



**REPORT OF THE
PACIFIC ISLANDS FORUM MINISTERIAL COMMITTEE TO NEW CALEDONIA
on the
2018 REFERENDUM ON NEW CALEDONIA'S FULL SOVEREIGNTY AND
INDEPENDENCE**

EXECUTIVE SUMMARY

On 4 November 2018, New Caledonia held a referendum to attain full sovereignty and become independent from the Republic of France, under the 1998 Noumea Accord. The Pacific Islands Forum Ministerial Committee (the Committee) to New Caledonia deployed to New Caledonia from 29 October to 6 November to observe the referendum and progress on the implementation of the Noumea Accord.

2. The Forum Ministerial Committee to New Caledonia was led by the Honourable Milton Dube, Assistant Minister for Foreign Affairs of Nauru and Special Envoy of His Excellency President Baron Waqa and Chair of the Pacific Islands Forum. The Ministerial Committee also comprised the Honourable Jean-Pierre Nirua, Minister of Education and Training of Vanuatu, Pacific Islands Forum Secretary General Meg Taylor, DBE, and Mr Daryl Mapu, Manager, Returning Services Division, Office of the Electoral Commissioner of Samoa. The Committee was supported by Forum Secretariat staff. A delegation list is appended at Annex 1.

3. During its mission, the Committee met with and consulted a wide range of stakeholders including representatives of the French State; Congress of New Caledonia; the Territorial and Provincial governments; Customary Senate; political parties; faith-based organisations; education sector; health sector; diplomatic corps; and regional and international organisations. The Committee also met with the Supervisory Commission overseeing the conduct of the referendum; delegates recruited by the Commission to assist/scrutinize the referendum process; the Office of Legal Affairs and Elections of the French High Commission in New Caledonia; and the *Comité des sages*.¹ Unfortunately the Committee was not able to meet with media representatives as is the case with usual Forum Election Observer missions.

4. The Committee noted and commended the efforts by the French State, Territorial and Provincial governments, and municipalities, to ensure the conduct of the referendum was in accordance with the Noumea Accord, as articulated under the Constitution and the Organic Law 99-209. In particular, the Committee commends the processes adopted to facilitate as wide a participation of voters as possible. This includes the automatic registration of eligible voters on the special roll, the provisions for registration of eligible voters on the day of election, and the establishment of de-centralised voting stations for the Loyalty Islands in Noumea.

¹ An informal body established by Prime Minister Edouard Philippe, to promote dialogue between Kanak and non-Kanak communities in the lead up to the referendum.

5. On the day of the referendum the Committee deployed across the three provinces of New Caledonia – the Southern Province, the Northern Province, and the Loyalty Islands Province – and observed all the stages of the referendum; the opening of polls, polling, closing of polls, and counting.

6. The Committee observed that while the election was peaceful and orderly in polling stations visited across the Territory, there were differences in the administration of procedures across the three provinces. In polling stations visited in the Southern Province, the referendum was conducted efficiently and in a timely manner, with polling officials fully versed with the processes and procedures involved. In the Northern Province and Loyalty Islands Province, polling officials in stations visited were not always aware of the procedures for the conduct of the poll and the count. The Committee is of the view that as a result, the conduct of the election was less efficient.

7. Notwithstanding the technical issues observed in the conduct of the election, the Forum Ministerial Committee is of the view that there was a high degree of transparency and credibility of referendum process, and that the final result accurately reflects the will of the voters. The Committee commends the general public for the high rate of participation in the election, which recorded a voter turnout rate of eighty percent. Of the 174,995 registered voters, **56.4%** chose to maintain the status quo and **43.6%** were in favour of full sovereignty and independence.

INTRODUCTION

8. On 6 August 2018, the Pacific Islands Forum Secretary General received an invitation from His Excellency, Mr. Thierry Lataste, High Commissioner of the French Republic in New Caledonia, for the Pacific Islands Forum to observe the 2018 referendum on New Caledonia's accession to full sovereignty, under the auspices of the United Nations.

9. The Forum Ministerial Committee to New Caledonia subsequently deployed to New Caledonia under terms of reference agreed with the Government of New Caledonia.

2018 Forum Ministerial Committee (FMC) to New Caledonia Terms of Reference

1. Observe the various institutions established and their performance in implementing the Noumea Accord;
2. Assess the implementation, and confirm national compliance, with the Accord;
3. Follow up New Caledonia's referendum progress;
4. Assure the Forum's continued support to all stakeholders in the implementation of the Accord;
5. Assess the political, economic and social developments across New Caledonia since the signing of the Accord;
6. That the FMC is an independent and neutral party in the referendum and will not interfere in any aspect of the referendum;
7. That the FMC will respect and adhere to New Caledonia's laws and customs;
8. Release an interim media statement after the referendum and as soon as possible after that, a full report outlining its observations for the consideration of the Government of New Caledonia; and
9. That the FMC will coordinate [its observer mission] with the mission of experts of the United Nations.

10. The broad terms of reference of the mission, which includes an assessment of the implementation of the Noumea Accord, is in keeping with the mandate of the Forum Ministerial Committee to New Caledonia, as established by Forum Leaders. Accordingly, the following report details the observations and views of the Committee with regard the conduct of the 2018 referendum, as well as the enabling environment in which the referendum is staged, namely the progress in the implementation of the Noumea Accord.

BACKGROUND

11. During the 1980s New Caledonia went through a period of bloody confrontation between the indigenous Kanak population and the predominantly European settler/immigrant population, broadly split into pro-independence and anti-independence groups. In April 1988 pro-independence activists attacked a police station on the island of Ouvéa, killing four policemen and taking twenty-seven hostages. The French military mounted a rescue mission which resulted in twenty-one deaths – nineteen Kanaks and two French soldiers. The scale of the violence led to calls for an independent enquiry into the events.

12. The State sent a dialogue mission to New Caledonia to meet with the main stakeholders in the pro and anti-independence movements, led by the *Front de Libération Nationale Kanak et Socialiste* or *Kanak Socialist National Liberation Front* (FLNKS) and *Rassemblement Pour la Caledonie dans la Republique* (RPCR) respectively. This was followed by negotiations at

the Prime Minister's Matignon office in Paris and at the Overseas France Ministry in the rue Oudinot. The result was the Matignon-Oudinot Accords of 25 June 1988.

13. Although the Matignon/Oudinot Accords was accepted by 57% of voters (out of the 63% who voted) in a referendum in New Caledonia, extremist elements on both sides of the independence platform initially vehemently opposed it. This manifested in the assassination of Jean-Marie Tjibaou in 1989 by an extremist left wing militant who thought he had sold out the cause. The assassination demonstrated the possibility of New Caledonia returning to the period of bloody confrontation and unrest, which nobody wanted, and likely helped all parties commit to the implementation of the Matignon-Oudinot Accords.

Matignon-Oudinot Accords (1988-1998)

14. The ten year Matignon-Oudinot Accords were signed by the French State, the anti-independence movement and pro-independence movement. There were two overarching objectives of the Accords. The first committed the State to implement programmes to address disparities in economic development across the Territory, termed the '*rebalancing*' strategy. The second objective was to hold a referendum on independence at the end of the ten-year period. In the interim, all parties committed to peaceful co-existence for the term of the Accord.

15. The *rebalancing* strategy was adopted in recognition that the predominantly European Southern Province was more developed and affluent than the Kanak dominated rural regions of the North and Loyalty Islands. Among other things the rebalancing strategy aimed to significantly increase investments and project subsidies to the rural North and Loyalty Islands provinces, as well as train and upskill young Kanaks to become professionals.

The Pacific Islands Forum

16. The involvement of the Pacific Islands Forum began in 1986 when Forum members at the United Nations (UN) successfully mobilised support for the re-inscription of New Caledonia on the UN list of Non-Self Governing Territories Subject to De-colonisation, in response to lobbying from the FLNKS.

17. Following the Matignon Accords the Forum Leaders established the Forum Ministerial Committee to New Caledonia in 1990, to monitor events within New Caledonia as it moved toward an Act of Self Determination under the Accords and monitor progress of implementation of the Accords. This mandate was later expanded to include implementation of the Noumea Accord, the successor agreement to the Matignon-Oudinot Accords.

18. In keeping with its mandate to monitor implementation of the Accords the Ministerial Committee undertook eight visits to New Caledonia, between July 1991 and July 2013.² Over the course of its visits during the Matignon Accord, the Committee noted the genuine efforts and significant progress by France and others in implementing the Accord.

Matignon-Oudinot Accords

19. The ten years of the Matignon Accords were peaceful with New Caledonia experiencing steady economic growth and development, and the Kanaks becoming increasingly engaged in politics and government, notwithstanding mixed success in the

² The Committee visited New Caledonia in July 1990, then in 1993, 1996, 1997, 1999, 2002, 2005, and 2013.

implementation of the education and training objectives. For instance, the upskilling programme for Kanaks was successful in training numerous professionals but not producing adequate numbers of mid-ranking Kanak managers.

20. However, on the whole there was general satisfaction with progress and universal agreement to maintain the peaceful state of affairs and the momentum of development. Significantly, there were no immediate demands by any party for independence upon expiry of the Matignon Accords, but unanimous support for a negotiated solution to be implemented upon its expiry. This negotiated solution became the *Accord on New Caledonia*, (the Noumea Accord), signed on 5 May 1998 by the partners to the Matignon Accord.

Noumea Accord (1998-2018)

21. The Noumea Accord built on the two broad objectives of the Matignon, expanding provisions for economic rebalancing and for gradually and irreversibly increasing the autonomy of New Caledonia, with the view to full emancipation should the people decide. As with the Matignon Accords, the State would finance the implementation of the Noumea Accord, which had a timeframe of twenty years.

22. Significantly, as part of the emancipation exercise the Noumea Accord fully recognised the indigenous Kanak identity and committed to protect and enhance the Kanak cultural heritage. At the same time, the Accord also acknowledged the presence of generations of settler communities and that the participation of these communities in the life and future of the Territory is essential.

23. The Accord established institutions of government (Executive, Congress, Provincial Assemblies, and Communes) to govern the territory during its transition to self-determination and provided for a staged and irreversible devolution of powers from Paris to New Caledonia. The institutions also include two advisory bodies, a Customary Senate comprising customary chiefs and an Economic and Social Council, and a New Caledonian citizenship.

24. The devolution of powers from France was scheduled to take place in four stages over the Accord period. The first set of powers were to include employment, external trade, external communications, navigation and international maritime shipping. The fourth and final transfer, that of Sovereignty powers (justice, law and order, defence, currency and foreign affairs), were scheduled for the fourth term of Congress, provided there was a majority vote for independence in a referendum, to be held no later than the end of 2018.

25. The Accord provided for up to two more referenda to be held before 2020 should the first return a majority vote against independence.

IMPLEMENTATION OF THE NOUMEA ACCORD – REFERENDUM ON THE ACCESSION BY NEW CALEDONIA TO FULL SOVEREIGNTY

26. The provisions of the Noumea Accord that pertain to the referendum for independence, related to *procedures for setting the date* for the referendum and *restrictions on the roll for the referendum*.

Agreement on the date for the referendum

27. The Noumea Accord stipulates that the referendum for independence shall be held within the fourth (five year) term of Congress, on a date agreed by three fifths of the members of Congress. The fourth congress term commenced in May 2014 and will end before May 2019. If the Congress did not agree to a date by the second last year of the congress term (end of 2018), then the State would set a date for within the last year of the term. In March 2018 the Territorial Congress agreed to hold the referendum on 4 November 2018.

Electoral rolls in New Caledonia

28. There are three electoral rolls in New Caledonia. The general roll, which is the list of all French nationals in New Caledonia who can vote in national, municipal, and European elections and national referenda; the Territorial roll which is the list of those who can vote in the New Caledonia Provincial elections; and the referendum roll which is the list of those eligible to vote in New Caledonia's 2018 referendum. Eligibility for one roll does not automatically confer eligibility for any other roll, as the requirements differ.

29. As a territory of France, the responsibility for the conduct of elections in New Caledonia lies with France. As such, French electoral laws apply to the conduct of all elections in New Caledonia. Under the 1964 French Electoral Code, to be eligible for registration on an electoral roll a voter must be a resident or have lived in that municipality/electoral area for at least six months; be a French citizen; be at least eighteen years of age before the first round of voting; and enjoy civil and political rights. The six-month residency requirement is waived for civil servants who relocate for work. These are the very minimum requirements for registration on any of the three rolls.

30. One of the key points of contention of the pro-independence movement going into any referendum was the high rate of immigration into the Territory from metropolitan France (including large numbers of French civil servants) and other Pacific French Territories, and the commensurate effect on the electoral rolls.³ Since the majority of immigrants are French citizens, under the Electoral Code they could potentially vote in any election as long as they fulfil the six-month residency requirement (which is waived for public servants).

31. The free movement of French citizens within the French Republic therefore could lead to a situation where an electoral roll is not reflective of the vast majority of the resident population over an electoral term. As such the restrictions placed on the electoral roll for the referendum, as well as for local (Territorial) elections, was a key negotiating factor for the pro-independence movement and formed a critical part of the Noumea Accord and the Matignon Accords.

The Provincial rolls

32. The Noumea Accord set out the eligibility requirement for enrolment on electoral rolls for the Provincial and (Territorial) Assemblies to ten years' residency. An issue of contention was whether the Accord restricted participation in these elections to those who were resident in New Caledonia before 1988 (and their voting age descendants) or included the more recent arrivals ten years before the relevant poll (ie. 1999 for the 2009 elections or 2004 for the 2014 elections).

³ As early as 1957 the Kanak comprised 51% of the population. A nickel boom from 1969 to 1972 led to further immigration from France and Pacific territories.

33. This is significant because the Congress (Territorial Assembly), which is made up of representatives from Provincial Assemblies, votes on a large number of issues relating to the implementation of the Noumea Accord.⁴ These include submitting requests to France for the transfer of competencies/responsibilities of government and setting the date of the referendum, the latter of which has to be agreed by at least three fifths of the Congress.

34. When the Forum Ministerial Committee visited New Caledonia in 2005, the eligibility requirements for the electoral rolls for Provincial Assemblies and the referendum was the key political issue of debate amongst pro-independence and loyalist camps. The issue was resolved by a 2005 ruling of the European Court of Human Rights effectively freezing the provincial electoral lists to those resident in New Caledonia before 1988 and their descendants.⁵

Eligibility to vote in the referendum

35. The Noumea Accord also set restrictions on the referendum roll, including electors who can prove twenty years of unbroken residence in New Caledonia by 2014. However, the issue of who should be eligible to vote in the referendum continued to be the subject of divisive political debate over much of the term of the Accord, with successive legal challenges by both sides keeping the issue in contention practically till the eve of the referendum.

36. In April 2015 the French Government backed a draft law that automatically enrolled indigenous Kanaks and those people registered in 1998 on the referendum roll. However, a French constitutional court ruled in August that a pre-requisite for enrolment on the referendum roll was registration on the general roll. As many Kanaks were apathetic about registering on the general roll they were therefore ineligible. This prompted pro-independence supporters to call for the automatic registration of all voting age Kanaks not yet registered, with loyalist supporters also calling for similar rights for non-Kanak residents who met the criteria.

37. Finally, on 2 November 2017, the 16th meeting of the Committee of Signatories to the Noumea Accord agreed to final criteria for the referendum roll, which was voted into law by the French National Assembly in March 2018, articulated in Article 218 of the Organic Law 99-209⁶.

Development of the referendum roll

38. The Committee noted that development of the referendum roll commenced in 2015, following which all political groups represented in Congress held monthly meetings to review the roll (this was increased to weekly meetings in 2018). The referendum roll was a completely new roll on which a number of electors could be automatically registered. These include people who have or had customary civil status and people who had voted in the 1998 referendum endorsing the Noumea Accord. In 2016, 153,000 voters were automatically transferred to the referendum roll.

⁴ The 54-member Congress comprises 32 representatives from the Southern Assembly, 15 from the Northern Assembly and 7 from the Assembly of the Loyalty Islands.

⁵ However, there have since been calls by anti-independence supporters to change the eligibility requirements for the provincial rolls to reflect demographic changes, namely long term tax-paying French citizens who do not meet the residency requirements.

⁶ Established under the Noumea Accord to take into consideration the opinions expressed by the local bodies consulted on the Agreement; take part in preparation of the legislation required for implementation of the Agreement; and ensure proper implementation of the Agreement.

39. In addition, commencing in 2016 the Office of Legal Affairs and Elections from the French High Commission, which led the development of the roll, was able to identify eligible groups of voters who were not registered on the general roll by cross checking the referendum roll being developed against the 2014 census data using a specially developed algorithm. Political groups also did their own extensive outreach to identify eligible voters who were not registered on the general roll.

40. In this way, approximately 11,000 residents of New Caledonia were identified and verified who were not on the general roll but qualified for automatic registration on the referendum roll, and were subsequently automatically registered. Approximately 7,000 of these were Kanak, while the remaining 4,000 were non-Kanak. Registration on the special electoral list for the referendum closed on 31 August 2018, with 174,154 people registered to vote.

Public awareness on the eligibility requirements for the referendum roll

41. The situation with regard the electoral rolls in New Caledonia is complex and difficult to understand as the eligibility requirements for the three rolls are different. The Forum Ministerial Committee was therefore pleased to note that as early as 2016 the French State commenced a public information campaign on the eligibility requirements for registration on the referendum roll.

42. A questionnaire was also posted online to help citizens check if they met the necessary requirements for registration on the referendum roll. On the basis of the outcomes they were advised if their names should have been automatically transferred, and to verify with their municipalities. In acknowledgement that the online questionnaire was not available to citizens with limited or no access to internet, the State also used print media and radio and sought the help of political groups to disseminate information to their supporters.

The management and conduct of the referendum

43. Under the Electoral Code, an impartial administrative body is tasked with overseeing the conduct of an election and ensuring that everything is done in compliance with the laws. As such a Referendum Supervisory Commission was appointed by the French Foreign Minister in May 2018 to oversee the conduct of the referendum.⁷

44. The remit of the Supervisory Commission included endorsing the political parties that were allowed to campaign during the campaign period,⁸ vetting campaign posters (and placement of posters) and allocating public speaking time for the various parties, in accordance with the French Conseil Superior de l'Audiovisuel (CSA) guidelines.⁹ The Supervisory Commission was supported by two hundred and fifty Delegates/magistrates engaged through a stringent recruitment process from across the Republic of France, and deployed to every polling station across the Territory.¹⁰

⁷ The Commission was led by Mr Francis Lamy, of the Conseil d'Etat, and included an honorary counsellor of the Court of Cassation, a president of an administrative court, a counsellor of the Court of Cassation, and a magistrate.

⁸ Namely the five political parties represented in Congress.

⁹ The CSA guidelines are in line with the Electoral Code which restricts the use of audio-visual mass media for commercial election campaign purposes. Instead, free-to-air time slots are made available to candidates and parties and paid by the State. The restriction is in support of the principle of political pluralism under which the representation of different sociocultural views is ensured, and which the French Constitutional Council considered in 1986 and 1989 to be one of the foundational conditions of democracy.

¹⁰ The Committee was informed that the Committee of Signatories had requested the presence of impartial delegates at each polling station across the Territory.

Facilitating the participation of as many eligible voters as possible

45. Undoubtedly the most ambitious and inclusive strategy to facilitate the registration and participation of as many eligible voters as possible, was the ability of the Referendum Supervisory Commission to continue to update the referendum list after it had been closed. Although the referendum roll closed on 31 August 2018, the Supervisory Commission could continue to register eligible voters right up to the close of polling on 4 November 2018, the day of the referendum.¹¹

46. On the day, if voters turned up with the requisite documentation but were not registered, they were referred to a Delegate who would check the voter's particulars, and if relevant, call in their details to a specially set up centralised office (which included magistrates) for verification. When/if the voter's eligibility for registration was verified, they would be called back to the polling station to cast their vote.

47. The Ministerial Committee was informed that across the Territory there were 1,115 requests received for registration on the day of polling. 104 of the requests were successful after verification and the electors able to vote; 452 voters were found eligible but registered in another municipality; while 559 did not meet the eligibility criteria. The Committee was also told that on average the entire verification process took at least two hours per elector.

The accuracy of the referendum roll

48. The Committee commends the efforts of the State; the Territorial, Provincial, and Municipal authorities; and the political parties for the extensive efforts to develop the referendum roll. The Committee is of the view that due to the extensive preparations and steps taken to facilitate the registration of eligible voters, the 2018 referendum roll had high degree of accuracy, and as much as possible, was reflective of the population of eligible voters as agreed in the criteria endorsed by the 16th meeting of the Committee of Signatories.

The conduct of the 2018 Referendum to Attain Full Sovereignty and Become Independent

The pre-polling environment

49. The Committee observed the pre-polling period in Noumea and acknowledges the comprehensive organisation and initiatives for the referendum, and commends the cooperation between institutions and organisations involved in the preparation for the referendum. The pre-polling period in Noumea and the surrounding municipalities was peaceful, and has been widely commended.

50. As the election was to decide on a single issue – 'yes' or 'no' to attain full sovereignty and become independent, there were basically two sides to campaigning by political parties. The Committee met with representatives of the major political parties who informed of their efforts to raise awareness with the voting public. The Committee was pleased to note that while political parties actively advocated their respective positions with their constituencies, they also encouraged their supporters to remain calm, and to accept the outcome of the referendum.

¹¹ The Committee was informed that since the actual procedures involved for registration on the day took several hours, the Supervisory Committee made the decision to stop accepting requests after 3pm. Polling hours were from 8am-6pm.

51. While the Committee did not attend any campaigning, it did note during its consultations with political groups that the events were well received and peaceful, regardless of historical geographic party affiliations. All political parties that the Forum Team met with were ultimately pleased with the pre-polling environment, and the extent to which the State had gone in preparation for the referendum.

52. However, the Committee was also made aware of, and observed on television and newsprint media, that some parties' campaign tactics included baseless speculation and sensationalisation of the implications of voting a particular way. Noting from media reports and consultations that a key concern of many people was what would happen after the referendum, the Committee is of the view that these tactics were irresponsible and divisive.

53. The Committee was therefore pleased to note advice that prior to the referendum the French State had issued an official advisory explaining what would happen at the institutional level in the event of a 'yes' vote and in the event of a 'no' vote. This document had been made publicly available although the Committee notes views raised that the official advisory had not been circulated widely enough, particularly amongst younger New Caledonians.

Recommendation 1

Noting that the Noumea Accords allows for up to two more referenda, the Forum Ministerial Committee recommends that the State work with Provincial Governments and municipalities to widely disseminate an official advisory on the institutional arrangements that will be put in place following a 'Yes' vote and a 'No' vote.

Comité des sages

54. The Ministerial Committee commends the *Comité des sages*, the 'Committee of Wise Men and Women' appointed by Prime Minister Edouard Philippe to encourage dialogue amongst all stakeholder groups. The *Comité des sages* had actively engaged with all political parties and sectors of society in New Caledonia to encourage the tradition of *palabre* or dialogue, without resorting to personal attacks. The *Comité* had also publicly criticised political leaders from both independent and loyalist camps for public statements and behaviour that contravened the spirit of Noumea Accord and *palabre*.

55. In addition, the Committee was pleased to note that the *Comité* had also reached out to young New Caledonians (born after the events of the 1980s) to explain the significance of the referendum to them.

Polling and counting

56. On 4 November 2018, the Committee split into three groups and deployed to Kone, Lifou, and Noumea to observe the referendum in the three Provinces of New Caledonia. The Committee observed the opening of polls in all three Provinces, and noted that polling opened on time at 8am and according to the prescribed procedures in the Electoral Code in all the polling stations observed. Each polling station had at least one Delegate to support local polling officials.

57. The Committee did not observe any disturbances or attempts to disrupt the opening of polls by anyone. In some stations visited there were armed police personnel outside to provide security, however the overall atmosphere was orderly, peaceful and calm. There were several

instances where electors waving Kanak flags were requested to put away the flags before entering the polling station in accordance with the Electoral Code, which they did.¹²

58. Polling stations and officials were neutral, ensuring that the premises were bare of propaganda materials. The Committee did not witness any display or dissemination of political messages that would affect the smooth conduct of polling. Venues were accessible for those with disability. The Committee was pleased to note that venues that did not have permanent disability ramps had temporary ramps installed for the referendum.

59. The Committee was impressed with the transparency of the overall polling process, which generally commenced with the voter entering the polling venue and presenting his or her proof of identity. Upon confirmation of eligibility to vote, the voter proceeded to the next table, collected an envelope, a 'Yes' ballot, and a 'No' ballot. Each voter was required to take both ballots to preserve the secrecy of the vote. The voter then proceeded into a curtained voting booth, where they placed their preferred ballot in the envelope.

60. The voter then exited the booth and approached the voting table, where the President of the polling station would verify the voter's identity with the support of polling officials. Upon confirmation that the voter was indeed allowed to vote, the President would allow the vote to be placed in the ballot box. To complete the voting process, the voter then signed next to his or her name on the registration list before exiting the venue.

61. The Committee was also able to observe instances of voters seeking to register on the day. Voters were directed to the Delegates who would do an initial check to see if they should have been registered (check photo identification, determine if they met the minimum residency requirement, et cetera), and if relevant, send their details to the specially set up office in Noumea for verification. As far as the Committee was able to see the process worked, although the verification process took several hours. In one situation a voter was still waiting to hear back after six hours.

62. Notwithstanding the overall transparency and credibility of polling processes observed across the Territory, there were also differences in how efficiently the poll was managed in different provinces.

63. In the Southern Province the Committee visited nine polling stations, in Noumea and the Greater Noumea area including the large decentralised voting venue for Loyalty Islands electors living in Noumea. In all the stations visited the polling officials were efficient, professional and obviously knew what they were doing. There was on average a quick turnaround of voters, including in venues that used the same door as entry and exit. There were no indications of electors or polling officials trying to undermine the integrity or transparency of the process.

64. The close of polling and counting was observed in the Dubea municipal hall. The polls closed promptly at 6pm and polling officials commenced the process of reconciling the number of votes received with the number of names crossed off the rolls. When the numbers tallied up, the officials proceeded to count the votes, in accordance with prescribed processes. The entire process (from close of polls to counting) was done efficiently and under the guidance of the

¹² In one polling station, an official was asked by the manager of the station to remove a scarf she had draped over her chest that had the word 'kanaky' and the faces and names of pro-independence leaders clearly displayed on it.

manager of the polling station. In the few instances when the manager was unsure of procedure he referred to the manual provided. Media representatives and party scrutineers were also present.

65. In the Northern Province and Loyalty Islands Province, the Committee noted that the conduct of polling and counting was transparent, peaceful, and orderly. However, both teams noted that there were aspects of the administration which could have been strengthened to facilitate greater efficiency.

66. In the Northern Province the Committee visited eight stations from the east coast to the west coast. Polling officials were courteous and accommodating and going out of their way to facilitate the process. However, the Ministerial Committee observed that in several cases polling officials could have benefited from better training. This was especially the case when polling stations experienced a temporary surge in voter numbers, which seemed to overwhelm polling officials. The Committee observed that these instances were common among polling stations that had the minimum required number of polling officials present.

67. The Committee does note however that the majority of polling stations it visited had more than the minimum required number of polling officials, and therefore the majority of polling stations visited performed efficiently. In some stations, the inclusion of a non-essential but highly effective queue master, was useful in managing queues into polling stations, and also as a source of information for voters. The queue master also ensured that the voting space within the polling station did not become overcrowded, allowing voters to proceed in regular intervals.

68. However, the Committee also noted that the lay-out of some polling stations was not ideal for the free flowing movement of people. The Committee observed some polling stations where voters were required to start at one table, and cross the room to another table for the next step in the polling process. This created confusion and led to momentary blockages and delays in the process.

69. The Committee observed the close of polling at the Centre Ville, Salle Au Pitiri in Kone, where the polls closed on time at 6pm, and without issue. Voters still waiting in the queue at 6pm were allowed to vote, while voters who entered the polling station after 6pm were not allowed to cast their votes. Once the final voter in the queue had voted, polling officials tallied the number of signatures on the electoral list against the number of envelopes in the ballot box. The votes were then counted and recorded on specially prepared sheets. Ineligible ballots were also noted on a separate list.¹³

70. The Committee also visited other stations to observe the count. At one polling station visited the officials could not agree on the correct procedure preceding the count and there did not seem to be anyone in charge. This all caused delay and confusion amongst polling officials. The count was eventually carried out correctly, but not without several discussions between polling officials.¹⁴ The Committee also noted that during the count, the public was able to freely enter and move about the counting room, with no barrier established around the counting table. Children were also roller blading and playing around the counting table, at times bumping into it and disturbing those involved in the count.

¹³ Votes were invalid if they were not in an approved envelope, not official ballots approved for the referendum, had been marked or displayed any information other than the ballot itself, or if the envelope contained both 'Yes' and 'No' ballots. Envelopes with multiple ballots of the same constituted one vote only.

¹⁴ In this same station although there were nine officials present, it took them two hours to count less than 600 votes

71. On Lifou in **the Loyalty Islands Province**, the Committee observed nine polling venues including the opening, voting and closing. The opening, polling, closing and counting of votes was conducted in an orderly, peaceful and transparent manner. The Committee observed minor issues such as a small number of voters waiting while verification was sought from Noumea of their status on the roll and the different approaches taken by officials during the polling process. These issues were not enough to jeopardize the integrity or outcome of the referendum, but would have been addressed through standardised training of polling officials.

72. In its consultations with voters, it was noted that some voters were not given sufficient and accurate information to constitute genuine informed consent, such as the implications for New Caledonia (and their communities) of full sovereignty and independence.

Post referendum events

73. The Committee noted that there were several incidences of post referendum unrest in the greater Noumea area following polling. Fortunately, the violence was relatively contained however the potential for violence and discontent to spread cannot be dismissed. The Committee is of the view that the underlying causes of the discontent should be addressed before the next referendum, or even the Territorial elections in May 2019.

Overall observations of the Forum Ministerial Committee on the conduct of the referendum

74. The Committee notes that the level of preparation and understanding of polling and counting procedures by polling officials differed across the three Provinces. This led to differences in the efficiency and management of the polling and counting processes.

Recommendation 2

The Forum Ministerial Committee recommends that extensive training be provided to polling officials in the Northern Province and Loyalty Islands Province to ensure full understanding of polling and counting procedures (including for the set-up of polling stations), and facilitate consistent application of polling procedures across the Territory.

75. However, notwithstanding the technical issues observed in the conduct of the election, the Committee agreed that across all the polling stations observed in the three Provinces, there was a high degree of transparency and credibility of process, and that the final result accurately reflects the will of the voters.

76. The Committee congratulates the State and Territorial authorities on a successful referendum, and commends the voting public for participating in this historic vote on the future of New Caledonia which saw a record voter turnout of 80%, which is high by any standards.

IMPLEMENTATION OF THE NOUMEA ACCORD: ECONOMIC REBALANCING AND EMANCIPATION EFFORTS

77. The Committee notes that the Noumea Accord, and its predecessor Matignon-Oudinet Accords, were negotiated and agreed by all parties in recognition of the need for New Caledonia to move beyond the divisive political and economic situation that had resulted in the prolonged period of conflict in the 1980s, and culminated in the tragic events in Ouvea in April and May 1988.

78. The Ministerial Committee commends the architects of the Matignon-Oudinot Accords and the Noumea Accord, for their willingness to put aside their differences for the good of all, and in recognising that the future of New Caledonia lay in building a common destiny for both indigenous and non-indigenous New Caledonians.

79. Both the Matignon-Oudinot Accords and the Noumea Accord were ground breaking in recognising and responding to the underlying causes of the conflicts in New Caledonia, and in prescribing, *and resourcing*, appropriate steps to address these. The success of the Accords has always depended on all parties honouring their commitments under the Accords, not least of which is the commitment by the State to facilitate and resource implementation of the Accords.

80. The Ministerial Committee commends the Republic of France, local authorities and the signatories to the Accords for adhering to and upholding the provisions of the Accords. The overall peace and prosperity that New Caledonia has experienced over the past thirty years is because of the achievements under the Matignon-Oudinot Accords and the Noumea Accord.

Rebalancing - *rééquilibrage*

81. Previous visits of the Committee have mapped progress in the implementation of the Matignon-Oudinot and Noumea Accords and noted that since the commencement of the rebalancing strategy there has been significant distribution of economic and development benefits beyond the Southern Province. There has also been significant progress in the implementation of efforts toward emancipation.

82. The Committee was pleased to be informed of broad agreement during its consultations that the rebalancing strategy across the Territory, for the most part, is a success. The Committee noted that the rebalancing strategy enabled local elected representatives (particularly outside Noumea) to better address the social needs of their constituencies which in turn is helping to slow urban drift. Tax concessions and co-financing options for the construction of mining plants helped the development of the mining industry in the Northern Province, and consequential development of the economy of the Northern Province. While in the Loyalty Islands, infrastructure development projects were also undertaken to help stimulate economic activity.

83. It is beyond the scope of this report to cover thirty years of progress under the Matignon and Noumea Accords. In any event, earlier visits of the Committee have reported on progress (and challenges) in the implementation of both Accords, in particular significant achievements in the establishment of the institutions of government; the implementation of land reforms (including returning custom lands to customary owners); and reviving and protecting Kanak languages and culture. However, there are several milestone developments that merit mention.

84. The Committee was pleased to note increased educational and specialised training opportunities for New Caledonians has led to overall increases in the number of New Caledonians completing secondary and tertiary education, including post graduate degrees, and qualifying for professional jobs. For instance, the Committee was very impressed on its visit to the Koniambo nickel plant to see that the highly specialised and technical Operation Centre was completely staffed by young New Caledonians, two of whom were women.

85. Other advances in the education sector include the inclusion of Kanak culture as a core subject in primary schools (with the option to continue in secondary school); a 29% increase

of university enrolments in 10 years; overall increase in education levels across the Territory; and the continuation of the training programme for New Caledonians to become middle and senior executives, which has trained nearly 1720 people since its commencement, approximately 71% of whom are of Kanak origin.

86. The Committee was also pleased to note that in 2010 the Congress adopted a law which provides restrictions on the employment of non-New Caledonian citizens in the private sector. This law was extended to the public sector in 2016 and has led to greater representation of New Caledonians in the public sector, such as in the Northern Province where the Committee was informed that 82% of civil servants are New Caledonians.

87. There is still however a low representation of New Caledonians and Kanaks in middle management and senior positions, notwithstanding which, since August 2016: two lawyers of Kanak origin have been sworn in; one of the six Police commissioners on the island is Kanak; the head of urban safety is a Kanak; and 95% of the police commanders are New Caledonians. In a workforce of 421 police officers, only 24 are metropolitan (including the Director of Public Safety and his deputy). Within the gendarmerie, 203 of 532 personnel are New Caledonians. Finally, in the education sector, almost two thirds of teachers are New Caledonians.¹⁵

88. Another noteworthy achievement is the almost complete devolution of powers from France to New Caledonia as per Organic Law 99-209. The Committee was informed that the pending competency, Audio-visual media, has not yet been requested by the Congress because there is still a lack of capacity and resources in country to successfully take over this responsibility. The Committee noted that the devolution of powers over the term of the Noumea Accord did not always take place according to the schedule in the Organic Law, in particular responsibility for education, however, there were a number of reasons for the slippages, including the lack of absorptive capacity.

89. Overall, there has been a reduction in development gaps between the Provinces and increase in access to services throughout the Territory. However, the Committee also notes reports that although there has been a reduction in the disparity between provinces, the gap remains, and now there is a growing disparity within each province. For instance, the gap in GDP per capita between the east and west coasts of the Northern Province is similar to that between the Northern and Southern Provinces (1:1.5). There is also a very uneven distribution of income across the Territory with the top 10% enjoying a standard of living 7.9 times higher than that of the poorest 10%.¹⁶

Self determination

90. There were always two overarching objectives of the Matignon-Oudinot and Noumea Accords – **rebalancing** and **increasing autonomy** with the view to full independence should the majority of the population vote so. The Accords provided the opportunity and time for New Caledonia to prepare for emancipation, by facilitating opportunities to develop local capacities for self-governance. While the rebalancing strategy has been the most visible illustration of the Accords, being at the forefront of social and economic development, there was never any

¹⁵ *Study on the Implementation of the Agreements on New Caledonia signed in Matignon and Noumea, by the Office of the Directorate General of the Overseas Department.* 25 June 2018.

¹⁶ Severine Blaise (2017): *The Rebalancing of New Caledonia's Economy*, *The Journal of Pacific History*, 52:2. 194-216, DOI 10.1080/00223344.2017.1349532

question that at the end of the Accord period, New Caledonians would have the opportunity to decide on their political future.

91. Article 5 of the Noumea Accord provides for the conduct of up to three referenda on independence. If after three referenda the eligible electorate rejects independence, the political parties should meet to consider the situation. In such an event, the political organisation set up under the Accord is to remain in force, at its latest stage, without possibility of reversibility. Under Article 5, the “State acknowledges that it is appropriate for New Caledonia to achieve complete emancipation at the end of [the Noumea Accord] period.”

92. The pre-requisites for successful emancipation, or any type of political future on the basis of a common destiny as espoused under the Noumea Accord, is the implementation of the rebalancing efforts and cooperation between the political parties. An initial ten years was allocated to this objective under the Matignon Accords, expanded to an additional twenty years, under the Noumea Accord. While there has been considerable progress in rebalancing, albeit with challenges remaining, there has not been as much progress in the cultivation of political goodwill and trust between the political parties, or serious efforts by political parties to forge a common identity and destiny.

Political cooperation or the lack thereof

93. The Committee notes that the Signatories to the Noumea Accord finally agreed on the criteria for eligibility for votes on 2 November 2017, only a year before the actual referendum was held, noting that under the Noumea Accord the referendum would have had to be held at the end of 2018 by the latest.

94. The Committee notes that for much of the duration of the Noumea Accord the issue of eligibility requirements to vote (first in provincial elections then in the referendum), was the most contested issue, taking up much of the time and focus of both separatist and loyalist parties. In effect, the negotiation over the referendum roll took almost twenty years. It was reassuring therefore that during the Committee’s consultations there was widespread acceptance by both pro and anti-independence movements of the criteria, with representatives from both sides expressing satisfaction with the criteria.

95. The Committee acknowledges the political sensitivities involved and the importance to both separatist and loyalist camps of ensuring the highest possible representation of their supporters on all the rolls. However, the Committee is of the view that more effort could have been made by all parties to the Noumea Accord to forge the necessary political partnerships and trust, to enable them to reach agreed compromises and work together to implement the provisions therein, in particular the aspiration that “[T]he future must be a time of identity in a common destiny.”

96. The Committee believes that the consensus reached on the referendum roll in November 2017 could have been achieved much earlier if the Signatories to the Noumea Accord had continued to engage in the spirit with which the Accords were negotiated and agreed. As noted earlier, the Matignon-Oudinot Accords and the Noumea Accord were agreed in recognition that the divisive political and economic conditions at the time could not continue. Over the thirty years of the two Accords the vast majority of New Caledonians have continued to subscribe to that spirit of cooperation.

97. During past visits of the Committee to New Caledonia a recurring theme raised with the Committee was the importance of maintaining the hard won peace and a genuine fear of a return to “*les évènements*” the protracted period of violence preceding the Matignon-Oudinot Accords. The Committee is of the view that political leaders must set the example for peaceful co-existence.

98. The Noumea Accord in particular recognised the need for a common destiny for all New Caledonians. The Committee is of the view that it is therefore unfortunate that the opportunity conferred by the Accord to forge a common identity and destiny was not adequately taken up by the signatories to the Noumea Accord, during its twenty-year lifespan.

CONCLUSION

99. Of the 174,995 registered voters, 56.4% chose to maintain the status quo and 43.6% were in favour of full sovereignty and independence.

100. On the basis of its observations and consultations, the Committee commends the conduct of the referendum, which in the view of the Committee was transparent, credible, and free, and which accurately reflects the views of the voters.

101. The Ministerial Committee notes the tremendous work and resources put into preparing for and conducting the referendum and congratulates all the relevant stakeholders, the State, the Territorial and Provincial Governments and the Municipalities for their efforts.

102. The result of the 4 November 2018 referendum means that New Caledonia will need to hold another two referenda, provided at least one third of the Congress vote accordingly. The Ministerial Committee strongly encourages all political parties in New Caledonia to put aside their differences and recall the spirit with which the Noumea Accord was signed, and work together toward a common destiny that ensures all New Caledonians benefit from the economic development and political governance of the country.

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- The Honourable Annick Girardin, Minister of Overseas Territories of the French Republic, the Office of the High Commissioner of the Republic of France to New Caledonia and Ambassador Hervé Dejean de la Bâtie for facilitating the observation mission;
- The Customary Senate for meeting with the Committee, traditionally welcoming the Committee to New Caledonia and sharing their views on the referendum and the state of affairs in New Caledonia;
- The Honourable Philippe Michel, President of the Assembly of the Southern Province; Honourable Paul Neaoutyine, President of the Assembly of the Northern Province; and Honourable Neko Hnepeune President of the Assembly of the Loyalty Islands;

- The Referendum Supervisory Commission and the Office of Legal Affairs and Elections of the High Commission;
- Political leaders and representatives of the political parties for sharing their views with the Committee;
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Members of the Forum Ministerial Committee to New Caledonia

1. Honourable Milton Dube, Associate Minister for Foreign Affairs of Nauru and Special Envoy of His Excellency President Baron Waqa of Nauru and Forum Chair;
2. Honourable Jean-Pierre Nirua, Minister of Education and Training of Vanuatu;
3. Dame Meg Taylor, DBE, Pacific Islands Forum Secretary General; and
4. Mr Daryl Mapu, Manager, Returning Services Division, Officer of the Electoral Commissioner of Samoa.

Supported by:

1. Mr 'Alifeleti Soakai, Political Issues Adviser, Forum Secretariat;
2. Ms Angela Thomas, Human Security Officer, Forum Secretariat; and
3. Mr Teanuanua Nicole, Research Officer, Forum Secretariat.

**2018 PACIFIC ISLANDS FORUM MINISTERIAL COMMITTEE TO NEW
CALEDONIA
INTERIM STATEMENT**

The Pacific Islands Forum Ministerial Committee to New Caledonia deployed across the three provinces of New Caledonia to observe New Caledonia's referendum on sovereignty and independence under the 1998 Noumea Accord, held on 4 November 2018.

In each of the three provinces – the Southern Province, the Northern Province, and the Loyalty Islands Province – the mission observed all the stages of the referendum; the opening of polls, polling, closing of polls, and counting.

In the Southern Province Forum Team Leader the Honourable Milton Dube of Nauru said “I was impressed by the transparent and efficient conduct of all the stages of the referendum we observed in the polling venues we visited. We'd been informed of the extensive preparations undertaken and that was evident in the professionalism and good understanding of procedures by polling officials in the stations we observed.” The Team also observed polling in the large decentralised polling venue for Noumea residents registered in the Loyalty Islands Province.

The Teams that deployed to the Northern Province and Loyalty Islands Province agreed that overall, the conduct of the polling and counting was transparent, peaceful, and orderly. However, both teams noted that there were aspects of the administration which could have been strengthened to facilitate greater efficiency.

The Team that observed the referendum in the Northern Province commended the transparency and credibility of the processes, but was of the view that polling and counting officials could have benefited from better training. In some polling stations presiding officers were not thoroughly versed with the procedures for the conduct of the referendum, and in one polling station it took two hours to count approximately 600 votes.

The Team that deployed to the Loyalty Islands Province also commended the high level of transparency of process, however noted on the basis of its observations, that polling officials could have had a better understanding of the procedures for the conduct of the referendum, which would have resulted in greater efficiency of process.

On the whole, the Forum Ministerial Committee agreed that notwithstanding the technical issues observed in the conduct of the election, there was a high degree of transparency and credibility of process, and that the final result accurately reflects the will of the voters.

The Forum Ministerial Committee also commended the extra efforts by the French State, Territorial authorities and municipalities to facilitate as wide a participation of voters as possible. These include the automatic registration of eligible voters on the special roll, the provisions for registration of eligible voters on the day of election, and the establishment of decentralised voting stations for the Loyalty Islands in Noumea.

“This referendum is an historical event in New Caledonia and it was therefore important that as many eligible voters as possible could cast their votes,” said Minister Dube. The Forum Ministerial Committee also commended the high level of participation in the referendum, noting that an eighty percent voter turnout is high by any standard.

We take this opportunity to congratulate all the stakeholders involved in this referendum for the transparent and peaceful manner in which it was conducted” said Minister Dube. “We also congratulate the people of New Caledonia for their participation in this process and take this opportunity to reiterate the continued support of the Pacific Islands Forum to New Caledonia.”

ENDS

