council) to replace the department and the region (although this option was rejected by the Constitutional Council in 1982). Article 73 could also be used to create a single council while retaining the two collectivities (DOM and ROM).

Following this constitutional reform, councillors of Martinique and Guadeloupe submitted proposals and a referendum was organised in both DOMs, on 7 December 2003, to consider a single territorial collectivity. In both cases, the populations agreed with their councillors’ enthusiasm and rejected that possibility (in Martinique with 51 per cent and in Guadeloupe with 73 per cent). In Guyane the lack of consensus between the elected representatives did

not permit the organisation of such a referendum. Finally, in order to take into account the strong opposition of Réunion to any change to its status, a 'third' option had then to be considered for the DROMs, the status quo.

Although Martinicans and Guadeloupeans refused any change to their status (as did, in a way, Guyane and la Réunion), the two islands administered by Guadeloupe, St Martin and St Barthélemy, also had the opportunity to organise a referendum in December 2003, this being on whether to become a COM (*Collectivité d'Outre-Mer*). Being ruled by Article 74 meant 'emancipation' from Guadeloupe, to administer themselves and improve their economic development in an autonomous way. While St Martin wanted, among other things, to be able to tackle the problem of immigration from its Dutch neighbour Sint Maarten, St Barthélemy wanted to be able to manage, develop and benefit more directly from its lucrative tourist activities.¹⁸ The results in both islands were overwhelmingly in favour of the new status (76 per cent in St Martin and 96 per cent in St Barthélemy). The two organic Laws of 21 February 2007 recognised this change and established the new statuses, allowing the two new COMs to develop, for example, their own taxation policy in accordance with French Law.

This reform has therefore empowered the DOMs, in particular, with the opportunity to be less dependent on the central authorities and entitled them to test their own capacities to initiate new means of political and economic development. If St Martin and St Barthélemy have been keen to embrace this opportunity, the ambiguous attitude of the four DOMs towards this option is far less understandable and might explain why the French government keeps trying to incite them in that direction.

The 2008 Reform: towards more autonomy?

The 2008 project of territorial reform introduced by President Nicolas Sarkozy, and adopted on 16 December 2010, concerns all territorial collectivities (regions, departments, municipalities), and aims at 'simplifying' the administration of the various types of collectivities, in mainland and overseas France. It considers the evolution of the DOMs, in particular, wishing to prevent dysfunctions such as damaging political rivalry between the regions and departments and their elected councils. President Sarkozy wanted the territorial collectivities and the DOMs, in particular, to gain more political and economic responsibility in order to promote good governance and also to generate more of their own incomes. As Sarkozy stated: 'There is a strong aspiration for improvement that translates into the current claim for an endogenous economic model capable of generating incomes and local employment' (Sarkozy, 2009).¹⁹

18 St Barthélemy is renowned for 'jet set' tourism.

19 'Il y a une aspiration puissante à un mieux être que traduit aujourd'hui la revendication d'un modèle économique endogène susceptible de favoriser la création de richesses et d'emplois locaux.'

The socio-economic crisis in the DOMs

This 'strong aspiration' refers directly to the social crisis that erupted at the end of 2008 in Guadeloupe and spread to the rest of the DOMs over the ensuing few months²⁰ in the context of a global economic crisis that had translated into yet another increase in the price of petrol (already higher in the FOTs due to the distribution monopolies that prevail there). It then developed into a protest movement against '*la vie chère*' (the high cost of living) with the 'Alliance Against Profiteering' (in creole: *Lyannaj Kont Pwofitasyon* or LKP) becoming the driving force of the protest.²¹ The denunciation of the 'colonial' (in the sense of exploitative) economic system and price-making policy in Guadeloupe, and in the rest of the DOMs, led to massive strikes that lasted much longer than expected – 44 days in Guadeloupe, 38 days in Martinique, 15 days in Guyane and eight days in Réunion. The LKP accused the richest families, usually descendants of colonial families, of holding and maintaining monopolies, with the silent support of the Republic, in the key economic sectors such as the import-export and the supermarket sectors in particular.²² The notions of '*pigmentocratie*' and '*ethnoclasses*', often used by some prominent figures in local politics or literature to describe the situation in the French Antilles,²³ underlay the LKP's discourse.

After vigorous negotiations, the response of the government was first to agree upon a salary increment of €200 for those on low salaries in the public and private sectors, and also to organise the '*États Généraux de l'Outre-Mer*': a general discussion, via the internet and local meetings, on Overseas Territories involving the populations and elected authorities of the FOTs and the rest of France. This was followed by the organisation of an Inter-Ministerial Committee on the Overseas Territories, a general meeting with President Sarkozy, the Ministers directly involved with the FOTs and local representatives and actors, to identify the sectors or issues, shared or specific to each FOT that needed reform or renewed support. The crisis, and the following *États Généraux* and Inter-ministerial Committee, reinforced the determination of the government to 'encourage' the FOTs to adopt a more coherent and responsible attitude towards their political, social and economic situation.

The 2008 reform, first promoted in the DOMs, represents what President Sarkozy also wishes to achieve in mainland France. Therefore, as with

20 On this crisis see my chapter, 'Guadeloupe 2009: Issues politiques à une crise sociale?' in Reno (2011).

21 This movement brought together nearly 40 unions, political parties and movements.

22 In Martinique for instance the 'Béké' (white colonial rich) families own 52 per cent of the land and control 40 per cent of the economy, while representing only one per cent of the population.

23 The writer Raphaël Confiant and the President (socialist) of the Regional Council of Guadeloupe, Victorin Lurel

Decentralisation in 1982, the DOMs could again appear as a sort of institutional laboratory for the Republic. This territorial reform must be implemented by the collectivities by 2014. This could explain the significant encouragement, presented as a response to the 2009 crisis, from the President (and the Ministry for Overseas Territories) to the DOMs to adopt, by January 2010, the status of Article 74, or at least prepare the implementation of article 73 according to the 2003 (and 2008) reforms on collectivities. While Martinique and Guyane decided upon a new single collectivity (and a single territorial council), Guadeloupe's elected councillors are still debating the characteristics of a single 'Assembly' and have submitted a Bill proposal to the National Assembly. In December 2010 the Parliament decided that, when the reform is implemented in 2014, Guadeloupe should have 45 councillors in one territorial Assembly. However, the current councillors are questioning the competences of this 'Territorial Assembly' and its legality (as it should not be allowed to deliberate without the approval of the Guadeloupeans by referendum). The Bill also asks for an increase in the number of councillors to 65.²⁴

Towards more responsibility

The main objectives of this reform are greater economic self-reliance and better governance (with greater political involvement of the populations). One indicator is the balance of trade, where imports largely outweigh exports, except in the case of New Caledonia (Thiou, 2010), and therefore there is a high level of dependency on funds from Paris (which reached €12.7 billion in 2009) (Performance Publique, 2010). The government considers that improved economic self-reliance could be achieved in part through the politics of regional integration of the FOTs. Promoted by France over the last decade, first in its South Pacific Territories, the government is now encouraging the rest of the FOTs to more economic insertion and regional cooperation, hence reinforcing their capabilities of endogenous economic development (and reducing their dependence on public funding). The *États Généraux de l'Outre-Mer* and the *Comité Interministériel de l'Outre-mer* represent important initiatives to encourage the DOMs in that direction.

One could therefore summarise the reform of 2008, and the subsequent governmental initiatives, as an official attempt to put an end to the vicious cycle of dependency that can take two forms: a dependency cultivated by France and for France and the local elites to preserve economic control; and a dependency claimed by the overseas populations (as they do not want

24 Bill proposal no. 3585 to adapt the reform on collectivity to Guadeloupe's characteristics and constraints. Submitted by Victorin Lurel to the National Assembly on 22 June 2011, www.assemblee-nationale.fr/13/propositions/pion3585.asp (accessed 18 Jan. 2012)

to give up a standard of living that has been kept artificially high). This dependency, in both forms, could explain the reluctance of the DOMs to move towards emancipation. This could also be illustrated by the fact that, with the new Article 73, the DOMs have been granted more freedom to adapt laws and regulations passed by the French Parliament, but in reality they have so far made very little use of this new power (Cointat and Frimat, 2011b).

What framework for the evolution of the FOTs?

As for a possible simplification of statuses implied by the constitutional reforms of 2003 and 2008, this did not take place. Today there are as many statuses as there are FOTs: Réunion (DROM, Art.73);²⁵ Mayotte (in evolution towards full integration, Art.73); Martinique; Guyane (Art. 73, soon to become two single collectivities,²⁶ each of them managed by a single council); Guadeloupe (Art. 73, has opted to retain its two collectivities with one single council); St Pierre & Miquelon (Art. 74 with some adaptations); St Barthélemy and St Martin (two COMs Art. 74, new regime); French Polynesia and Wallis & Futuna (Art. 74 'old regime' as they retain the possibility to ask for a referendum on self-determination that could include independence); the TAAF (still considered a TOM); and last New Caledonia (Special Collectivity).

Already in 2000, at the time of the first attempt to allow the DOMs to adapt or change their status, President Jacques Chirac had acknowledged that 'uniform statuses are over and each overseas collectivity should evolve, if it so wishes, toward a somehow tailored status'.²⁷ Nicolas Sarkozy, following on from Chirac's declaration of 2000, confirmed this in his speech of November 2009 where he stated that '[t]he unity of the Republic does not imply a uniformity of its institutions'.²⁸ He repeated it in his speech of January 2010 in Réunion: 'I see nothing shocking in considering that each of the overseas territories would endorse an organisation adapted to its own characteristics as long as this does

25 Réunion will remain a DROM Art.73, until the deadline of 2014 for the implementation of the 2008 general reform on collectivities (although the next President, if Sarkozy is not re-elected in 2012, could decide otherwise).

26 There is still no agreement on the date of this implementation. The year agreed upon for the rest of the collectivities is 2014, but 2012 is the government's preferred date (i.e. before the presidential elections, which would complete the 2008 reform programme).

27 Jacques Chirac, (Martinique, 11 March 2000): 'Les statuts uniformes ont vécu et chaque collectivité d'outre-mer doit pouvoir désormais, si elle le souhaite, évoluer vers un statut différencié, en quelque sorte un statut sur mesure'.

28 'L'unité de la République n'est pas l'uniformité de ses institutions.'

not affect the principle of unity of the Republic.’²⁹ Therefore, whatever the option chosen, a FOT under Article 73 or 74 could not evolve outside the Republic. In his speech in Réunion in January 2010, Sarkozy recalled to that effect, ‘[w]e have equipped ourselves with a Constitution that allows for great flexibility that I intend to use (...) with one red line (...) independence. The overseas territories are French and will remain French.’³⁰ So is it correct to say that the FOTs are prisoners of the Republic? The populations and their representatives have, since 2000, demonstrated that independence is not the issue. Therefore such a declaration (by President Sarkozy) could appear needlessly conservative. Self-determination should be left accessible to all FOTs and not only to the old TOMs.

This right to self-determination, and the very large degree of autonomy enjoyed by the three French territories of the Pacific, does not however exclude a possible intervention of the state if it becomes necessary, as the situations in French Polynesia and New Caledonia recently illustrated. Indeed, French Polynesia’s ‘wide autonomy’ (as described in its status) has not helped to prevent a high level of political instability in the territory. Since its last status conferred in 2004 that granted Tahiti even more autonomy than the status it was given in 1996 (in external relations and in legislative power for example), the territory has experienced no fewer than 12 governments. This has been caused by governments with small majorities and a fractious, opportunistic and self-serving Parliament (Al Wardi, 2008). This is why Sarkozy in his New Year speech in January 2011 declared to the French Polynesian politicians that, although the intention was to give them a maximum of responsibilities, the state would not hesitate to intervene if the political situation got out of control and the local institutions failed to perform as they should. In response, in July 2011, the Parliament amended the 2004 status of French Polynesia in order to regulate the use of the motion of no-confidence and therefore guarantee a more stable political, and consequently economic and social, situation in the archipelago (Quentin, 2011).

The necessary intervention of the State in the domestic policy of French Polynesia has highlighted the fragility of this ‘wide autonomy’. However this should not deter the rest of the FOTs from considering this option as the way forward even though the large choice of possible statuses is guaranteed by the constitution.

29 ‘Je ne vois pas ce qu’il y a de choquant à considérer que chaque territoire ultramarin puisse se doter d’une organisation adaptée à ses caractéristiques propres, à condition que cela ne remette pas en cause le principe d’unité de la République’. Sarkozy repeated this in a speech in Guadeloupe in January 2011.

30 ‘Nous nous sommes dotés d’une Constitution qui nous permet beaucoup de souplesse. Je compte en faire usage (...) avec une seule ligne rouge (...) l’indépendance. L’outre-mer est français et restera français’.

New Caledonia and Mayotte: an evolving institutional spectrum for the FOTs

With its amendments of 1998 and 2008, the French Constitution now presents a large panel of possible options to accommodate the particular situation of each FOT within the Republic. The examples of New Caledonia and Mayotte present the two opposite situations characteristic of the new face of this 'Overseas France'. One wants (or has agreed) to consider independence while the other has never stopped claiming more integration.

New Caledonia: on a rocky path to self-determination?

The *Accords de Matignon-Oudinot*, signed in 1988 to defuse the threat of civil war between the pro-independence Kanak³¹ and the loyalist Caldoches, organised a ten-year period of political, social, cultural and economic compensation (*rééquilibrage*) in favour of the Kanak, and was to end with a referendum on self-determination. However in 1998, both actors, with the agreement of the State, agreed in the Nouméa Accord that, in order to securely construct a 'shared future' (*un avenir commun*), a further period of 15 to 20 years was needed. This new agreement was established to further experiment with and then consolidate the elements of a 'shared sovereignty'³² with a progressive and definitive handing over of most political, administrative and legislative powers from the State to the territory's authorities. However, the State would retain its five '*pouvoirs régaliens*' or 'sovereign powers' (defence, foreign policy, currency, justice and public order) until the next referendum. As set out in the Nouméa Agreement, the Parliament of New Caledonia (the *Congrès*) must, before 2014, set a date for the referendum on self-determination some time between 2014 and 2018. The citizens of New Caledonia³³ will then decide whether to maintain – and the form this will take – their relations with France. They will have to decide on the transfer of the five '*pouvoirs régaliens*' to New Caledonia, which in turn will impact on the organisation of citizenship, nationality and international status.³⁴

31 The Melanesian Kanak population represent about 40 per cent of the total population (250,000) of New Caledonia, while the Caldoches (the European descendants of the colons and convicts established in New Caledonia since the 1850s), together with most of the rest of the population, today represent the majority and are generally opposed to independence.

32 Preamble, Nouméa Accord, 1998.

33 Those who voted in the referendum in 1988, and those who reach 18 in the meantime, will be entitled to take part in this referendum on self-determination. This is another demonstration of the will of the French state as well as of the major actors in New Caledonia to allow the Kanak population, or more exactly the pro-independence Caledonians, to express their will in the most favourable conditions.

34 Article 5, Nouméa Accord 1998.

Since 1998, the population and authorities of New Caledonia have been encouraged to develop their own attributes of sovereignty (motto, anthem, bank notes and flag) (Nouméa Accord, 1998). In April 2008, a motto was officially announced: ‘Land of word, land of sharing’ (*‘Terre de parole, terre de partage’*), as well as an anthem ‘Let us be united, let us become brothers’ (*‘Soyons unis, devenons frères’*).³⁵ Later that year, the national *Conseil d’État* recognised the validity of these two markers of identity (*signes identitaires*) and, in August 2010, the *Congrès* of New Caledonia voted to endorse the motto, the anthem and the proposals regarding the design of the bank notes. However, in 2011, New Caledonia was shaken from within its own government when the then President Philippe Gomes opposed flying the pro-independence flag of the independentist group FLNKS (Socialist and Kanak Front of National Liberation) alongside the national flag, claiming this was in opposition to the spirit of the Nouméa Accords and a threat to the political stability established by the Matignon and Nouméa Accords (Cointat and Frimat, 2011b: 11–12). The display of the two flags had, however, become commonplace since 1988 (even in non-independentist towns with the exception of La Foa, Moindou and Bourail), and this had also become common practice in French Polynesia since 1984 without causing any significant opposition. This controversy resulted in the resignations of two political groups (first the pro-independence *Union Calédonienne*, then Gomes’ loyalist *Calédonie Ensemble*) from the coalition government. But it was the three successive resignations from government of the President’s own group that clearly appeared to be a deliberate act intended to provoke an early general election by overthrowing the *Congrès* (the institution that constitutes the heart of Caledonian politics). This was the first time this political tool (the collective demission of a group within the government), established in the Organic Law that implemented the Nouméa Accord, was deliberately used to block Caledonian institutions and threatened to jeopardise the so-far rather peaceful process towards self-determination. Exceptionally, the *Congrès* then decided to ask the State (and Parliament) to amend the article in the organic law that concerned the collective demission of part of the government, in order to prevent an abuse of this instrument in the future and therefore guarantee the return of a peaceful and stable political transition towards the referendum on self-determination.³⁶

It is surprising that such an event took place at the initiative of the President and his political group when, as was well known at the time, pro-France voters constituted the majority of the electorate in New Caledonia. This can be explained by the growing division amongst loyalist groups and some of their leaders who, in a more peaceful context (in front of pro-independence

35 Several proposals were considered for the bank notes.

36 A delay of 18 months between two possible collective resignations has now been introduced to the Organic Law of 1999.

representatives entirely focused on the quest for the best option for a sovereign New Caledonia), have let personal ambitions prevail over the general interest. Since Gomes' eviction from power previous President Harold Martin (loyalist) has been re-installed in his position as President of the government. More open and more respected across the whole political spectrum, his return might be a guarantee of stability although, as the pressure increases with the referendum deadline approaching, violence could erupt again.

Mayotte: a 'DOM' at last!

After more than 30 years, the small island of Mayotte, in the Indian Ocean, finally managed to obtain what it had been claiming since its secession from the Comoros islands in 1975. Mayotte, initially autonomous (when it was part of the TOM of French Comoros) became an 'Overseas Territorial Collectivity' in 1976 and an 'Overseas Departmental Collectivity' in 2000, despite Mayotte having claimed to be 'assimilated' in the French Republic since 1975. France therefore appears to have created these special statuses to accommodate a request it did not want to satisfy. These French citizens had been asking for a referendum on 'self-determination' to opt for the opposite option than the one usually associated with this sort of referendum. After nearly 30 years of 'hesitation', France eventually agreed to hold two referenda in Mayotte, the first in 2000 on the status of CDOM³⁷ being a preparatory stage of the second held in 2009 on self-determination.³⁸

The outcome was an overwhelming majority (96 per cent) in favour of Article 73 (and legislative identity). The long reluctance of France to undergo this statutory change could be explained by the fact that Mayotte is 98 per cent Muslim and its population's fluency in French is not what one would expect from a French territory. The people of Mayotte have always enjoyed 'special treatment' particularly when it comes to language and secularism. Two main languages are spoken there alongside French, which often remains relegated to schools, administration and the media. Besides, Mayotte was ruled by Islamic religious law until 2011,³⁹ an exception to the secular rule in the Republic that could have been accommodated in the status of a TOM or even a CTOM (and their legislative specificity), but not any longer under a regime based on legislative identity with mainland France. Therefore, from 2000, the common law had to be extended progressively to this territory's population. The delay

37 In CDOM and CTOM the C stands for 'Collectivity'.

38 In 2000, 73 per cent of the Mahorese declared themselves in favour of the new status that was supposed to facilitate their move towards 'départementalisation' and, in 2009, 96 per cent of the Mahoreses decided to become the 'Département de Mayotte'.

39 Although some changes, such as banning polygamy, have been progressively introduced since 2000 in preparation for the likelihood of integration.

in acceding to Mayotte's wish could also be understood in terms of France not wanting to provoke the Comoros, who continue to oppose the secession of Mayotte and are very active in expressing their view, and the UN, which never endorsed France's decision to split the result of the referendum of 1975 between the four islands.

In March 2011 Mayotte became the 101st French *Département*, although it is not per se a DOM as it has become (ahead of any others) a new 'single collectivity' ruled by Article 73. Designated as 'Le département de Mayotte', its combined competences are those of a *département* and of a region managed by a single council. Despite its new status, it will not immediately enjoy all the social and economic benefits given to the rest of the DOMs. The French central authorities can put forward two main reasons for the 25-year delay. First, Mayotte's economic situation is challenged by a series of impediments such as a very young and fast-growing population (200,000 and counting) and a very low generated income (mainly from horticulture). Second, progressive '*départementalisation*' was carried out in an attempt to limit the extremely high level of immigration mostly from the neighbouring Comoros islands. To raise the level of public financial support immediately would have subjected Mayotte to an even higher level of illegal immigration, jeopardising Mayotte's chance of a successful transition. This is why full social and economic advantages will be granted progressively so as to allow the Mahorese to adapt to the major cultural and economic changes they will now have to face.⁴⁰

Finally, a last point concerning the FOTs' change of statuses is the impact these alterations will have on their European status. For example, St Barthélemy and St Martin's adoption of a status that allows more autonomy has also led to a change in their European treatment. In January 2012, St Barthélemy is scheduled to give up its outermost region status to enter the OCTs category (Overseas Countries and Territories). This means reduced financial support from Europe, but also less constraint. On the other hand, Mayotte in becoming a DOM should soon see its European status 'upgraded' from OCT to an outermost region in 2014.

Conclusion

Despite 'encouragement' from the French government and the President, autonomy does not seem to be an attractive option for the populations of the DOMs, who have repeatedly demonstrated their preference for the status quo. The referenda of 2003 and 2008 could be described as failed attempts to simplify the overseas statuses. But is this what matters? In point of fact, the efficiency and dynamism of the local leaders and of the populations is what is really at stake. In the former TOMs, now COMs, self-determination,

40 See Mrgudovic (2005) for a more detailed report on this situation.

a right maintained for French Polynesia and Wallis and Futuna, does not seem to be the main concern of the populations. Even in French Polynesia, the political instability that has been present since 2004 does not incline the population to claim independence, nor even more autonomy, but rather a better managed 'country'.⁴¹ This claim is therefore aimed more at local politicians in the overseas territories, rather than at the French State, and is not at the institutional level but at the political one. Lastly, New Caledonia, the territory with the strongest claim for independence, seems to become more and more hesitant and cautious. If we simply consider the figures, there is no means by which independence could ever be a democratic option. However, to guarantee peace and development the pro-independence component of the population and its various political representatives have to be recognised and granted power based not on figures but on principles and ideals. This is what was sought with the status of 1988 and 1999. These encompass dignity, the ability of all Caledonians to decide for themselves on their destiny and the degree of association they want with France. This last point will largely depend on their ability to support themselves financially. And that is exactly the policy President Sarkozy has tried to develop in the rest of the FOTs as well, with one nuance however: they will have to develop their financial autonomy while remaining within the boundaries of the *République*. If the latter does not seem to cause much concern, the former might prove more challenging to establish. But it will require patience, determination (from the overseas elected representatives) and courage (from most of the FOTs populations) to recognise that eventually autonomy will be the only way forward for the FOTs.

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41 At Flosse's request, the 2004 status allowed French Polynesia to be called a 'country'. Although it has no legal application, this appellation remains symbolically important for Flosse which insisted on using this as evidence of apparent sovereignty.

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