The New Caledonian Referendum on Independence (Part 2): The Vote

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This In Brief outlines the main aspects of the referendum on independence in New Caledonia, officially called the ‘consultation on the exit of the Noumea Accord’. It considers the referendum question, its timing and the divisive matter of eligibility. Although these points are to a certain extent covered in Articles 216–222 of the 1999 Organic Law (OL) implementing the 1998 Noumea Accord, many details remain undecided and actively contested by local political leaders.

Referendums are a form of direct democracy by which the people are asked to vote directly on a key issue or policy (Morel 2011) and, according to international law, are the mechanism by which a people democratically exercises self-determination. According to Article 72 of the French constitution, a ‘consultation’ refers to a referendum restricted to a given overseas territorial community on matters relating to its organisation or powers.

In December 2017, French Prime Minister Edouard Philippe visited New Caledonia and outlined the road map for the consultation, reassuring leaders that it would definitely happen. From March 2018, the French government will convene a 10-person working group chosen by, and from among, New Caledonia’s legislative assembly — the Congress — to work on four themes: the implementation of the Noumea Accord, the transfer of sovereign powers, New Caledonia’s place in the world, and the common values of New Caledonian society and its institutions. He also announced that a group of highly regarded local figures, a groupe de sages, likely drawn from different parts of New Caledonian civil society such as the churches and non-profit organisations, would be responsible for ‘watching over the themes of the campaign to make sure they do not wound Caledonian society by violating its values’ (Philippe 5/12/2017).

The question

Section 5 of the Preamble to the Noumea Accord states that ‘the consultation will be on the transfer to New Caledonia of sovereign powers, access to an international status of full responsibility and the organisation of citizenship into nationality’. Many powers have already passed irreversibly from Paris to Noumea since 1998, but the referendum will determine whether to transfer the five ‘sovereign powers’: defence, foreign affairs, currency, justice, and law and order. In the event of a ‘yes’ vote, New Caledonia, which has ‘shared sovereignty’ with France, would accede to full sovereignty, becoming the first part of the French Republic to secede since Djibouti in 1977. Prime Minister Philippe indicated during his visit that the question needed to respect international and national norms, being ‘unambiguous and understandable’, implying ‘an effort made towards extreme simplification and a binary formulation’ (Philippe 5/12/2017). Although the multi-party New Caledonian government, in conjunction with Congress, have the responsibility to agree on a question, the French government will officially decree it no later than four weeks before the referendum occurs (Art. 216 OL).

The timing

The Accord postponed the 1998 consultation on independence until between 2014 and 2018, coinciding with the fourth term of the New Caledonian Congress (elected every five years), and the precise date can be determined by a three-fifths majority of that assembly. The likely date will fall in mid-November 2018, since the Organic Law stipulates it cannot occur in the last six months of that Congress term (elections for the provinces and Congress will take place in May 2019). However, if the Congress fails to agree on a date by May 2018, the French government is constitutionally bound to organise the consultation, an eventuality widely held to be the worst-case scenario.

The Accord states that, if the first consultation is a negative vote, one-third of the Congress elected in May 2019 is sufficient to demand a second referendum (Art. 217 OL). A third and final consultation is equally possible if voters oppose full sovereignty on the second occasion, according to the same procedure. However, if a yes vote to full sovereignty prevails in any of
these consultations, the decision will stand. The one-third of Congress requirement for these decisions is significant since pro-independence parties occupy 25 of the 54 seats of Congress, allowing them to call for a second referendum even if the majority anti-independence parties do not support this option.

**Eligibility**

Who can participate in the vote remains the most troublesome issue since it directly impacts the legitimacy of the results. In a major constitutional change, the Accord supplemented the general electoral roll consisting of all French citizens with two special electoral rolls — one for the election of the provincial assembles and the Congress (known as New Caledonian citizens), and the other for the consultation (the LESC) — each of which has different eligibility criteria. Since the Accord, there has been a general, though not unanimous, agreement on restrictions but not their extent.

The voting restrictions for the consultation were first agreed to in the 1988 Matignon-Oudinot Accords, envisaging that the ‘population concerned’, defined as those on local electoral lists in 1988 and their descendants, could participate. The Organic Law enumerates the conditions for enrolment, including eligibility for the 1998 consultation; having customary status, birthplace and a durable connection to the territory; and, perhaps most importantly for migrants, continuous residency in New Caledonia since the end of 1994 (Art. 218). As of mid-2017, out of approximately 180,000 French citizens on the electoral lists, nearly 158,000 are on the LESC, meaning that 13% of people on the general list are currently excluded (UN 2017).

Until recently, enrolment on the LESC required the individual to prove they satisfied either the residency requirements or one of the seven other listed conditions. However, pro-independence parties argued this excludes many young Kanak mostly because of the arduous administrative procedures involved. Indeed, many Kanak are absent from the general electoral list as well. According to the Rassemblement indépendantiste et nationaliste (RIN) [Pro-Independence and Nationalist Rally], 25,000 Kanak are missing from the referendum electoral list, which they argued justified the automatic enrolment of people with customary status, exclusively held by Kanak, a view rejected by anti-independence parties as unfair discrimination. A recent compromise arrangement was made, to automatically enrol 11,000 New Caledonian-born ‘natives’ on the general electoral list, a necessary precursor to being enrolled automatically on the referendum list, of which 7000 have customary status. Although the pro-independence movement largely supports the move, the Parti travailliste [Labour Party] insists all Kanak must be automatically enrolled and raised the possibility of boycotting the referendum (Peteisi 19/11/2017). Significant Kanak exclusion or non-participation has the potential to de-legitimise any vote for self-determination.

Despite constant reassurances from the French government of its commitment to guaranteeing the consultation’s integrity, local politicians have criticised its role for different reasons. Anti-independence leaders have at times accused it of negligence and failing to articulate its preferred view, while pro-independence leaders accuse it of failing to ensure that as many Kanak as possible are enrolled. United Nations monitors have visited the territory over the last two years and observed a number of deficiencies in the enrolment process overseen by local municipalities under French government control (UN 2017). Highlighting the gravity of the situation concerning the electoral rolls, the French government solicited the aid of the well-known French Olympic gold-medal winning judoka, Teddy Riner, to attend youth events, encouraging them to enrol and participate in the referendum.

While both pro- and anti-independence sides broadly approved the blueprint put forward by the French government, there remain significant hurdles to overcome before the vote occurs, above all making sure that the different future pathways are well understood by the public. Part III of this series will explore the issues likely to weigh heavily in the debate.

**Author notes**

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**References**


