



# Department of Pacific Affairs

## New Caledonia and Bougainville: Towards a New Political Status?

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### Introduction

Over the next few years, major political — and possibly constitutional — changes can be expected in two of Australia's closest neighbours, as New Caledonia and Bougainville move towards a new political status.

Both sets of islands suffered periods of armed conflict — in the 1980s for New Caledonia and in the 1990s for Bougainville. In spite of the widespread calls for independence, there were significant divisions within the population and both conflicts ended with innovative political and constitutional agreements, including delayed referendums on their final political status.

Since 1998, each has undertaken a lengthy transition towards a decision on self-determination and the possible creation of a new sovereign and independent nation. These transitional periods of economic and political reformation are now coming to a head. Under the 1998 Noumea Accord, New Caledonia is scheduled to hold up to three referendums between 2018 and 2022 to determine a new political status, with the first vote to be held in November 2018. After a decade-long transition following the 2005 election of the Autonomous Bougainville Government (ABG), and 2015 elections that resulted in the return to office of President John Momis, there are currently plans to hold a referendum in Bougainville in June 2019.

Despite their very different histories, there are a few striking similarities between New Caledonia and Bougainville. The sizes of their population is one, with approximately 270,000 people in New Caledonia and about 300,000

in Bougainville. Independence in both places is probably only possible because of large-scale mining: the existing nickel mines in New Caledonia and the giant Panguna copper and gold mine, or possibly even new mines, in Bougainville. In both places, there are fierce debates over the costs and benefits of mining.

There are few deferred independence referendums on the global stage (South Sudan being one of the rare examples), so these two Melanesian islands set important precedents beyond the Pacific (Thomas 2011). New Caledonia's initial referendum takes place on 4 November 2018, but there is uncertainty over the timing of Bougainville's vote. In both cases, will domestic and regional pressures seek to continue some form of transition to avoid renewed conflict? Will two sovereign and independent nations be created, or will the process end in some innovative form of ongoing relationship with Paris and Port Moresby?

The future for New Caledonia and Bougainville takes on greater regional importance, as the Pacific Islands Forum (PIF) and Melanesian Spearhead Group (MSG) debate the issue of West Papua. Pacific leaders are trying to reconcile the growing push for self-determination by the West Papuan nationalist movement and the recognition of Indonesian sovereignty over Papua and West Papua provinces by most Forum member governments. Changes to New Caledonia's political status have crucial implications for the other French Pacific dependencies, French Polynesia and Wallis and Futuna.

Parts 1 and 2 of this Discussion Paper comprise two separate case studies on New Caledonia and Bougainville. Each details the referendum provisions of their peace agreements and the main steps and timelines towards referendums on self-determination, as well as the political stresses and tension points that might lead to alternative scenarios. In each case there are significant political, cultural and economic pressures that may derail the process towards independence with a diverse range of players involved in the outcome.

Part 3 outlines eight areas that will affect the transition to a new political status, comparing and contrasting the situation in the two Melanesian nations:

- the success of brokering peace
- post-conflict reconciliation
- relations with the metropole
- the constitutional embedding of the political agreement
- resolving control and decision-making on mining and natural resources
- international scrutiny
- monitoring the Accord
- the possibility of abandoning the agreed process.

### Part 1: New Caledonia – the Noumea Accord and New Caledonia’s referendum on self-determination

New Caledonia comprises the main island Grande Terre, the Loyalty Islands and other outlying island groups. The Melanesian nation was colonised by France in 1853. Its population has grown to 268,767 (ISEE, [2014 census](#)) through waves of migration and colonial settlement: prisoners, free settlers, indentured labour and more recent migrants, mostly from France and other French colonial dependencies.

From the founding in 1953 of Union Calédonienne (UC or Caledonian Union) to the creation of independence parties in the mid-1970s, the indigenous Kanak people has formed political coalitions to campaign for greater autonomy and then independence from France.

Between 1984 and 1988, a period of armed conflict pitted the French state and armed settlers

against the Front de Libération Nationale Kanak et Socialiste (FLNKS or Kanak Socialist National Liberation Front), a coalition of parties supporting independence. The period of conflict, known as *les événements*, polarised the country, with the independence movement boycotting French elections and institutions and creating parallel political structures in Kanak-majority rural areas. After four years of conflict, this period culminated in the Ouvéa massacre of May 1988 with the death of 19 Kanak activists and two French Special Forces soldiers. The contending parties turned away from armed conflict, signing the 1988 Matignon-Oudinot Accords. The aftermath of grief and division on the island of Ouvéa led to the assassination of FLNKS leader Jean-Marie Tjibaou on 4 May 1989 when he came to commemorate a year of mourning for the victims of the Ouvéa massacre.

The Matignon-Oudinot Accords proposed a 10-year transition to a referendum on independence in 1998, but as that deadline approached, political leaders decided that the referendum should be deferred. This would allow a further period of political settlement, the creation of a shared ‘new Caledonian citizenship’ and the building of ‘a common destiny’ (Christnacht 2004). The delay would also allow further economic rebalancing between the capital Noumea and outlying rural areas, given the colonial legacies of land tenure, mining and infrastructure distribution that had disadvantaged indigenous Kanaks.

On 5 May 1998, an agreement known as the Noumea Accord was signed by representatives of the French state, the FLNKS independence movement and the anti-independence party Rassemblement pour la Calédonie dans la République (RPCR or Rally for New Caledonia in the Republic). This Accord determined that any vote on New Caledonia’s final political status would be delayed for a transitional period of 20 years. The transition would be based on new political institutions, including three provincial assemblies, a congress, a customary senate for the indigenous Kanak people and a multi-party government that could unite supporters and opponents of independence in the collegial governance of the nation (Faberon 2012).

### *Provisions of the Noumea Accord*

Since the first provincial assembly elections in May 1999, this transition has involved the transfer of powers from Paris to Noumea over many aspects of policy and administration. However, pending the final referendum on self-determination, the French state retains control over five so-called ‘sovereign powers’ (*compétences régaliennes*): justice and courts, public order and policing, finance and currency, defence, and most aspects of foreign relations.

The French state has committed to financing this process and agreed on the ‘irreversibility’ of the transfers (that is, any powers ceded to the government and congress of New Caledonia cannot be reclaimed by Paris, which is unique compared to autonomy statutes in French Polynesia, Wallis and Futuna and other French collectivities).

The Noumea Accord was approved in a November 1998 referendum, then formalised in French domestic law through a [March 1999 Organic Law](#) and entrenched in articles 76 and 77 of the [French constitution](#) in its own *sui generis* section. The Accord proposed a referendum on self-determination with an initial vote to be held between the years 2014 and 2018 (article 53 of the French constitution is the legal basis for any such referendum, which ‘cannot be conducted without the consent of the concerned populations’).

The Noumea Accord proposed that a consultation of the ‘concerned population’ should decide on the transfer of the remaining sovereign powers. Article 3.3 of the Accord notes:

Justice, law and order, defence and currency (including credit and exchange), as well as external affairs (subject to the provisions of 3.2.1) will remain under the responsibility of the State until the new political organisation is introduced as a result of the poll provided for in Section 5.

The Accord also states that this vote will be based on a limited franchise of New Caledonian citizens (rather than all French residents) and will focus on ‘the transfer of the sovereign powers to New Caledonia, accession to an international status of full responsibility

and transformation from citizenship to nationality’ (Article 5 Noumea Accord).

### *Timing of the referendum*

The timing of a referendum on self-determination was originally detailed in section 5 of the Noumea Accord and article 217 of the Organic Law:

A poll will be held during the fourth (five-year) Congress term of office. The date of the poll will be set by the Congress in the course of the fourth term, by a qualified majority of three-fifths of its members. If the Congress has not set such date by the end of the second-to-last year of this fourth term, the poll will be held, on a date set by the State, during the last year of the Congress term.

Thus the congress elected in May 2014 could have, by three-fifths majority, decided on a date for a self-determination referendum. Given the longstanding balance of forces in the congress, where no individual party has won a majority, the requirement that 33 of the 54 members of congress agree on the date was deliberately designed so that both supporters and opponents of independence must come to a common decision to proceed to a referendum.

If the congress was unable to agree on a date for a referendum, the French state was obliged to organise a referendum in the final year of this five-year term of the congress. This state-organised vote, however, cannot be held within six months of the next elections (scheduled in May 2019), so must be held after 1 June 2018 but before 30 November 2018.

After lengthy political disagreements between supporters and opponents of independence, the date was finally agreed in March 2018 at the Committee of Signatories (a meeting between the French Government, the original signatories to the Noumea Accord, and representatives of other major parties represented in the congress).

The date for the referendum is now set for 4 November 2018, with the question: ‘Do you want New Caledonia to accede to full sovereignty and become independent?’ This wording is a compromise between the FLNKS position favouring the words ‘full sovereignty’ rather than

the word ‘independence’ (which ironically was favoured by the anti-independence side). In turn, the FLNKS resisted attempts by anti-independence parties to include the option of ‘remaining with France’ as part of the yes/no decision.

The Noumea Accord actually makes provision for three referendums rather than just one. If the New Caledonian population votes in the negative in the first referendum, there is a mechanism for two more votes to be held. One third of the members of congress can call for a second referendum, to be held in the second year after the first vote. In the case of a second negative vote on independence, the procedure can be repeated again to hold a third referendum. If the response is still negative, then the signatories to the Accord must meet to determine the next step. For this reason, the full implementation of three proposed referendums might extend the process from 2018 until 2022 or beyond.

### *Electoral rolls*

In response to Kanak concerns about ongoing migration from France, Wallis and Futuna, Tahiti and other locales, the Noumea Accord created different electoral rolls for different political institutions (a system of affirmative action for long-term residents that has been endorsed by the French courts, the European Court of Human Rights and the UN Human Rights Council).

For the French National Assembly and Senate in Paris, the European Parliament and local municipal councils, all French nationals of voting age (18) and registered at the relevant town hall on a general electoral roll are eligible to vote. In contrast, voting for New Caledonia’s three provincial assemblies and congress is restricted to long-term New Caledonian citizens rather than all French nationals. This restriction meant that more than 23,000 French residents of New Caledonia were ineligible to vote in the May 2014 provincial elections, even though they could vote in the March 2014 municipal elections (Maclellan 2015).

To complicate matters further, the electoral roll of long-term residents for the provincial assemblies has a different residency requirement to the separate roll for the final referendum. For the local political institutions, New Caledonian citizens

must be registered to vote and resident for ten years before 31 December 1998. However article 2.2.1 of the 1998 Accord and article 218 of the 1999 Organic Law set out a different residency requirement for the ultimate referendum(s) on the future of New Caledonia (essentially 20 years’ residency by 2014).

These original eligibility provisions, however, have been superseded in part by court rulings as part of a long-running debate over who will be eligible to vote in 2018, as supporters and opponents of independence manoeuvre before the referendum. The February 2016 meeting of the Committee of Signatories agreed that new voting rights could not be obtained for people arriving after 8 November 1998 and declared that the whole issue was ‘politically closed’ (LNC 2016). However, this declaration has not stopped political and legal challenges to voting rights.

The longstanding belief that all Kanak adults would automatically vote was overturned by the August 2015 decision of a French constitutional court which ruled that all potential referendum voters must be registered on France’s general electoral roll. This ruling presented a major problem — from a total of 90,949 Kanak adults with customary status, only 65,467 were registered on the general electoral roll (as of 1 January 2016). This meant that up to 25,282 Kanaks, who had never been properly enrolled, might therefore be ineligible to participate in the referendum on self-determination. At the same time, the status of hundreds more voters of European or Wallisian heritage was challenged between 2016 and 2018 as independence supporters questioned whether they met residency requirements.

These numbers have been the subject of great dispute, as pro-independence supporters sought automatic registration for all indigenous people on the general voter list. Loyalists in turn claimed special rights for non-Kanak residents.

By the end of 2017, negotiations resulted in agreement for automatic registration on the general list for Kanak voters, and special measures to identify non-Kanak eligible voters with long-term interests in New Caledonia. The French government accepted that another 11,000 people (holding Kanak customary status or common law civil status) should be added to the

general electoral roll. With government programs to enrol potential voters, the number of correctly registered people has risen from 153,000 to a potential 175,000 when the referendum electoral roll is finally released on 31 August 2018 (LNC 2018). The closing date for registration on the general electoral list was originally set as 30 December 2017, but this has been extended three times (until 30 July 2018 at time of writing). The delay by the French state to resolve the issue of voting rights earlier in the 20-year transition has threatened to delegitimise any vote in 2018, with the small Parti Travailleiste (Labour Party) deciding not to participate in the November referendum. It is a recipe for division at a time when New Caledonia is supposed to be building a 'common destiny' for the future of the country. For some independence supporters, it reaffirms their doubts about the supposed neutrality of the French authorities.

Article 216 of the Organic Law states that the result of the referendum will be determined by the majority of those voting, not those registered to vote, which discourages one or other party from organising a boycott to create a low turnout.

With many Kanak voters from the outer islands living and working in the capital, specific provisions have been made to allow them to vote either in Noumea or in their home municipality. Islanders from Lifou, Ouvéa, Mare, Belep and the Isle of Pines can register at the French High Commission between June and September 2018, so they can vote in the referendum without making an expensive trip to the outer islands.

Another crucial provision of the Noumea Accord is that New Caledonia cannot be divided geographically during the self-determination process. Section 5 of the Accord notes: 'The result of the poll will apply comprehensively to New Caledonia as a whole. It will not be possible for one part of New Caledonia alone to achieve full sovereignty, or alone to retain different links with France, on the grounds that its results in the poll differed from the overall result.'

The FLNKS lobbied for this provision to ensure that the two Kanak-dominated provinces in the north and Loyalty Islands did not choose independence while the European-dominated southern province remained associated with France

(there is the precedent of Comoros where one of its islands, Mayotte, voted to remain French while the rest of the French Indian Ocean dependency moved to independence in 1975, a clear breach of international law on decolonisation).

### *Decolonisation or delay?*

Although the process outlined above is enshrined in law and the French constitution, and even after 20 years of transition, competing political forces in New Caledonia still perceive the Noumea Accord in different ways: some see the transition as a decolonisation process; for others, the question of political independence can still be delayed for years, if not forever. Most parties in the independence movement continue to call for the full implementation of the Accord, to create a fully sovereign and independent nation.

A range of academics and French officials have also canvassed options for New Caledonia to adopt some form of free association within the French Republic. After consultations between 2011 and 2013, French public servant Jean Courtail and academic Ferdinand Mélin-Soucramanien presented their report 'Réflexions sur l'avenir institutionnel de la Nouvelle-Calédonie' (Reflections on the institutional future for New Caledonia) to the Committee of Signatories to the Noumea Accord on 11 October 2013. They suggested four options for the future but, according to critics, slanted these options towards a model of free association (Courtail and Mélin-Soucramanien 2013).

The formal referendum provisions of the Accord have long been questioned by anti-independence politicians (even by those who signed the agreement in 1998). Different political parties have expressed divergent views on which path should be followed to 'exit' from the Noumea Accord. Even though they wish to retain links to France, there are clear differences between the anti-independence parties on the way forward.

Pierre Frogier, a key leader of Les Républicains (formerly Rassemblement–UMP) has called for negotiations with the independence movement leading to a third accord (following the 1988 Matignon-Oudinot Accords and the 1998 Noumea Accord). In contrast, the largest single party in the congress, Calédonie Ensemble (CE) led by

Philippe Gomes, has called for shared sovereignty with France and the greatest possible autonomy, arguing that ‘independence supporters will not win the referendums, but neither will they sign a third accord’.<sup>1</sup>

Some conservative leaders have also called for the re-establishment of the *glissant* (sliding) electoral roll (which would enable more short-term residents to vote for the local political institutions) and a revision of the *clé de répartition*, an agreement that divides revenues between the three provinces.<sup>2</sup> With a growing population in the capital Noumea, southern provincial leaders are seeking to change this existing agreement, because the two rural provinces currently receive a greater share to make up for decades of underdevelopment. These demands will be resisted by the independence movement, which calls for adherence to the existing provisions of the Noumea Accord.

Key leaders of the Union Calédonienne party have called for the ‘full and complete implementation of the Accord’ and ‘nothing less than the three proposed referenda’ If the vote is negative in all three referendums, UC President Daniel Goa has called for bilateral negotiations between the independence movement and the French state to determine the way forward.<sup>3</sup> The other major independence party, Parti de Libération Kanak (Palika or Kanak Liberation Party) has talked of ‘independence with partnership’, stressing the importance of adding content to the concept of New Caledonian citizenship (LNC 2017). Palika’s 2014 campaign slogan was *Reuissions notre citoyenneté* or ‘Let us succeed with our citizenship’.

In a 2014 interview, Palika President Paul Neaoutyine stated:

New Caledonians should take up the rights and responsibilities of the New Caledonian citizenship they have adopted, as a voluntary step towards full emancipation, for sovereign and equal relations with France and the free nations of the world.<sup>4</sup>

As president of the Northern Province, Neaoutyine also reaffirmed his opposition to changing the *clé de répartition* and stated:

Some people are talking about a third accord. But what would you add in a new accord beyond what’s already there in the Noumea Accord? (Maclellan 2015:19)

Key independence leaders stress that the creation of a sovereign nation does not mean a final rupture with France. UC politician Roch Wamytan has offered a nuanced approach on the question of the five remaining sovereign powers, proposing the need for transitional agreements with France or neighbouring Pacific nations in areas such as maritime surveillance and national security:

We see the future of the country within the realities of today, a globalised world with a modern economy. We are ready to sign cooperation agreements to help manage certain powers, whether with France, the European Union, or with countries in the region (LNC 2014:2).

Some Kanak leaders have begun to publicly discuss the type of security forces that might exist after independence, a crucial question given that the French state retains control of defence, policing and courts until a final decision on self-determination. For example, Paul Neaoutyine has reflected on whether there is a need for an army (as in Fiji and Papua New Guinea) or just a paramilitary police force (Vanuatu or Solomon Islands) and has expressed a preference for the latter (Maclellan 2015:6).

There are precedents in the francophone world where France contributed to defence and security after a self-determination referendum: one example is the 1962 Evian peace accord in Algeria, which allowed France to maintain its military bases in Algeria for five years after independence. (France even continued its nuclear testing programme in the Sahara desert after Algerian independence, with 13 underground nuclear tests at In Eker between 1961 and 1965.)

### *Economic reform and mining*

Beyond this political debate, of course, lies the reality best expressed by the late Kanak leader Jean-Marie Tjibaou: ‘The most important day is not the day of the referendum, but the day after’ (Tjibaou 1996:196).

A much wider discussion about the social, economic and cultural values of the future nation underlies the politics. One crucial area concerns the economic *re-equilibrage* (rebalancing) that is

a central pillar of the Noumea Accord. With the country holding nearly 25 per cent of global nickel reserves, the mining sector is a significant arena of political, economic and social conflict. Contending parties (including transnational corporations like Vale, ERAMET and Glencore) fight for control of New Caledonia's nickel and other strategic minerals, as part of the broader political debate.

The signing of the Noumea Accord in May 1998 was only possible because contending parties had come to agreement some months earlier over the *préalable minière* (mining precondition) posed by the independence movement. The February 1998 Bercy Accord allowed the transfer of strategic deposits of high-grade nickel to SMSP and SOFINOR, two companies controlled by the northern provincial administration, opening the way for the construction of the Koniambo nickel smelter in the north of the country and challenging the monopoly long held by the French-controlled ERAMET–Société le Nickel.

Decisions made about economic policy in the boom times have come to haunt the government and provincial authorities. This key industry is buffeted by fluctuating prices for nickel on the international market, and by protests and disputes between industry subcontractors and the government. All three smelters — KNS Koniambo in the north, Vale's Goro project in the south and the Doniambo smelter run by ERAMET–SLN in Noumea — face a perfect storm of changing international nickel prices, heavy debt burdens, technological failures and reduced capital investment by their parent companies. Questions over ore export markets, with the collapse of Clive Palmer's QNI Yabulu operation in Queensland, complicate decision-making at a crucial time with China now serving as a major destination for a range of ores and metal products.

The fundamental dilemma is that most Kanaks want independence and most Europeans do not. While the Noumea Accord process has transformed New Caledonia's economy and society, this core political division remains. [Opinion polls in early 2018](#) suggest the independence movement will not win the November referendum, as the FLNKS has not yet made a strategic breakthrough to win mass support from voters of European

or Wallisian heritage (DNC 2018). But with non-compulsory voting for roughly 170,000 registered voters, the level of mobilisation of supporters in each camp — through fear or hope — will have a decisive impact on the result.

The Kanak people have been made a minority in their own country through generations of settlement and continuing migration (currently around 40 per cent of the population). For this reason, restrictions on voting rights are a central pillar of the Noumea Accord process. Nevertheless, a variety of conservative anti-independence parties have implicitly or expressly sought to overturn these restrictions on voting in 2019, proposing that the electorate be extended again to all French nationals. This is a highly contentious issue and efforts to widen the voting body will be fiercely resisted by the FLNKS and its allies.

No party holds a majority in the congress elected in 2014, which is currently divided between 29 opponents of independence and 25 pro-independence members. But dialogue between supporters and opponents of independence is hampered by divisions within the two camps.

The FLNKS coalition faces tensions between the two largest pro-independence parties Union Calédonienne and Palika. There are also smaller parties such as the Parti Travailleiste (Labour Party) and Dynamique Unitaire Sud (DUS) that support independence but are not part of the FLNKS. On the other side, there are major differences between the three leading anti-independence parties, despite agreement to carve up key posts in the assemblies, congress and government under a so-called 'governance pact'. This governance pact has crumbled due to fundamental policy differences between the competing anti-independence forces on issues like mining, collaboration with the independence parties and the future relationship with France.

In past years, the French state has presented itself as a neutral arbiter, accompanying the people of New Caledonia towards their future decision. This polite fiction masks the strategic interests of France as a mid-sized global power. Any pretence at neutrality was discarded when French President Emmanuel Macron visited New Caledonia in May 2018. While claiming not

to take sides, Macron said that the referendum process was ‘constructing a sovereignty within a national sovereignty’ and that France would be the less without New Caledonia (Fisher 2018). France has territories and military deployments in every ocean of the world and long-term interests in terrestrial and maritime resources, such as the seabed minerals and fisheries of the 11 million square kilometres of exclusive economic zones under French sovereignty (Maclellan 2018).

With FLNKS leaders continuing to seek support from the United Nations Special Committee on Decolonisation, the Melanesian Spearhead Group and the Pacific Islands Forum, the international context becomes even more crucial — especially as the timing for New Caledonia’s political decision coincides with a similar debate in Bougainville.

## Part 2: Bougainville — autonomy, independence and mining

Bougainville, currently an autonomous region of Papua New Guinea (PNG), comprises two large islands (Bougainville and Buka) and many smaller islands and atolls. Its population in 2018 is approximately 300,000, less than four per cent of PNG’s total population, and its land area constitutes about two per cent of PNG territory.

From November 1988 to July 1997 Bougainville was wracked by violent conflict, widely referred to amongst Bougainvilleans as ‘the crisis’. The conflict originated in widespread dissatisfaction with the action of the Australian colonial government in imposing the development of the huge Panguna copper and gold mine from 1966 for the benefit of the rest of the then Territory of Papua and New Guinea; the mine was operated from 1972 by Bougainville Copper Ltd (BCL), majority owned by Conzinc Riotinto Australia.<sup>5</sup> The environmental and social impacts of the mine and unfair distribution of its ‘benefits’ caused particular resentment (Regan 2017). Disagreements between Bougainville leaders and PNG about the mine and its impacts contributed to an attempted unilateral declaration of Bougainville’s independence in September 1975, after which the dispute was settled by PNG amending its constitution to provide for a decentralised system of provincial governments applicable to

all parts of PNG, but under which Bougainville’s government received mineral royalties previously payable to the national government.

By the mid-to-late 1980s, dissatisfaction in Bougainville had grown over the provincial government’s limited power to deal with mining impacts. From November 1988, destruction of mine power lines intended by the Bougainvillean perpetrators to force BCL and PNG to renegotiate the mining agreement instead prompted PNG to deploy security forces, which used indiscriminate violence against Bougainvilleans. A wider violent conflict emerged, with Bougainville independence becoming the central goal of the loosely structured Bougainville Revolutionary Army (BRA). Following the departure of PNG forces from Bougainville under a ceasefire in March 1990, Bougainville announced a second unilateral declaration of independence in May 1990. In June that year, PNG imposed an air and sea blockade on Bougainville which operated until late 1994.

The conflict caused deep divisions amongst Bougainvilleans, with complex localised conflicts resulting in the development of pro-PNG militias (Bougainville Resistance Forces, or BRF) opposing the BRA. At the request of local leaders suffering from localised conflict, PNG forces returned to parts of Bougainville from September 1990, and by 1993 they had a degree of control over significant parts of Bougainville. The BRA, however, remained in control of over half the province and had an extensive support base. The BRF likewise had extensive support and continued to oppose the independence demands of the BRA.

Estimates of the deaths attributed to the conflict (including deaths arising from the PNG blockade) range from 3000 up to 20,000.<sup>6</sup> More than one third of the population was displaced, most infrastructure and large amounts of private property were destroyed or severely damaged; the Panguna mine ceased operation in May 1989 and remains closed as of mid-2018.

A peace process developed in Bougainville from mid-1997, initiated by moderate Bougainvillean leaders on both sides, and supported from late 1997 to mid-2005 by an international intervention comprising two main elements: an unarmed regional monitoring body (1997–2003) and a small



United Nations political office (1998–2005). The need to build trust between the deeply divided parties meant that negotiations for a political settlement did not begin until mid-1999. Prior to these negotiations, the opposing Bougainville factions negotiated a common negotiating position (Regan 2002). On the question of Bougainville independence, the pro-independence leadership compromised by abandoning their favoured demand for immediate independence, instead seeking a binding referendum on independence within a few years, with constitutionally guaranteed autonomy operating in the interim.

In late 2000 a stalemate in negotiations on the referendum was resolved by an intervention of the then Australian Minister for Foreign Affairs, Alexander Downer. He proposed a non-binding referendum, deferred for 10 to 15 years after the establishment of autonomy in Bougainville (Downer 2001:33–34; Regan 2010:88–90). Downer gained support from the Bougainville negotiators for a non-binding referendum by pointing to East Timor's non-binding referendum in 1998, saying that once East Timorese voted overwhelmingly for independence, the international community ensured that the outcome was honoured. To the PNG side, he advised that if the result was not binding, then its sovereignty was protected. Thus, both sides were persuaded that the international community would support their favoured position following a 'yes' vote in an independence referendum.

### *The Bougainville Peace Agreement*

The long and detailed [Bougainville Peace Agreement](#) (BPA) was signed on 30 August 2001. PNG constitutional laws giving legal effect to most provisions of the agreement, inclusive of the referendum arrangements, were passed by the PNG parliament early in 2002. Those laws were a new part XIV of the [PNG constitution](#), and a new organic law, the [Organic Law on Peace-building in Bougainville — Autonomous Bougainville Government and Bougainville Referendum](#) (the Organic Law). Because of Bougainville concerns about the necessity to constitutionalise as much of the agreed arrangements as possible, the Organic Law contains a 65-page schedule on detailed

arrangements for the conduct of the referendum. The bulk of the constitutionalised arrangements, however, deal with the establishment and operation of special autonomy arrangements for Bougainville.

The goal of demilitarisation of Bougainville was pursued through significant incentives for the BRA and BRP to dispose of their firearms. The focus on weapons came because the constitutional laws provided that its provisions did not come into operation, even after the PNG parliament enacted them, unless the head of the UN mission in Bougainville certified completion of the second stage of a three-stage 'weapons disposal' process provided for by the BPA.

The autonomy arrangements are unique to Bougainville and are dramatically different to the arrangements for provincial governments which operate in most of the rest of PNG. They enable Bougainville to use a constitutional commission and a constituent assembly to develop its own constitution, providing for the structures and key processes of the Autonomous Bougainville Government (ABG). The ABG was vested with all the powers and functions of the previous North Solomons Provincial Government (NSPG)<sup>7</sup>, and in addition, a long list of 56 additional powers and functions was made available to the ABG under a transfer process. This process gave the ABG a right to have powers transferred to it after giving 12 months notice and negotiating the financial and capacity arrangements needed for the effective ABG exercise of the powers and functions in question. The 56-item list includes many significant responsibilities such as land and natural resources, mining, water resources and environment. In addition to that list, the ABG has authority to establish a wide range of institutions, including its own public service, courts to an equivalent level of the PNG national court, a police service and an ombudsman. A list of 17 powers in relation to Bougainville is retained by the national government, such as currency, defence and foreign affairs.

The autonomy arrangements include provisions on intergovernmental arrangements and on protection of the constitutional arrangements for unilateral change by the national government. On intergovernmental arrangements, the

PNG constitution provides that the national government ‘has no power to withdraw powers from the Bougainville Government or to suspend it’ (section 331(c)). It also provides a multiple stage process for dealing with disputes between the two governments (sections 333 to 336), inclusive of disputes in relation to the referendum process (section 343). Provision is included for establishing and operating a Joint Supervisory Body (JSB) that oversees the implementation of the BPA and acts as a consultative forum between the two governments (section 332). In relation to protection of the constitutional arrangements, the PNG constitution provides that neither part XIV of the constitution nor the Organic Law, inclusive of the provisions on the referendum, can be amended without the approval of the proposed amendment by a two-thirds absolute majority vote by the Bougainville legislature (section 345).

Financial aspects of autonomy provide for the PNG government to support the ABG through two main annual grants. One meets the cost of the functions of the ABG, inclusive of provision to meet the costs of newly transferred powers and functions once the transfer process is complete. The other is a grant to meet the costs of restoration and development of post-conflict Bougainville. The autonomy arrangements offered the PNG government the opportunity to make the autonomy status so attractive to Bougainville that even pro-secessionists might be persuaded to vote for continued autonomy when the referendum was held. However, PNG has failed to pay the Restoration and Development Grant as required by the Organic Law. Further, the process of transfer of powers to the ABG has been far slower than expected.

As to the referendum, the BPA specifies that a referendum on the future political status of Bougainville be held before mid-June 2020, in which the question or questions will be agreed by the two governments, provided that one of the options offered will be independence for Bougainville. The date of the referendum is to be agreed by the two governments, and must be between the tenth and fifteenth anniversary of the establishment of the ABG, that is in the ‘window’ between June 2015 and June 2020.

Most details about the actual conduct of the referendum are contained in the 65-page schedule to the Organic Law. All residents of Bougainville entitled to enrol to vote in national parliament elections will be entitled to vote, as will ‘non-resident’ Bougainvilleans, for whom the connections to Bougainville required for enrolment were agreed by the two governments at a JSB meeting in late June 2018. After the referendum, section 342 of the PNG constitution requires the two governments to consult on the results. Then ‘subject to’ that consultation, the results will be tabled in the national parliament, the BPA providing that the outcome is then ‘subject to ratification (final decision-making) of the national parliament’ (para. 311(a)). Accordingly, while most of the detailed arrangements for the referendum are contained in the Organic Law schedule, significant issues are left to negotiation between the governments at a later date, and as yet remain to be negotiated.

#### *The question or questions to be asked*

The constitutional laws and the BPA leave open the issue of the content of the ‘question or questions to be put’ in the referendum’ (constitution section 339). In general terms, the referendum is intended to be about ‘the future political status of Bougainville’ (section 338). However, the only option amongst potential future political statuses that must be included is ‘separate independence for Bougainville’ (section 339(c)). The ABG put forward a proposal to the December 2017 and the June 2018 JSB meetings to the effect that the question should be one offering a simple ‘yes’ or ‘no’ to the option of independence, but a decision on the question was deferred to a later JSB meeting. In practice, a question in the form proposed by the ABG would involve a choice between independence, on the one hand, and autonomy on the other, with a ‘no’ vote effectively serving as a vote for autonomy. In the absence of a change to Bougainville’s political status being agreed to by the national parliament, the existing autonomy arrangements will continue to apply to Bougainville. At the June JSB meeting the national government requested deferral of discussion of the question to a special JSB to be held before the

end of July 2018, and requested joint legal advice from lawyers for both governments on unspecified constitutional issues concerning the question or questions. At the time of writing (late July), the joint legal advice had not been developed, and no date had been set for the special JSB.

The issue remains to be determined through consultation. Statements by PNG Prime Minister Peter O'Neill to the effect that there is no requirements that the referendum be about independence (*PNG Post Courier* 3/3/2018; *The National* 3/5/2018) have caused concern that there may be difficulties in the consultations.

### *Timing of the Bougainville referendum*

The provisions of the BPA and the PNG constitution on the timing of the referendum have become the subject of controversy, even though they are quite clear, requiring that it must be held in the five-year window between the tenth and the fifteenth anniversary of the establishment of the ABG. The problems arise because of fundamental misunderstandings about provisions in the BPA and the PNG constitution that the two governments are required to take into account when setting the date within the five-year window. Those matters are whether 'weapons have been disposed of in accordance with the agreement [the BPA]', and whether 'it has been determined that the Bougainville government has been and is being conducted in accordance with internationally accepted standards of good governance' (section 338(3)).

The constitution provides for the good governance issue to be determined by the five yearly process for review of the autonomy arrangements (section 337) and — if necessary — the process that the constitution provides for resolution of disputes between the governments (sections 332–336). There has so far been one review, in 2014, and at the June 2018 JSB meeting it was agreed a second one should be conducted by UN-funded experts in the second half of 2018, with a report expected by the end of October 2018. If for any reason the review does not occur, then the governments would not be able to meet the requirement for taking good governance issues into account. The outcome would be that the

referendum would still need to be held before mid-June 2020, but could not be held earlier.

No provision is made for a method to determine whether weapons have been disposed of in accordance with the Agreement, mainly because the BPA provided for the UN to make determinations about whether weapons had been disposed of in accordance with the three-stage weapons disposal process, and a determination to that effect was made in May 2005, just before the first ABG election. Despite this, there is widespread agreement amongst the Bougainville leadership, including the leadership of former combatant groups, that there remains a need for disposal of the many weapons still held by groups that were outside the peace process and so did not take part in the weapons disposal program that ended in 2005. As a result, in practice, weapons disposal can be expected to be a factor taken into account in setting the referendum date.

The fundamental misunderstanding about these provisions concerns whether weapons disposal and good governance constitute preconditions that must be met by Bougainville before the referendum can be held or whether they are matters to be taken into account when setting the date in the five-year window. Views to this effect have been advanced a number of times by the PNG Prime Minister (*The National* 5/3/2018; *PNG Post Courier* 8/3/2018, 3/5/2018), by academic commentators (for example, Wallis 2012:37) and by a report of the PNG Parliamentary Bipartisan Committee on Bougainville Affairs (PNG Parliament 2017:16).

These views are clearly contrary to both the PNG constitution and the BPA which respectively and explicitly make clear that the provision for the five-year window within which the referendum must be held apply irrespective of any other consideration. Thus the constitution provides that those provisions apply '*notwithstanding any other provision*' [emphasis added] (sub-section 338(2)), while the BPA provides that the 'referendum will be held no earlier than 10 years, and, *in any case, no later than 15 years after the election of the first autonomous Bougainville Government*' [emphasis added] (para. 312(a)).

The reasons for the misunderstanding include the elapse of 17 years and the holding of four

general elections for the national parliament since the BPA was signed. All those on the national government side of the original negotiations are no longer being involved in BPA implementation. Should the national government continue to hold the position that weapons disposal and good governance are preconditions for the referendum to take place, it is likely that the ABG will seek to deal with the issue through the dispute settlement process, that is, to have the matter dealt with by the Supreme Court of Papua New Guinea as a question of constitutional interpretation.

The currently proposed date for the referendum in June 2019 was agreed by the two governments at the May 2016 JSB as a ‘target date’ for planning purposes only. However, it has since become widely accepted in Bougainville as the actual date. In fact, under the BPA and the national constitution the actual date cannot be agreed until the two governments consult over whether good governance has been and is being achieved by the ABG. In practice it will also be necessary to take into account the progress made in establishing the Bougainville Referendum Commission (BRC) and in making necessary preparations, such as compiling the rolls for voters.

Most of the work of the BRC depends on availability of funds. At the time of writing, a promised initial national government contribution of K20 million to the BRC has not been released, resulting in growing uncertainty about the timetable for preparatory activities for the referendum. At present it seems most unlikely that the state of preparations would allow the referendum to be held on the target date. It is more likely it will be held closer to the final permissible date of June 2020.

### *The electoral roll*

Both the BPA and the Organic Law provide that persons resident in Bougainville can enrol to vote in the referendum subject only to having been resident for six months. Thus it is clear that non-Bougainvillean citizens of PNG who meet the residential requirements are entitled to enrol. This is a provision that causes some controversy in Bougainville, where many believe that only Bougainvilleans should be entitled to

vote in the referendum. However, this aspect of the BPA was the subject of clear agreement between the parties to the negotiation of the BPA.

In relation to non-resident Bougainvilleans, the 2011 PNG census recorded almost 10,000 people who were both born in Bougainville and resident outside the Autonomous Region of Bougainville (although that figure probably includes some who were not ‘indigenous’ Bougainvilleans and does not include many ‘indigenous’ Bougainvilleans born outside Bougainville). The Organic Law (section 55(1)) elaborates on the BPA (para. 315) to state that, before the date of the referendum is agreed by the governments, they must consult and agree on the:

detailed criteria to determine the link or links with Bougainville that a person (referred to in the Agreement as a “non-resident Bougainvillean”) must have in order to be entitled to vote at the Referendum.

At the JSB meeting held in Arawa on 29 June 2018, the two governments agreed to the criteria for enrolment of non-resident Bougainvilleans. They must meet the requirements of section 7 of the Bougainville constitution, under which a person is a Bougainvillean if he or she is a member of a clan lineage that owns land by custom in Bougainville, has been adopted into such a clan, is married to or is the child of a person who is a member of a clan owning land by custom in Bougainville. Further, it was agreed that a person must be entitled to register to vote in a PNG national election, which means they must be a citizen of PNG, over 18 years of age, and resident in PNG.

The schedule to the Organic Law makes it mandatory for people to enrol to vote in the referendum, but voting is not compulsory. There are no provisions setting a quorum for either voter turnout or results. It will be a matter for the two governments to take into account the numbers voting for whatever options are put forward in the question or questions to be asked in the referendum.

### *The conduct of the referendum*

The BPA and the Organic Law provide for the electoral authorities of both governments to

cooperate in the conduct of the referendum. However the Organic Law offers the options of doing that through the establishment of an independent body, or alternatively leaving the responsibility with either or both of the electoral authorities. At a JSB meeting in May 2016, the governments agreed to establish an independent body, to be called the Bougainville Referendum Commission (BRC). In August 2017, the charter establishing the BRC was signed by the PNG Governor-General. It provided for a seven-member commission headed by an independent person appointed by the two governments, the heads of the two government's electoral authorities, and two members each appointed by both governments, with the requirement that one each of those two members should be a woman.

It was expected that it might take some time for the two governments to agree on a chair and nominate their appointees. In the interim, the charter provides for the commission to operate through a Transitional Committee, made up of the heads of the two governments' electoral authorities together with the chief secretaries to the two governments. At the time of writing (June 2018), the Transitional Committee had met six times. Working committees established at its first meeting (December 2017) have enabled the BRC to make considerable progress towards planning of the referendum.

The main stumbling block remains funding. The indicative budget developed by the BRC indicates the total budget for the referendum will be around K127 million (about AU\$51 million). However as yet only K500,000 allocated by the ABG is available, while K20 million promised by the national government towards meeting 2018 costs has yet to be released. At the time of writing, there is growing concern that delays in the release of PNG funds are already pushing back important preparatory steps, such as the compilation of voter rolls.

From the time the BRC was established, there was discussion amongst key actors of the need for the chair of the new body to be a respected international figure. At the JSB meeting in December 2017, the ABG proposed Helen Clark (former prime minister of New Zealand and head

of the United Nations Development Program or UNDP). Prime Minister Peter O'Neill indicated that the national government was considering nominating former Irish prime minister Bertie Ahern. The JSB meeting delegated authority to appoint the chair to Prime Minister O'Neill and President Momis and at a meeting between them in April 2018, the pair reached agreement to jointly invite Mr Ahern to take up the role. Mr Ahern subsequently accepted the invitation (Dineen 2018). The ABG decided to accept the national government's nominee because not only was Ahern a suitably qualified person, but also because accepting the national government nominee would be likely to encourage the national government to take ownership of the BRC and of the referendum process more generally.

In part because of limited capacity and financial resources in both the PNG national government and the ABG, the international community is playing significant roles in provision of both funding and expertise. The UN Peacebuilding Fund and the UNDP are prominent, and the International Foundation for Electoral Systems is providing significant technical support.

### *Will the referendum be delayed?*

The existence of the misunderstanding about whether weapons disposal and good governance are preconditions that must be met before the referendum is held (outlined above) gives rise to the serious possibility that the national government might take the view that the referendum should not be held in the five-year window of 2015 to 2020. While misunderstanding of the BPA and constitutional provisions is a factor in the national government view on preconditions, there is also little doubt that it suits the national government to take that view. Key figures in the national government have deep concerns about the threat to national unity presented by a referendum on independence.

Fears about the possible independence of Bougainville also feed wider fears that this will be a precedent for other parts of the country. Such concerns were first in evidence before PNG independence in 1975, when there were a number of micro-nationalist movements in various parts

of the country (May 1982). There are particular fears in contemporary Bougainville that the resource-rich parts of PNG could be candidates for separation. In March 2018, Prime Minister O'Neill said in relation to Bougainville that 'we worry about the unity of our country. We can't have every resource-rich province secede from PNG. It is just unthinkable' (*The National* 5/3/2018). Since the BPA was signed in 2001, every PNG Prime Minister has probably had concerns about not wanting to go down in history as the person who presided over the breakup of the country. Thus, on the fortieth anniversary of PNG independence on 15 September 2015, Prime Minister O'Neill was reported as stressing that PNG would 'not be broken up under his watch' (Callick 2015).

O'Neill, who has been Prime Minister since mid-2011, has spoken more about the Bougainville referendum than any other national government figure, and has done so particularly in the first half of 2018. To some extent there are mixed messages here. On the one hand he has stated on several occasions that the national government is committed to complete implementation of the BPA provisions on the referendum (*PNG Post Courier* 8/3/2018). On the other hand he has also claimed on several occasions that weapons disposal and good governance are preconditions or prerequisites for the referendum to be held (*The National* 5/3/2018; *Australian Associated Press* 1/5/2018).

In addition, O'Neill has apparently mounted a campaign to encourage the national parliament to take a stand against independence. In September 2015, he emphasised that the question of independence was ultimately a matter for the parliament, which 'would consider the question with great seriousness, with the backdrop of our understanding of the country. We have a diverse and tribal country, so we can ask ourselves, where does it stop?' (Callick 2015). In March 2018 he said 'any outcome of the referendum will have to be endorsed by Parliament, which basically means that the people of Bougainville will also [have to] convince the people of PNG as well through their elected leaders' (*PNG Post Courier* 10/3/2018).

In April 2018 O'Neill told the parliament:

If this Parliament does not ratify the outcomes of the referendum, we don't want

to create anxiety among our people. We must make sure that this is a realistic outcome that will happen in our country. So it must be discussed in a frank and open manner so that we are not going to build the hopes and aspirations of the people of Bougainville to a degree where when the Parliament does not ratify the outcome, people of Bougainville feel that they are being let down (*PNG Post Courier* 13/4/2018).

On more than one occasion, he has stated that he expects that every MP will vote against independence when the referendum outcome is discussed in parliament.

For example, in May 2018 he said:

After the vote in 2019, regardless of the question — the outcome must be tabled in Parliament ... I can assure you that every Member of Parliament will vote in the interests of a unified and harmonious country (*PNG Post Courier* 3/5/2018).

### *Economic development and mining*

Quite apart from the attitude of the Prime Minister, there are other significant obstacles to Bougainville's independence. A key difficulty is whether Bougainville can achieve the fiscal self-reliance likely to be necessary for independence to be a reality. In 2017, total budgeted expenditure for the ABG was K162 million. ABG 'internal' revenue (inclusive of personal income tax derived from Bougainville remitted to the ABG by the PNG Internal Revenue Commission) was only K21 million, or 13 per cent of the total budget (Chand 2017). The rest of the revenue was derived from national government grants. Satish Chand has undertaken comparisons with other small Pacific states, notably Vanuatu (which has a similar population to Bougainville) and Solomon Islands, estimating that an independent Bougainville would need an annual budget of between K836 million and K923 million (Chand 2017).

Bougainville's current economy is based heavily on smallholder cocoa and alluvial gold production, each generating in the region of K75 to K100 million per year for Bougainvilleans (O'Faircheallaigh, Regan and Kenema 2017).

Taxing either industry would be difficult and unlikely to raise more than a few million kina at best. The only other likely significant source of revenue would be licence fees for fishing for migratory fish stocks in the Exclusive Economic Zone associated with Bougainville, which could possibly amount to K100 million per year.

Since the ABG was established, successive leadership groups have regarded the most likely source of revenues to make independence viable to be large-scale mining. This could involve either reopening the Panguna mine (which has about 20 years of proven resource still in the ground), or both Panguna and new mines that may be established by other operators that were issued with exploration licences in 2017 for three areas of Bougainville. Putting aside risks such as Dutch disease (Chand 2017:10) and the difficulties that can be expected in achieving consensus on renewed large-scale mining (Regan 2017), it will take some time to either reopen Panguna or develop any new mines. Estimates range from six to eight years for reopening Panguna, and 15 years or more for a new mine (from exploration to operation). Hence, large-scale mining will not result in the necessary revenue for a self-reliant Bougainville to be available soon after the referendum.

It should be noted that renewal of large-scale mining is far from assured, in large part because of the divisiveness it generates. Parts of the population are opposed to mining in principle. There is also potential division amongst landowners, caused by foreign companies seeking access to resources by developing allies amongst local landowner groups. This has occurred in relation to Panguna, leading the ABG in early in 2018 to impose a moratorium on exploration and development there.

### *Post-referendum transition*

There is a growing focus amongst the Bougainville leadership on the period following the referendum, which is often referred to as ‘the transition period’. The expectation is that whatever the outcome of the referendum, the two governments will consult about the outcome. Such consultations are expected to deal with the possibility of change to Bougainville’s political status, be that a gradual change to independence (largely

because current public sector capacity and fiscal self-reliance prospects are weak) or a change to even greater autonomy for Bougainville. In 2018, the Bougainville leadership has been exposed to the South Sudanese experience, and has taken away the need to plan carefully for the period after the referendum in order to avoid post-referendum violence. In a paper prepared for the June 2018 JSB meeting, the ABG proposed and the national government agreed to establish a joint ABG–national government taskforce to undertake planning for the post-referendum situation, and also proposed a summit meeting in late 2018 to consider the issues involved.

### **Part 3: Self-determination in Melanesia?**

By coincidence of timing, the self-determination processes in New Caledonia and Bougainville are moving towards a new political status in the same period. There are significant differences in the two cases, in international law, colonial history and socio-economic status. With France as administering power, New Caledonia is listed as a non-self governing territory with the UN General Assembly and is monitored by the UN Special Committee on Decolonisation. In contrast, Bougainville is part of the postcolonial nation of PNG.

There are, however, important similarities in the situations of the two Melanesian nations, which have important implications for neighbours like Australia, New Zealand and the island members of the PIF and the MSG. This section briefly outlines eight areas where there are commonalities and contrasts between the transition in Bougainville and New Caledonia:

#### *1. Brokering peace*

The Noumea Accord model of a deferred referendum and a lengthy transitional process directly influenced peace brokering in both Bougainville and Timor-Leste in the late 1990s. Negotiators between different Bougainvillean groupings used the Noumea Accord as a model. In 1999, then Australian Prime Minister John Howard wrote to then Indonesian President Habibie proposing a similar decade-long transition for Timor-Leste. The Indonesian government decided instead to proceed directly to a referendum

on self-determination, offended by the implicit comparison between the Indonesian annexation of Timor and the long history of European colonialism in the Pacific. However Timorese voted overwhelmingly for independence, following extensive bloodshed as military-backed militias committed significant human rights violations.

Rather than proceeding directly to a referendum on self-determination in 1988, the Matignon-Outinot Agreements delayed a vote by 10 years. The 1998 Noumea Accord mapped out a further 20-year transition before a final decision on New Caledonia's political status would be determined. In Bougainville, the creation of the Autonomous Bougainville Government preceded a 10- to 15-year transition after 2005.

In both New Caledonia and Bougainville, the decision to hold a lengthy transition towards a final political decision was based on the belief that time would contribute to reconciliation between competing cultural and political forces after a period of conflict, avoiding a return to armed violence if the referendum went the 'wrong' way.

There was also the tacit assumption on both sides that time would be advantageous for their case, changing the political or demographic balance before a referendum. For the State parties, the assumption was that better investment and political engagement would make it harder for citizens to make the final break towards independence. However, unlike France, PNG has failed to provide the financial inputs and seize the opportunity to make autonomy attractive to Bougainvillean supporters of secession.

## 2. Post-conflict reconciliation

A central element for political cooperation is a range of efforts to promote post-conflict reconciliation (Maclellan 2005). In the early stages of the Bougainville peace process, there were steady but uneven efforts to disarm combatants, reduce the availability of weapons in the community and promote truth and reconciliation for communities and families devastated by the conflict of the 1990s. This disarmament process has faltered in recent years and the weapons required for a return to armed conflict are still widely available.

New Caledonia's colonial history and the minority status of the indigenous Kanak

people have created a different dynamic to the overwhelmingly Melanesian population of Bougainville. The Noumea Accord includes the central principle of uniting a multicultural, multiethnic society in a common destiny (*le destin commun*) by creating a new citizenship for long-term residents, even as the 'Kanak people' is recognised for the first time ever in French constitutional law (as a people, not a minority ethnic group).

In both cases, the upheaval of armed conflict has allowed a period of post-conflict reflection on whether existing systems of governance, law, administration and bureaucracy are best suited to the local context. There have been innovative debates about the role of culture and customary leadership, including constitutionally endorsed provisions for the creation of a Kanak customary senate in New Caledonia and a Bougainville advisory body of traditional chiefs and other traditional leaders (yet to be established). These are both envisaged as advisory structures to the government and legislature. New Caledonia has also started to transform its educational curriculum and health system to better reflect local realities.

Women have also used this period of political reform to advance their call for greater representation in the parliament and public sphere. This is most evident in New Caledonia and other French territories, where France's parity law has ensured equal representation of women on electoral lists and a massive growth in the numbers of elected female representatives (women make up 46 per cent of the congress elected in 2014, the mayor of Noumea is currently a woman, and two women have served as President of the Government of New Caledonia since 2007). In a smaller way, Bougainville has created three seats for women in the autonomous government, as a small contribution to carrying dynamic women's organisation in the church and community sector into the parliamentary sphere.

## 3. Relations with the metropole

In both Bougainville and New Caledonia, the social economic and political crisis combines internal and external dynamics, as tensions with the metropolitan capital (Paris or Port Moresby) overlay a range of local, domestic



disputes between competing political forces.

In both cases, the two metropolitan governments pledged to fund the transfer of powers to the local government and administration as a central part of the transition. This is the fundamental disparity between France and PNG: as a wealthy OECD nation, France has funded the Noumea Accord process comprehensively, with extensive spending on infrastructure, technical assistance and the mechanics of implementing the Accord itself. In contrast, Port Moresby has relatively few financial and technical resources and much less political will in strengthening the Autonomous Bougainville Government.

The resulting viability of state institutions is sharply different. An independent New Caledonia would be one of the wealthiest Pacific Island countries, with a well-established state and functioning administration. In contrast, Bougainville would continue with a tradition of weak Melanesian governance in a post-referendum environment, even though there is a vibrant and ongoing culture of customary governance that has largely survived the turmoil of the conflict in the 1990s.

There are significant imbalances in the transfers to New Caledonia, however, with large amounts allocated to French public servants and institutions; for example in 2014, the French state allocated 36.9 billion Pacific francs (CFP) for defence and the army, another CFP12.1 billion for public order and the police, and CFP10.2 billion in retirement provisions for state functionaries. In comparison, the state transferred CFP15.6 billion for the three provinces and CFP11.8 billion for municipal government (MacLellan 2016:15). New Caledonia is a starkly unequal society, generating significant social and industrial conflict between poorer Kanaks and islanders and those in power.

#### 4. Constitutional embedding of the political agreement

The success of the Noumea Accord, in contrast to previous proposals for a political settlement since the 1970s, was in part due to the way that the agreement was constitutionally entrenched following a popular referendum in November 1998. The creation of a special section in the French constitution and the passage of an organic

law in March 1999 ensured that the provisions of the political agreement could not be overturned following a change of government in Paris. In Bougainville too, changes were required to the PNG constitutional laws and the ABG has a veto over changes to the relevant provisions.

Both agreements include provisions on the irreversibility of the transfer of powers. In New Caledonia, a negative decision in a referendum on independence does not change the *status quo ante*, ensuring that the penultimate status of expanded autonomy cannot be rolled back. In Bougainville, the ABG can decide to revert powers to the Government of Papua New Guinea, but Port Moresby does not have the right to reclaim authority already granted to Bougainville.

#### 5. Mining and natural resources

Underlying the conflict in Bougainville and New Caledonia are broader questions of political economy, environmental management and the role of transnational corporations in the exploitation of natural resources.

Mining lies at the heart of the political economy of the two territories, both as a source of grievance and as a source of potential economic viability for a postcolonial nation. In New Caledonia, a central pillar of the Noumea Accord and decolonisation process is economic ‘rebalancing’, with the development of a new nickel smelter in the Northern Province as a pillar of economic development in a largely agricultural, rural area. The decision on Bougainville’s future will be largely determined by the debate on the reopening of the Panguna mine and new mineral projects around the mainland.

In both Melanesian nations, there are extensive debates about the potential economic and employment benefits to be gained from local control of natural resources, but also a widespread critique of environmental damage and inequities in the distribution of benefits from major mining and resource projects.

In both cases, transnational corporations are stakeholders and players in the political process (ERAMET, Vale and Glencore in New Caledonia; Bougainville Copper Ltd and Rio Tinto in Bougainville). The 2016 transfer from Rio Tinto of its shareholding in BCL to both the

PNG government and the ABG has reopened debate on the future of Panguna and the cost of rehabilitating the environment (Regan 2017).

### 6. *International scrutiny*

During their respective periods of conflict, the independence movements in Bougainville and New Caledonia both sought to internationalise the conflict, seeking material and political support from overseas. They attempted to utilise United Nations and other international human rights mechanisms to publicise their cause and pressure the French and PNG governments. In both cases, church, women's and non-government agencies played a significant role in advocacy, lobbying or provision of logistic support.

Beyond this broad principle, however, there were differing levels of engagement with key institutions such as the United Nations, the Pacific Islands Forum and the Melanesian Spearhead Group. The FLNKS drew on regional support in its efforts to be relisted on the United Nations list of non-self governing territories through a UN General Assembly resolution in December 1986. From that time, the FLNKS has continued to utilise the UN Special Committee on Decolonisation as a tribunal to advance its agenda, and has more closely integrated into the MSG (the independence movement, rather than the elected government of New Caledonia, is the official member of the Melanesian group).

In contrast, Bougainville has not been included on the MSG agenda and the forum played a very limited role in the peace process. Because Bougainville is not listed with the UN Special Committee on Decolonisation, UN principles and practice on decolonisation has not paralleled New Caledonia. In contrast, UN agencies have played a much more active role on the ground in Bougainville, with UN agencies active after 1998 and UNDP playing an important role in reconciliation and rebuilding efforts. The UN Peacebuilding Commission is currently investigating a potential role in the lead-up to the referendum.

It is only now, with the New Caledonia referendum looming, that the UN is playing a more public role there. UN observers have monitored the administrative commissions

responsible for updating the electoral rolls in 2017–18, while France has invited a mission of the UN Special Committee on Decolonisation to observe the referendum on 4 November.

### 7. *Monitoring the Accord*

In both cases, the agreements involve a staged process with regularly scheduled elections, mechanisms to allow monitoring and decision points to possibly defer key provisions of the Accord, as well as other mechanisms to promote cooperation and collaboration between divided parties.

On paper, both agreements establish structures to monitor the implementation of the Accord and the peacebuilding process. For Bougainville, the main monitoring mechanism (the JSB) has played an important role in decision-making on the referendum. It is likely to be the main body in which negotiations occur between the two governments on the remaining issues to be resolved about the referendum (including the question to be asked and the date of the referendum).

The New Caledonia *Comité des signataires* (Committee of Signatories to the Noumea Accord) has met regularly to monitor and debate the progress on the staged transfer of powers from Paris to Noumea. France has also deployed senior officials and politicians to promote debate about contentious issues, though their neutrality has been questioned by both sides.

Over time, the *Comité des signataires* has been expanded to include key political parties that were not originally signatories to the Noumea Accord but have developed a key role in local governance. The 2010 committee established three working groups to discuss crucial elements of the exit from the Noumea Accord: a balance sheet on the transfer of powers; a committee to look at options for the referendum after 2014; and an expert review of the future of the nickel industry. Key decisions on the electoral roll and timing of the November 2018 referendum have been made during face-to-face negotiations at the committee, after the full congress of New Caledonia failed to reach consensus.

### 8. *Abandoning the agreed process?*

For members of the independence movements in Bougainville and New Caledonia, the decision to accept a lengthy transition on self-determination does not negate the desire to gain the status of an independent and sovereign nation. However in both cases, there are powerful forces — institutions of the state in Port Moresby and Paris and also competing political forces on the ground — who are seeking to transform or derail the path agreed some years ago.

In New Caledonia, the minority status of the indigenous Kanak people and the presence of long-term and recent migrants from Europe, Wallis and Futuna, and Tahiti require a level of negotiation to implement the provisions of the Accord. As detailed above, divisions within as well as between the competing camps of loyalists and independence supporters makes forming a consensus more difficult.

In Bougainville, the ABG can vote not to hold a referendum, but the complex process required for this decision under the Bougainville constitution makes it almost impossible to achieve. Beyond this, Port Moresby's lack of capacity to fund the necessary transition means there are pragmatic reasons to question the viability of a postcolonial state in Bougainville.

And in both cases, Australia, New Zealand and neighbouring Pacific island states are calculating the impacts on regional stability, economic capacity and human security that two new sovereign nations would generate.

### Regional and international context

South Sudan, New Caledonia, and Bougainville are all cases where a deferred referendum on independence has been used as part of a package intended to end violent disputes. However post-independence violence in South Sudan might suggest a need for caution in use of the precedent elsewhere. There will certainly be strong international interest in what happens in the post-referendum situations in New Caledonia and Bougainville.

The lesson that Bougainville has drawn from consideration of the South Sudan experience has been that it is important that the Bougainville

leadership should not concentrate solely on the referendum, but rather must consider and plan for the post-referendum situation, with a view to ensuring that what they term as the 'transition period' will be peaceful.

French leaders too are emphasising dialogue to focus on 'the day after' the referendum. New Caledonia's decision will affect other French dependencies in the Pacific that do not have a pathway to self-determination. Aside from this point, key functions of the French state in Wallis and Futuna are managed through Noumea, which will complicate any movement towards New Caledonian sovereignty.

Just a few years ago, it seemed uncertain whether the two referendums would actually be held. Now, in New Caledonia, the first referendum will be held on schedule on 4 November 2018. The Bougainville situation might seem less certain, given some of the conflicting statements made by PNG Prime Minister Peter O'Neill in the first half of 2018 (he makes statements about the referendum not being about independence and talks of weapons disposal and good governance being preconditions for the referendum, yet he has also stated that the PNG national government will honour every word in the BPA and that the referendum will be held on the target date of mid-2019).

There is extensive international community involvement in the preparations for the Bougainville referendum, including the pending appointment of former Irish prime minister Bertie Ahern as the chair of the BRC. This international participation points to possible diplomatic problems for the PNG national government should it seek to delay the referendum. Australia is a key development partner, but its role is affected by the fact that a large number of Bougainvilleans see Australia as partly responsible for the conflict during the 1990s — through the mine, through military and diplomatic support for PNG, and through the influence of Bougainville Copper Ltd.

The Pacific Islands Forum also faces complex problems in relation to the three French dependencies. All three hold a different legal and constitutional status within the French republic. The Noumea Accord, entrenched within the French constitution, creates a clear, binding pathway

to a referendum on self-determination, unlike French Polynesia's 2004 autonomy statute and the 1961 statute for Wallis and Futuna. Unlike the Noumea Accord, the other autonomy statutes are not 'irreversible', so powers transferred from Paris to French Polynesia or Wallis and Futuna can be taken back by future governments.

The 2016 decision to incorporate New Caledonia and French Polynesia as full members of the PIF has also complicated relations between the forum and the FLNKS. This is amplified by the increasing strategic partnership between France and Australia — the largest forum member — in the face of growing Chinese influence in the Pacific. Successive ALP and Coalition governments have downgraded support for decolonisation as they look to a broader geopolitical partnership with France in the Indo-Pacific region (Carroll and Ell 2017).

For these reasons, New Caledonia's independence movement increasingly relies on the MSG for international support (for example, to attend the 2018 meeting of the Non-Aligned Movement in Azerbaijan). Within the MSG, successive PNG governments have actively assisted the FLNKS since the 1980s with diplomatic and financial support. However the MSG clearly will not play the same role for Bougainville.

The promised referendums in New Caledonia and Bougainville, as well as popular support for self-determination across Melanesia, complicate the scenario for West Papua. The issue of West Papua has divided the MSG and forum, with larger governments like Australia, PNG and Fiji backing Jakarta's policies, while smaller island states support the United Liberation Movement for West Papua. Civil society activists make little distinction between self-determination in New Caledonia (recognised by the UN General Assembly as a non-self governing territory) and movements in postcolonial states like Indonesia and PNG. Indonesia has also expanded its diplomacy across the MSG states to weaken support for the West Papuan nationalist movement, and will not welcome independence in a PNG province as a precedent for its provinces of Papua and West Papua.

Some scholars and officials argue that the age of decolonisation is over, and the best that

non-self governing territories can expect is some form of negotiated autonomy. Unlike Tokelau, Guam or American Samoa, however, there are still strong independence movements across Melanesia. There is also a changing international context around self-determination, with nationalist movements in the OECD (from Scotland to Catalonia) as well as developing nations.

Are regional governments ready for significant political changes across Melanesia? The lack of media scrutiny and public debate suggests otherwise. Pacific governments and citizens need to get ready for the outcomes of the looming referendums: good, bad or just muddling through.

### Notes on authors

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Nic Maclellan works as a journalist and researcher in the Pacific Islands. He is co-author or editor of a number of books on French policy in the Pacific, including: *La France dans le Pacifique — de Bougainville à Moruroa* (Paris 1992: La Découverte); *After Moruroa — France in the South Pacific* (Melbourne 1997: Ocean Press); and *No Te Parau Tia, No Te Parau Mau, No Te Tiamaraa* (Suva 2000: Pacific Concerns Research Centre).

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1. Philippe Gomes 2017. President of the Calédonie Ensemble party (CE or Caledonia Together), interview with Nic Maclellan.
2. Ibid.
3. Daniel Goa July 2108. President of the Union Calédonienne party (UC or Caledonian Union), interview with Nic Maclellan.
4. Paul Neaoutyine May 2014. President, Party of Kanak Liberation (Palika), interview with Nic Maclellan, Ponerihouen.
5. For more on the development of the Panguna mine, see Mamak and Bedford 1974; Denoon 2000.
6. There are no reliable estimates of the number of deaths, mainly because no records are available,

particularly for deaths of BRA personnel, extra-judicial killings and deaths attributed to the blockade. For a discussion of the difficulties with the data, see Braithwaite et al. 2010:83–92.

7. The words 'North Solomons' were used in the name of Bougainville's provincial government to emphasise links to neighbouring Solomon Islands. However the name of the province, as determined by the Organic Law on Provincial Boundaries, remained Bougainville. For discussion of the issues involved, see Regan 2005:xxvi–xxviii.

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