



THE NATIONAL
RESEARCH INSTITUTE
PAPUA NEW GUINEA

RESEARCH REPORT

ADMINISTRATION OF REFERENDUMS: A COMPARATIVE STUDY OF INDEPENDENCE REFERENDUMS

Andrew Ellis

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- (b) the undertaking of research into social, political and economic problems of Papua New Guinea in order to enable practical solutions to such problems to be formulated.

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Abbreviations & Acronyms

- ABG Autonomous Bougainville Government
- AEC Australian Electoral Commission
- ARSLSM Act on Referendum on State Legal Status of Montenegro 2006 (Montenegro)
- BBC British Broadcasting Corporation
- BEA Bougainville Elections Act 2007 (Bougainville)
- BEAA Bougainville Elections (Amendment) Act 2013 (Bougainville)
- BIB Bougainvilleans inside Bougainville
- BOB Bougainvilleans outside Bougainville
- BPA Bougainville Peace Agreement
- BRC Bougainville Referendum Commission
- CCPR UN Human Rights Committee
- CEDAW Convention on the Elimination of All Forms of Discrimination Against Women
- CL19 Law 19/2017 on the Referendum on Self-determination (Catalonia)
- CPA Comprehensive Peace Agreement (Sudan)
- CRPD International Convention on the Rights of Persons with Disabilities
- ECDL European Commission for Democracy through Law (known as the Venice Commission)
- EMB Electoral Management Body
- EU European Union
- EUEOM European Union Electoral Observation Mission
- FIEO Electoral Ordinance 1988 (Falkland Islands)
- FIRO Referendum (Falkland Islands Political Status) Ordinance 2012 (Falkland Islands)
- GC General Comment
- ICCPR International Covenant on Civil and Political Rights
- ICERD International Convention on the Elimination of All Forms of Racial Discrimination
- IDEA International Institute for Democracy and Electoral Assistance
- IHERC Independent High Electoral and Referendum Commission (Iraqi Kurdistan)
- IHERCL Independent High Electoral and Referendum Commission Law (Iraqi Kurdistan)
- IDP Internally Displaced Person
- IEERT International Election Expert Research Team (Catalonia 2017)
- IKNAEL Kurdistan National Assembly Election Law 1992 (Iraqi Kurdistan)

- ILOM International Limited Observation Mission (Catalonia 2017)
- IOM International Organization for Migration
- ISCA-AIDC International Sustainable Community Assistance—Appui International Durable aux Communautés
- MoU Memorandum of Understanding
- NGO nongovernmental organisation
- OBEC Office of the Bougainville Electoral Commissioner
- OLB Organic Law 2002 on Bougainville (Papua New Guinea)
- OLCN Organic Law 99-209 of 1999 relating to New Caledonia (France)
- OSCE/ODIHR Organization for Security and Cooperation in Europe Office for Democratic Institutions and Human Rights
- PNG Papua New Guinea
- QRA Referendum Act 1978 (Quebec)
- SIRA Scottish Independence Referendum Act 2013 (Scotland)
- SPLA Sudan People’s Liberation Army
- SPLM Sudan People’s Liberation Movement
- SSRA Southern Sudan Referendum Act 2009 (Sudan)
- SSRB Southern Sudan Referendum Bureau
- SSRC Southern Sudan Referendum Commission
- TCC The Carter Center
- UN United Nations
- UNAMET United Nations Mission in East Timor
- UNCAC United Nations Convention Against Corruption
- UNHCR Office of the United Nations High Commissioner for Refugees
- UN OHCHR Office of the United Nations High Commissioner for Human Rights

A note on terminology

Comparative studies of electoral processes must address differences in the terminology used. Countries may differ in the words they use to describe the same activity or concept, and the same word or phrase may mean different things in different countries. Translation can give rise to further confusion.

This study seeks, as far as possible, to adopt standardised and generally recognised terminology, rather than the country-specific terminology of the referendums studied. This may differ from terminology in common use in Papua New Guinea (PNG) and Bougainville.

The most frequent examples are:

Electoral Management Body (EMB) is an authority or authorities that has the sole purpose of, and is legally responsible for, managing some or all essential elements for the conduct of elections or referendums. Where the process is conducted by an authority constituted under the independent model of electoral management, it is often called an election commission or a referendum commission.

Electoral register is the list of people enrolled and determined as eligible to vote in an electoral process. The PNG equivalent is common roll. A person who is named on an electoral register is an elector. A person who casts a vote is a voter.

Calling the referendum refers to the formal triggering of the referendum campaign period, usually including the setting of the polling day or days. The PNG equivalent is issuing the writ.

A polling station commission is the group of electoral officials tasked with operating a polling station. Its chair is the equivalent of a PNG presiding officer.

Executive Summary

Referendums on independence and sovereignty are not isolated electoral events, but are landmarks that have potential enduring consequences in longer term political processes. This means that the broader political and security environment in which they take place cannot be ignored. Within this context, a referendum is a particular kind of electoral process. When planning a referendum, consider these three factors: (a) factors specific to the referendum as the mechanism for making a policy choice; (b) factors common to the success of any electoral process; and (c) factors characteristic of the successful functioning of any organisation. For all three factors, legitimacy and credibility depend on design and on implementation. Good design does not alone guarantee success, but bad or inappropriate design can be a major contributor to failure.

Legitimacy and credibility depend on consultation and communication. Transparency—the active willingness to share both good news and problems—and commitment to wide ranging civic and voter education as part of the electoral process also contribute.

Much of this report is devoted to design issues that are specific to referendums in particular or to electoral processes in general. A case can be made for major changes in the existing electoral framework to try to ensure that it is up to the more intensive pressure and scrutiny that the Bougainville independence referendum is likely to bring. Conversely, such changes may not work perfectly, especially if time for testing of new procedures is limited, and may in addition be open to suspicion that some political player must be seeking to gain an advantage by introducing them for such an important event.

This discussion is particularly important in the context of proposals to increase technology use in PNG elections. Although there may be temptation to use the upcoming Bougainville referendum (the agreed target date for which is 15th June 2019) to pilot changes for the 2022 PNG national elections, the political importance of holding a legitimate and credible referendum counsels extreme caution in doing so. In addition, the joint approach to electoral administration embodied in the composition of the Bougainville Referendum Commission (BRC) must not lead to loss of time while differences of approach are discussed and resolved, especially as the limited international experience of this approach suggests a consensus-building approach within the BRC will be important.

The substance of many referendum practicalities is challenging. For example, the limitations of the existing model of electoral registration have been illustrated over a long series of elections. Out of territory voting may be particularly sensitive and complex, requiring issues of electoral integrity, inclusion, cost, and timetabling to be resolved.

Good decisions about these and other aspects of the electoral framework are only half the story. Effective and timely implementation is essential. Decisions about management, administrative and financial structures and practicalities are required. Many of these relate to issues that are not specific to the electoral field, but must be addressed in any organisation in order to make it function well. Although general questions of management and implementation do not occupy as much of this report as do the specifically electoral questions, they are just as important.

These decisions need to be linked to a realistic understanding of the administrative, financial and human resources management skills that exist; systems need not only to look good on paper but to be functional based on the competences and resources that are available. Registration, for example, requires effective organisation, training and logistics, good communication and voter education, and a secure atmosphere. The more training and practice that is done for registration, polling and counting, the better.

Budget and cashflow therefore need to be available well in advance of polling day. The financing of elections and

referendums always depends on the political will and capability to make the necessary resources available at the right time. Assessments of the Southern Sudan referendum of 2011, the ABG elections of 2015, and the PNG national elections of 2017 all identified late payment or non-payment of polling station staff as one of the most potent threats to a successful electoral process.

A clear message to Bougainville referendum planners emerges that a focus on management and funding issues, and not only on electoral issues, is crucial. Ensuring that an organisation works involves building capacity and functionality: these cannot be created at the last minute. A timely start and a timetable that has contingency for delays are both critical.

In addition, when an electoral process relies on funding from the international community, the potential funders often do not focus on what is needed until the upcoming vote hits their political radar—this may not occur until close to polling day, and the procedures for mobilising development assistance money may then not be instantaneous. Truncation of electoral preparations and corner-cutting then result from politically-induced delays and from cashflow-induced delays.

It is almost inevitable that a one-off electoral process such as an independence referendum will have organisational and administrative rough edges. If in addition the existing institutional culture includes the belief that things will be good enough on the day and a tendency towards last minute solutions, severe dangers to legitimacy and credibility are likely to arise as a result of rushed or inadequate implementation—however good the design of the process has been. Although June 2019 is still 15 months away at the time of writing, time is already of the essence. The more that decisions about how the Bougainville referendum process will work are delayed, the more will acceptance of the integrity of the referendum outcome—whichever option is chosen by the voters—be open to question.

Not everyone will fully share the commitment to success that a good election administration will radiate, and even supporters of a good electoral process may have vested interests or partisan advantage to seek. It is necessary to regularly question how things will work, what opponents of the process may do to undermine or circumvent it, and how special interest groups may try to redirect the process for their own benefit. The answers may identify weaknesses and areas that need attention and are essential to address.

Many of the challenges that face planners and organisers of the Bougainville referendum are already known from previous elections for the parliament of PNG and for the ABG. The comparative experience of independence and sovereignty referendums conducted in other regions of the world provides a rich and wide range of ideas and practices that may inform approaches to issues of design and of implementation of specific electoral matters and the effective management and delivery of the election process. Although no blueprint can (or should) exist, the knowledge gained from experience can provide important information and insights for referendum stakeholders in Bougainville and across PNG. This study seeks to provide that assistance by collating experience from recent independence referendums.

Ch. 1 The legal framework for referendums

International standards for electoral processes

The standards by which an electoral process may be considered legitimate and credible have been discussed for well over 20 years. It is accepted that these standards are based on public international law, which provides a framework of obligations of behaviour and respect for human rights that states have voluntarily accepted through their accession to and ratification of international and regional conventions and treaties (International Institute for Democracy and Electoral Assistance [IDEA,] 2014a; The Carter Centre [TCC], 2014). In addition to treaties and conventions, other sources of international standards are the jurisprudence of international courts and treaty monitoring bodies, and political commitments and declarations.

PNG is a signatory to all five international treaties and agreements recognised as giving rise to the major obligations and commitments relating to international electoral standards. These are the:

- International Covenant on Civil and Political Rights (ICCPR), to which PNG acceded in 2008;
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), to which PNG acceded in 1982;
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which PNG acceded in 1995;
- International Convention on the Rights of Persons with Disabilities (CRPD), which PNG ratified in 2013; and
- United Nations Convention Against Corruption (UNCAC), which PNG ratified in 2007.

Article 55 of the Bougainville Peace Agreement (BPA) clarifies that obligations under treaties and other international agreements to which PNG is or becomes a party apply to Bougainville.

These obligations assumed by PNG are not subject to oversight by a world policing agency with an enforcement function — no such agency exists. The provisions of the treaties are, however, accompanied by derived jurisprudence, in particular through the role of the UN Human Rights Committee in hearing specific complaints and in interpretations of the ICCPR through General Comments (GCs). CCPR GC25 was adopted by the Committee in 1996 (UN OHCHR, 1996) and addresses public participation and the right to vote; this is of especial relevance to electoral processes.

International standards and referendums

Specific references to referendums in key international documents about electoral processes are limited. The ICCPR, the earliest of these documents, was written when referendums were comparatively uncommon, and makes no specific reference. However, the jurisprudence developed under ICCPR by the UN Human Rights Committee (CCPR) does contain relevant material. CCPR GC25 states in paragraph 6 that referendums to decide public affairs constitute participation in public affairs for the purposes of ICCPR Article 25(b). GC25 also states, in paragraph 19, that:

“Persons entitled to vote must be free to vote ... for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector’s will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.”

This statement applies ICCPR obligations relating to right and opportunity to vote, freedom of opinion, access

to information and right to security of the person to referendums. Other international obligations can be inferred by analogy with elections, except for the right and opportunity to be elected and periodic elections, which do not apply. CRPD Article 29, under which states shall guarantee persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, refers directly to referendums, as does CEDAW Article 7 about equality of voting rights.

In its report on the Southern Sudan referendum, the European Union Electoral Observation Mission (EUEOM, 2011, p14) noted that:

“international electoral commitments from legal texts such as the ICCPR and the African Charter on Human and Peoples’ Rights, both of which Sudan has ratified, include commitments that apply equally to referenda as to electoral processes. These include commitments to provide an accessible and transparent voter registration exercise, to ensure secrecy of the vote, to ensure equality among voters, to ensure transparency in counting and aggregation, and to make available an effective legal remedy.”

Principles for constitutional provisions, legislation and other instruments governing referendums

The European Commission for Democracy through Law (ECDL, also known as the Venice Commission) published a reference instrument in 2013 that combined its studies of electoral law and practice in Europe into a single code of good practice (ECDL(VC) 2013). In addition to the general discussion of electoral law matters in this instrument, a separate part of the document specifically considers good practice issues for referendums. Although the instrument considers referendums in general rather than in the specific context of sovereignty or independence and is based on the electoral heritage of Europe, it is nonetheless informative for discussions on good practice elsewhere.

An earlier opinion of the Venice Commission in 2005 on issues relating to the Montenegro independence referendum included material on the role of international electoral principles in the referendum context (ECDL(VC) 2005 paragraphs 12–15). This stated that:

”the internationally recognised fundamental principles of electoral law, as expressed for example in Article 25 of the ICCPR, have to be respected, including universal, equal, free and secret suffrage. For a referendum to give full effect to these principles, it must be conducted in accordance with legislation and the administrative rules that ensure the following principles:

- the authorities must provide objective information;
- the public media must be neutral, especially in news coverage;
- the authorities must not influence the outcome of the vote by excessive, one-sided campaigning;
- the use of public funds by the authorities for campaigning purposes must be restricted.

Free suffrage includes freedom of voters to form an opinion as well as freedom of voters to express their wishes. Moreover, the freedom of voters to form an opinion includes not only the objectivity of public media as mentioned above, but also a balanced access of supporters and opponents to public media broadcasts. The freedom of voters to express their wishes implies that any question submitted to the electorate must be clear (not obscure or ambiguous); it must not be misleading; it must not suggest an answer; voters must answer the questions asked by yes, no or a blank vote.”

The UK Electoral Commission is an independent UK wide body established by the UK Parliament that regulates party and election finance, sets standards for well-run elections and referendums, and has responsibility for the overall conduct of UK wide referendums (although it is not responsible for the conduct of UK elections). It has summarised its approach to the design, administration and implementation of referendums in the following principles for voters, campaigners and administrators:

Voters

Our focus is putting voters' interests first. There should be no barriers to voters taking part. This means that:

- Voters can easily understand the question (and its implications).
- Voters are informed about the possible outcomes, and can easily understand the campaign arguments.
- Those eligible can register to vote.
- Voters can have confidence that campaign funding is transparent; distribution of any public support and access to media is fair; any rule-breaking will be dealt with.
- The voting process should be easy to take part in and well-run.
- The result and its implications should be clear and understood.

Campaigners

There should be no barriers to campaigners putting forward arguments for any of the possible outcomes. This means that:

- it is easy to register as a permitted participant and to take part in campaigning;
- the rules that govern campaign spending and fund-raising activity are clear and fair;
- the process for designating lead campaign organisations for each outcome (and consequent distribution of public funds and access to the media) is easy to understand, and is accepted as fair.

Administration

The referendum should be administered efficiently and produce results that are accepted. This needs:

- a clear legal framework with clear roles and responsibilities communicated to those who are bound by them;
- clear guidance and efficient procedures for voters, campaigners and administrators;
- performance standards against which the performance of EROs and Counting Officers at referendums is evaluated.;
- an efficient process for distributing funds to campaigners and administrators;
- rapid and clear reporting on campaign funding and spending
- a timely and persuasive report on how the referendum worked.

The legal framework for the Bougainville referendum

The commitment to hold a referendum amongst Bougainvilleans on the future political status of Bougainville is the second pillar of the BPA reached by the government of PNG and leaders representing the people of Bougainville in 2001. The choices available in the referendum are required to include the separate independence of Bougainville. The commitment is fleshed out in the body of the BPA (BPA articles 309 to 328), which includes the requirement that the outcome of the referendum will be subject to ratification (final decision-making authority) of the parliament of PNG. As consequence, provisions on the referendum were added to the constitution of PNG (BPA articles 338 to 343) and then included in the 2004 constitution of the Autonomous Region of Bougainville (BPA articles 193 and 194). The Organic Law on Bougainville (OLB) gives further detail, including options for the electoral management framework of the referendum and detailed procedures for the registration, polling and counting processes (OLB sections 52 to 63 and schedule 1). A fuller analysis of these provisions has been provided by Anthony Regan (Regan, 2016), who discusses the relationship of the referendum to issues, in particular good governance and weapons disposal, that lie outside the scope of this study.

The legal framework for recent independence referendums

i. Quebec 1980 and 1995

In their successful provincial election campaign in 1976, the Parti Quebecois promised a referendum on sovereignty. In government, it enacted legislation to establish a general framework for provincial referendums, the Referendum Act 1978 (QRA), under which the parliament could specify either a question or a bill to be put to referendum. Two referendums on the sovereignty of Quebec have been held under this legislation, in 1980 and 1995 (LeDuc, 2003).

ii. East Timor 1999

A vote on an autonomy package on the future of East Timor was announced by the president of Indonesia, B J Habibie, and subsequently agreed to by the Indonesian Cabinet during January 1999 (Greenlees & Garran, 2002). This vote was defined as a ‘popular consultation’—in practice, a referendum—in March 1999 and was formalised in the agreement reached on 5 May 1999 between Indonesia and Portugal at the United Nations (UN) (United Nations, 1999a). Under this agreement, the ballot would be organised by the UN, with Indonesia retaining responsibility for security and rule of law. No agreement existed for the enactment of legislation governing the ballot, and the legal framework for the referendum was defined through Directions given by the UN to the UN Mission in East Timor (UNAMET) (United Nations, 1999b).

iii. Montenegro 2006

Following the collapse of the Socialist Federal Republic of Yugoslavia in the early 1990s, Serbia and Montenegro remained as the two components of the Federal Republic of Yugoslavia. This relationship proved to be unstable and lacked legitimacy. Negotiations resulted in the adoption of the 2003 constitution of the State Union of Serbia and Montenegro, based on a much looser relationship between the two states. This constitution contained, in Article 60, a power for either state to initiate breakaway proceedings after three years had passed through a referendum. The Assembly of Montenegro duly passed the Act on Referendum on State Legal Status of Montenegro (ARSLSM) in 2006.

iv. Southern Sudan 2011

A Comprehensive Peace Agreement was signed on 26 May 2004 between the Government of Sudan and the Sudan People’s Liberation Movement/Sudan People’s Liberation Army (SPLM/A). Under its terms, at the end of a six-year period, an internationally monitored referendum organised jointly by the Government of Sudan and the SPLM/A would take place. This would give the people of Southern Sudan the choice to confirm the unity of Sudan by adopting the system of government created under the peace agreement, or to vote for secession. This referendum was duly called when the National Assembly of Sudan of the Southern Sudan Referendum Act 2009 (SSRA) was passed.

Although the governing party in Sudan threatened on numerous occasions during the six-year interim period to block the referendum from proceeding and/or withhold recognition of the process, the declaration made by Sudanese president Omar al-Bashir on 31 December 2010 and subsequently that he would unconditionally accept the result of the referendum — even if the outcome was for secession — cleared any political obstacles to endorsement of the result (EUEOM 2011).

v. Falkland Islands 2013

The Falkland Islands, also claimed by Argentina as *Islas Malvinas*, are a British Overseas Territory. In mid-2012, the Falkland Islands Government, with the support of the UK government, announced a referendum on the political status of the islands. The Legislative Assembly enacted the Referendum (Falkland Islands Political Status) Ordinance (FIRO) later that year. Some major matters, including the question, the timing of the referendum, and the text of the official information leaflet, were determined through subsequent executive orders.

vi. Scotland 2014

Under the Scotland Act 1998, the UK legislation that established the devolved Scottish parliament, and matters relating to the union of Scotland and England were reserved to the UK. The governments of Scotland and of the UK subsequently agreed in Edinburgh (HM Government and The Scottish Government, 2012) that a referendum on Scottish independence should take place. Orders were laid in both Parliaments to facilitate this referendum, following which the Scottish Parliament enacted the Scottish Independence Referendum Act 2013 (SIRA).

vii. Catalonia 2014

In early 2014, the parliament of Catalonia requested the Spanish parliament to consider, in line with procedures in the Spanish constitution, enacting an organic law that gave the Catalan government power to call a referendum on the political future of Catalonia. This request was refused by the parliament of Spain. The Spanish constitution reserves the holding of referendums exclusively to the Spanish state, while the Statute of Autonomy of Catalonia (2006) gives exclusive competence to Catalonia for the holding of other popular consultations. In response, Catalonia enacted a law (Law 10/2014) on popular consultations, which states that the government may call for expression of opinion by a vote. The president of the government of Catalonia then issued a decree (Decree 129/2014) calling for a 'popular non-referendum consultation'. This law and decree were challenged in the Constitutional Court of Spain, which ruled to suspend them. In response, the president of the Catalan government called for a 'participatory process' of 'prior consultation', the legal basis for which was unclear. Although the Constitutional Court of Spain also suspended this, the vote took place on 9 November 2014.

There was a lack of formalisation both in the application of the general legal framework and in the lack of regulatory provisions or administrative acts giving the process a specific legal status or specifying the details of how it would take place. Most of these details appeared only on the government of Catalonia's website (www.participa2014.cat) or in emails to the media who, in accordance with the Catalan Audiovisual Communications Act, were obliged to broadcast communications from the government regarding the participatory process. This lack of formalisation, coupled with the short timetable adopted, made it difficult for the Spanish state to take action against the participatory process (Government of Catalonia, 2015).

viii. Iraqi Kurdistan 2017

In April 2017, the governing political parties in Iraqi Kurdistan announced their intention to hold a referendum on independence. A presidential decree issued on 8 June contained a basic legislative framework for the referendum and confirmed the date as 25 September. Although specific legislation for the referendum was drafted, the parliament—which had not met for two years because of disputes between major groups—did not convene to enact it. A session of parliament subsequently took place on 15 September that ratified the holding of the referendum but did not enact the legislation. The referendum took place under the decree and the provisions of existing electoral legislation.

ix. Catalonia 2017

On 6 September 2017, the parliament of Catalonia passed Law 19/2017 on the Referendum on Self-determination (CL19). This law contained a provision stating it established an exceptional legal regime that gave it precedence in the hierarchy of laws (CL19 Article 3(2)), and stated that the referendum called under its terms would be binding (CL19 Article 4(3)). Any provision of local, Catalan or Spanish law that did not contravene this law would remain in force, and provisions of European Union (EU) law, international law and international treaties would continue to be applicable (CL19 Final Provision 1). A Catalan presidential decree was issued calling a referendum under this law to take place on 1 October 2017. The Spanish government immediately challenged this legislation before the Constitutional Court of Spain, which suspended it the next day. Catalonia nonetheless proceeded to hold the vote on 1 October 2017.

x. New Caledonia 2018

The Nouméa Accord, an agreement between the government of France and the two major political groups in

New Caledonia, was signed in May 1998. This provided for an initial referendum to take place in 1998 on the political structures of New Caledonia, and the subsequent passage of an organic law (realised under provisions added to the Constitution of France in articles 76 and 77). A further referendum was to follow between 2014 and 2018. The organic law, enacted in 1999, contains provisions for the timeframe, structure of the electoral management body (EMB), franchise, electoral register, polling procedures, media access for campaigners, and procedure in the event of a challenge to the referendum result (Organic Law 99-209 of 1999 relating to New Caledonia [OLNC] articles 216–222). Further arrangements for this referendum were agreed and announced following a meeting between the government of France, and the government and parliamentarians of New Caledonia on 2 November 2017, and the referendum is scheduled to take place on 4 November 2018.

xi. Summary of the legal framework experience

The independence/sovereignty referendums of recent years show that political agreement — or its absence — by significant actors both within the territory whose independence is under consideration and within the state that contains it is a major factor affecting the likelihood of a peaceful outcome of the referendum process within the rule of law. This is true both of referendums conducted under an international agreement and of referendums called unilaterally in the territory. In Quebec (1980 and 1995), Montenegro (2006), Southern Sudan (2011), the Falkland Islands (2013), and Scotland (2014), a legal framework existed that was in practice accepted and honoured at both levels — although with varying levels of enthusiasm. All of these referendums produced outcomes that, while not necessarily welcome to some stakeholders, were accepted in practice and were followed by a continuing political process (even though the general issue of violence remained critical in the new state of South Sudan that emerged). The same common acceptance appears to be true, at the time of writing, of the ongoing process in New Caledonia.

In East Timor, even though the referendum process had been initiated by the president of Indonesia, it was not accepted by major elements of the military and by local militias. The vote for independence was followed by large scale violence and a scorched earth policy by the departing Indonesian forces.

No common agreement or understanding has existed between the governments of Catalonia and Spain at least since 2010. Finding all avenues to a legal vote blocked by the government of Spain and the rulings of the Constitutional Court of Spain, the government of Catalonia in 2014 initiated an informal and essentially ad hoc process. In 2017, its successor sought to proceed through a referendum recognised only by the authorities in Catalonia, suspended by the Spanish Supreme Court and considered as illegal by the government of Spain. Violence occurred on polling day as the Spanish police force was deployed to attempt to stop the vote taking place. After the referendum, the Spanish government invoked a previously unused provision of the Spanish constitution to suspend Catalonia's autonomy and call for new elections to the Catalan parliament.

Drafting and agreeing the referendum question(s)

i. Legal basis

The BPA does not specify the text of the question(s) to be asked in the Bougainville referendum. However, it contains provisions that the question(s) should be clear and agreed to by the national government of PNG and the Autonomous Government of Bougainville, and that the choices should be so presented to facilitate a clear result (BPA Article 316). These provisions are restated in the amended constitution of PNG, which also reiterates the requirement to include a choice of separate independence for Bougainville (Article 339).

However, the most common practice for formalising the text of a referendum question is to include it in the text of the legal instrument establishing the referendum. For the independence referendums in Quebec, Montenegro, and Scotland, this instrument was the legislation passed by the parliaments of those entities. For the referendum on Southern Sudan, it was the legislation passed by the National Assembly of Sudan. In East Timor, the question was included in the agreement of 5 May 1999 (United Nations, 1999b). In Catalonia in 2014, the two questions were based on an agreement reached in December 2013 by six political parties represented in the Catalan parliament; they were included in the decree calling the 'popular non-referendum consultation', and carried

into the prior consultation process that ultimately took place. In 2017, the single question was specified in the referendum legislation enacted by the Catalan parliament (CL19, Article 4(2)). The question for the referendum in Iraqi Kurdistan was included in the presidential decree that called the referendum. The question for the 2018 referendum in New Caledonia will be contained in the decree that calls the referendum, to be issued by the government of France after consultation with the government of New Caledonia (OLNC Article 216).

ii. Drafting principles

The UK Electoral Commission has a statutory duty to comment on the intelligibility of proposed referendum questions, and has developed guidelines for the substance of question assessment and for the process of undertaking the assessment (Electoral Commission, 2009a, 2009b). A question should be easy to understand, to the point, unambiguous, non-biased (i.e., should avoid encouraging voters to consider one response more favourably than another), and not misleading. The assessment process includes consultation with academic experts and with stakeholders such as political parties and campaign groups, as well as research with the public.

The Venice Commission has considered the principles that apply to the drafting of referendum questions. Its guidelines for the holding of referendums include three tests (ECDL (VC) 2013, Section III paragraph 2, p. 215).

The first test is that of unity of form (ECDL(VC) 2013, sections 71–72, p. 241). This states that a referendum question may not combine a specifically worded draft amendment to a constitution, law or other measure with a generally worded proposal or question of principle. It is designed to ensure lack of ambiguity.

The second test is unity of content (ECDL(VC) 2013, sections 73–74, p. 241). This states that where a total revision of a constitution or other legal instrument is not being proposed, there must be an intrinsic connection between each part of the referendum question. Unlinked or tenuously linked proposals should not be bundled together into a single question.

The third test is unity of hierarchical level (ECDL(VC) 2013, sections 75–76, pp. 241–242), which applies solely to specifically worded draft amendments, and states that these should not apply simultaneously to the constitution and subordinate legislation.

These three tests may not all be relevant in every context. After they have been cleared, the Venice Commission proposes a further requirement relating to the question (ECDL(VC) 2013, section 77, p. 242): ‘the question submitted to the electorate must be clear (not obscure or ambiguous); it must not be misleading; it must not suggest an answer; electors must be informed of the consequences of the referendum; voters must answer the questions asked by yes, no or a blank vote’.

While these tests and questions have been complied with in most recent independence/sovereignty referendums, this has not always been true. The question in the Quebec referendum of 1980 contained 109 words, and in both 1980 and 1995 the questions did not contain the words ‘independence’, ‘secession’ or ‘separation’, but included reference to potential negotiations of association agreements with the rest of Canada in the event of a Yes’ vote (House of Commons Library, 2013). As a result, the federal parliament of Canada enacted the Clarity Act 2000, claiming to itself the competence to decide whether question wording was clear and imposing a requirement that in any future referendum on secession, a Yes vote of at least 50 percent of the electorate will be required. The Quebec parliament responded through legislation claiming to itself the exclusive competence to resolve all questions arising from a referendum, and specifying a simple majority as the requirement for a proposition to be agreed (Sen, 2015). These pieces of legislation sow the seeds of conflict between federal and provincial levels should another independence referendum enter the Quebec political agenda.

The Edinburgh agreement (HM Government and The Scottish Government, 2012) contained a provision under which the UK Electoral Commission would be responsible for advising on the referendum question in Scotland. This advice was duly sought by the Scottish Government and provided (Electoral Commission, 2013) during the drafting of the referendum legislation. The Electoral Commission’s guidelines require the question to be clear, simple and neutral, and the Commission recommended a change to the originally proposed draft of the question,

replacing the Scottish government's proposed wording — 'Do you agree that Scotland should be an independent country?' by the wording 'Should Scotland be an independent country?' While the Electoral Commission saw no evidence that 'Do you agree...?' was deliberately intended to encourage voters in a particular direction, some responses to their consultation suggested that this might be perceived to be the case. The question was duly revised and appears in the Scottish Independence Referendum Act 2013 enacted by the Scottish Parliament (SIRA section 1(2)).

The question for the Falkland Islands' referendum was drafted using the UK Electoral Commission guidelines on fairness and intelligibility and was subsequently proposed by the Legislative Assembly. The Falkland Islands Executive Council held a public consultation on the wording through public meetings, broadcast and print media and online (MIOR/RIOM, 2013) before the final text was adopted as subsidiary legislation through the Referendum on Political Status (Question) Order 2012.

In almost all of the referendum processes studied, voters were faced with a single question to which Yes, No, abstention or spoiling of the ballot were the only possible responses, in line with the Venice Commission guidelines. The consultation of 2014 in Catalonia is the single exception: voters were asked 'Do you want Catalonia to become a State?' and 'If the answer is affirmative, do you want this State to be independent?' (Government of Catalonia, 2015). A vote on the second question could only be cast by a voter who had voted Yes to the first. There appeared to be little comment on the clarity of this formulation in 2014; however, the IEERT observation mission noted that exactly what had been meant by a Yes answer to the first question and a No to the second was unclear (IEERT, 2017).

Thresholds of turnout and of support

i. The principles behind thresholds

Sometimes there is discussion sometimes on whether any form of minimum requirement for participation is necessary or desirable to give clear legitimacy to the result of a referendum. Such a threshold may take one of three forms: a threshold for electoral participation (a turnout threshold); a threshold requiring some level of supermajority support for the referendum proposition to be carried (an approval threshold); or a requirement that to be carried, the Yes option requires both a majority of the valid votes cast and the support of a pre-specified proportion of the whole electorate.

Using thresholds in referendums is common enough practice to be accepted as a valid element of a legal framework, and is positively supported by some analysts (Sen, 2015). In a 2005 opinion in the context of Montenegro, the Venice Commission indicated that although the absence of a requirement for a specific level of support was consistent with international standards, a higher level might be required to provide legitimacy to the outcome of a referendum, particularly given the importance of any decision relating to independence (ECDL(VC) 2005). However, the Venice Commission has now released guidelines on referendum conduct that state neither a turnout nor an approval threshold is desirable (ECDL (VC) 2013, Section III paragraph 7, p. 217). In doing so, it draws attention to the possibility that where a turnout threshold is in place and a simple majority of voters which is however less than half the total electorate exists for the Yes option, it may be possible for the No campaign to ensure defeat of the referendum proposition by asking its supporters to abstain from the poll instead of voting No. It also points out that a difficult political situation may emerge where an approval threshold is in place and the Yes option gains a majority which is insufficient to clear the threshold. However, if a threshold is introduced, an approval threshold is preferable to a turnout threshold (ECDL(VC) 2013, section 111, p. 247).

To illustrate the potential difficulties associated with turnout thresholds, suppose that a referendum is held with the result shown in this table. Eighty-one percent of the electorate voted, and 80 percent cast valid votes. The Yes option was successful.

	<i>Percentage of electorate</i>	<i>Percentage of valid votes</i>
<i>Yes</i>	44%	55%
<i>No</i>	36%	45%
<i>Blank or spoilt</i>	1%	
<i>Did not vote</i>	19%	

Now suppose that a 50% turnout threshold is required. The Yes vote remains the same. The No campaign, however, realises that it is likely to lose, and calls upon its supporters not to vote, and most follow this call. This is the result:

	<i>Percentage of electorate</i>	<i>Percentage of valid votes</i>
<i>Yes</i>	44%	92%
<i>No</i>	4%	8%
<i>Blank or spoilt</i>	1%	
<i>Did not vote</i>	51%	

The Yes option has the same level of support as above — but it fails, because the turnout is only 49 percent. This poses the question: which of these two outcomes will have greater legitimacy, credibility and acceptance within the community?

ii. Thresholds: global experience and practice

In practice, thresholds of any kind have only been adopted in a minority of independence or sovereignty referendums. No threshold was used in Quebec, East Timor, the Falkland Islands, Scotland, Iraqi Kurdistan or Catalonia, and none will be used in the New Caledonia 2018 referendum. Montenegro, however, required both a turnout threshold of 50 percent of registered voters and an approval threshold of 55 percent of valid votes to be reached for a decision in favour of the independence option to be achieved (ARSLM Article 6). In practice, both were achieved, the second albeit narrowly.

In Southern Sudan, a turnout threshold of 60 percent was required; in the event of turnout not reaching the threshold, the referendum would be held again within 60 days of the declaration of the result (SSRA Article 41(2)). A contingency in the event turnout in the second referendum also failed to reach the threshold was not specified; fortunately, turnout exceeded 90 percent.

According to the EUEOM, the SPLM responded to the incentives created by the turnout threshold by appearing to aim on the ground for 100 percent turnout in Southern Sudan. The mission reported that ‘the campaign climate focused on maximising voter participation. Clear intimidation tactics were observed on occasion, and contributed to the eventual overwhelming turnout’ (EUEOM, 2011, paragraph 13).

In addition, a potential lacuna existed in the Southern Sudan legislation (SSRA Article 41(3)). An absolute majority of votes cast was specified as necessary for the success of either the unity or the secession option. Had the result been very close, the existence of invalid votes might have led to neither option being successful, and a situation of political uncertainty. The overwhelming support for the secession option made this problem theoretical in practice. However, this lacuna could have been avoided: it is always good practice to ask ‘what if?’ questions during the drafting process to identify areas which will be problematic in certain circumstances.

iii. Lessons for the Bougainville discussion

In situations where one option in a referendum gains overwhelming support, the threshold discussion may ultimately have little relevance. Where support is more closely balanced, either the absence or the presence of a threshold can be justified as in line with international standards, with an approval threshold being the preferable form if one is used. The decision in any particular context therefore needs to emerge from a community-wide discussion as to what will best ensure political legitimacy and acceptance of the consequence of a close outcome. In this respect, the potential domestic response would be paramount. As a matter of practical politics, the

international perception and potential response may also be worth considering; international perceptions of the Bougainville referendum outcome will inevitably influence international political reactions. This will in turn affect, whatever the outcome, how subsequent issues of external support and recognition play out.

Referendum timetable

i. Guidelines and legal basis

The UN has given general guidance regarding election timelines: each time an election is scheduled, the dates set out in the electoral calendar for each phase must allow adequate time for effective campaigning and public information dissemination, for voters to inform themselves, and for the necessary administrative, legal, training and logistic arrangements to be made. The electoral calendar should be publicised as part of civic information activities, in the interests of transparency and of securing public understanding and confidence in the process (United Nations, 1994, paragraph 75). Further, in relation to elections, the electoral calendar should provide adequate time for campaigning and public information efforts (United Nations, 1994, paragraph 108). There does not appear to be any reason why this guidance does not equally apply to referendums.

The timetable for the Bougainville referendum is considered in the organic law, using a mechanism that lays down provisions for the issue and return of the writ calling the referendum. Polling begins between eight and 11 weeks from issue of the writ, and may not last more than 14 days (OLB Schedule 1 section 1.42).

ii. Timetable: global experience and practice

The detailed schedule for the East Timor consultation process was outlined in the agreement of 5 May 1999 (United Nations, 1999a, Section D). However, the logistical impracticality of the tight timetable envisaged led to its subsequent amendment, delaying polling from 8 August to 30 August. Although meeting even this date was a major practical challenge, external political events and timetables, especially in Indonesia, precluded delaying the polling day.

In Montenegro, the legislation vested the responsibility for calling the referendum and fixing its date in the parliament. At least 75 days' notice was required (ARSLSM Article 4).

In Southern Sudan, the date of polling (9 January 2011), was fixed over a year in advance through a provision in the legislation citing the requirements of the constitution which was based on the Comprehensive Peace Agreement (CPA;SSRA sections 3 and 5). This led to what the EU observation mission described as a pragmatic view that the 9 January 2011 date was mandatory and other matters were subservient. In practice, this meant when delays occurred, time periods provided in detailed procedures for subsequent stages of the electoral process were truncated.

In Scotland, the legislation provided that at least 25 working days' notice of the date of the referendum should be given (SIRA Schedule 3 section 1(1)). In the Falkland Islands, the legislation provided a six-month window for the holding of the referendum (FIRO section 6); the dates finally chosen were enacted in a subsequent executive order.

In Iraqi Kurdistan, the presidential decree calling the referendum fixed a polling day between 15 and 16 weeks after its issue.

In Catalonia, both the informal process of 2014 and the referendum of 2017 occurred within very short timetables. In 2017, the legislative provision that the start date and duration of the election campaign was to be contained in complementary and implementing regulations to be issued by the government (CL19 Article 9(2)). The rejection by the Spanish government and judiciary of the legitimacy of the process led to concerns by the Catalan electoral administration about repercussions on those involved in electoral preparations. This then led to work in anonymity and without transparency, as a consequence of which the International Limited Observation Mission (ILOM) concluded that the referendum did not comply with accepted international standards (ILOM, 2017).

iii. Lessons for the Bougainville referendum

The wide variation in administrative resources, training requirements and, above all, logistics constraints between countries and territories means no guidance on specific timetable periods can be given that covers all or even most referendums. The timetable that is adopted in the Bougainville context needs to be credible and feasible to allow sufficient time for each stage of the electoral preparations, and ensure that campaigners and voter education organisers are realistically enabled to communicate their message throughout the country or territory, and that electoral participants have a realistic mechanism for their complaints to be submitted and heard.

The timetable discussion is not merely a one-off planning exercise at the beginning of the electoral process. In almost all electoral processes, especially where historical precedent and institutional memory are limited, the schedule for the early stages of the electoral process will inevitably slip. Indeed, it is not unknown for political actors to delay progress on electoral preparations for political objectives. The electoral management body (EMB) — the BRC — therefore needs to keep the timetable under continuous review to identify bottlenecks in electoral implementation and to devise strategies to avoid or overcome them, and closely monitor activities that lie on or near critical paths.

Nonetheless, the EMB may still be faced with the necessity for polling day to be delayed, as happened in Timor-Leste. It may also find itself permitting the time allowed for later stages of pre-polling activity to be squeezed to maintain a fixed polling day, as in Southern Sudan. Either course may have credibility costs for the referendum, and any such decisions will be a matter of judgment.

The franchise

i. Legal basis

International obligations address franchise issues through the provisions in the ICCPR on the right and opportunity to vote and the right of the universal suffrage of every adult citizen (ICCPR Article 25(b)). The BPA contains a provision (BPA section 315) which provides a base for defining the franchise for the referendum. All residents of Bougainville of voting age are entitled to be registered provided they can demonstrate six months' residence, are not under sentence of death or more than nine months' imprisonment, have not been convicted of electoral offences in the previous three years, and are not dual citizens (Constitution of PNG Article 50). Non-resident Bougainvilleans are also entitled to be registered, but no definition of a non-resident Bougainvillean is included in the BPA: this is made subject to later agreement between the government of PNG and the ABG.

The franchise for Bougainville is also referred to in the organic law, but is not defined further. Before the date for the referendum can be set, a formal written agreement is required between the governments of PNG and Bougainville on the links with Bougainville that are necessary for a person not resident in Bougainville to qualify as an elector (OLB section 55).

ii. Franchise: global experience and practice

A specific definition of the franchise—the qualifications required for a person to be validly registered as an elector—has been created for some independence and sovereignty referendums. In other cases, the practices and mechanisms used in regular elections have been followed.

For East Timor, the franchise was defined in the 5 May 1999 agreement (United Nations, 1999a, Section C). To be eligible to vote, a person needed to be aged 18 years, and to have been born in East Timor or have one parent born in East Timor, or be the spouse of a person who fell into either of these categories.

In Southern Sudan, the franchise was defined in the implementing legislation passed by Sudan (SSRA Article 25). Eligible voters were required to be aged 18 years and of sound mind. In addition, eligible voters were required to have or have had parents belonging to indigenous communities of Southern Sudan before 1 January 1956, or to have traceable ancestry to a Southern Sudan ethnic community, or themselves, their parents, or their grandparents to have been permanently resident continuously since 1956.

The Scottish Government wished to implement a reduction of the voting age, previously 18, to 16 at the referendum - both as one of its general policy objectives and because it believed that younger voters would be

more likely to favour the Yes option supported by the Scottish government. In this desire, it was following a long history of franchise enlargements around the world in which not only a commitment to the principles of inclusion, but prospective partisan advantage to those implementing the change, was likely to have been a strong motivation. The USA, Canada and the UK all provide such examples in the introduction or extension of out of country voting (International IDEA and IFE Mexico, 2007, pp. 41–44).

As a result, 16- and 17-year-olds became eligible, for the first time, to vote in Scotland. The mechanism to achieve this was the creation an additional register of young voters as provided in a separate new piece of legislation, the Scottish Independence Referendum (Franchise) Act 2013. This register was then combined with the existing register used for other elections, for which the voting age was 18 (SIRA Schedule 1 section 18). The Scottish Parliament has subsequently harmonised the voting age downwards to 16 for Scottish Parliament and Scottish local elections. However, the UK voting age remains at 18, which applies for UK general elections in Scotland just as it does elsewhere.

In Catalonia in 2014, the franchise had been defined in the decree calling the formal non-referendum popular consultation (Decree 129/2014, Article 4), and the definition was carried over into the informal prior consultation process. Electors were required to be aged over 16, and to fall into one of the following categories: Catalans resident in Catalonia, Catalans abroad whose last administrative residence was in Catalonia, descendants of Catalans who were registered in the Register of Catalans Living Abroad, EU nationals resident in Catalonia for at least a year, and third country nationals resident in Catalonia for at least three years. Both the short timescale and the informality of the process meant that no formal register of electors was created.

In 2017, however, the referendum legislation passed by the parliament of Catalonia harmonised the franchise with that used for the parliament, with the addition of Catalans abroad complying with the legal requirements who requested participation in the referendum (CL19 Article 6).

The franchise for the 2018 New Caledonia referendum was laid down in the 1999 organic law (OLNC articles 218–219). The major sensitivities in New Caledonia relate to the inclusion of non-native residents of New Caledonia, leading to very detailed provisions in this area. While inclusion in the general electoral register is a necessary condition for appearance on the special register established for the referendum, the qualifications are not identical (Nouméa Accord Article 2.2.1).

In Quebec, the standing legislation on referendums carried over the franchise for elections as part of its general approach (QRA Article 44). In the Falkland Islands, the referendum legislation also carried over the franchise used for elections (FIRO Section 8), although there was some internal discussion of changing the eligibility requirements for the referendum to increase the number of eligible voters. The decision was, however, made to retain the same eligibility requirements for the referendum that are used for all other elections to avoid any perception that the Falkland Islands Government was attempting to manipulate the process (RIOM/MIOR, 2013).

In Montenegro, the referendum law specified the use of the existing voter registration legislation (ARSLSM Articles 3 and 18). Citizens of Montenegro aged over 18 who had been permanent residents of Montenegro for at least 24 months were eligible to vote, as were Serbian citizens meeting these residence requirements and Montenegrin citizens temporarily residing elsewhere. The controversial issue of extending the right to vote to Montenegrin citizens residing in Serbia was finally resolved in line with the Venice Commission's opinion that considered such an extension "at the present stage would be incompatible with the necessary stability of the voting rules and jeopardise the legitimacy of the referendum as well as the reliability of the voters' list" (ECDL(VC)2005 sections 60–61).

Electoral registration

i. Legal and administrative framework

Once the franchise has been defined, the implementation of electoral registration is a challenge of administration, logistics and practicality. It also requires additional policy decisions that specify the evidence required to

demonstrate to registration or electoral officials that a person seeking registration is who they say they are, and meets the qualifications for registration as an elector. Just as in considering qualifications, the evidence requirements can be specific to the referendum or the same as those used in regular elections.

Although the franchise itself is not fully defined in the BPA or the OLB the OLB does include the procedures for the conduct of registration (OLB Schedule 1 sections 1.15–1.41). A specific register is to be created for the referendum. The register used for Bougainville elections may be used as the base document for its preparation, although it is also possible to create a new register if no suitable base document exists — as will, for example, be the case for voters outside Bougainville.

ii. Registration: global experience and practice

In Montenegro, the Falkland Islands, Scotland and Iraqi Kurdistan, the existing registration system also formed the basis of the register for the referendum. In the Falkland Islands, a permanent electoral register, compiled on an annual basis, exists and was used for the referendum (RIOM/MIOR, 2013). In Iraqi Kurdistan, the EMB updated the register over a one-month period shortly before the referendum. In Montenegro, the standing procedures based on data provided by the Ministry of the Interior were used to generate a draft register, which was then finalised following a period of public display. In Scotland the same applies, although the integration of the list of 16 and 17 year old voters to create the final polling list was an additional feature in 2014.

In Quebec in 1995, the referendum was used by the government of Quebec as the occasion to introduce a permanent standing electoral register. The new system was more reliant on active registration by the elector rather than on the previous passive registration system in which the initiative lay with the authorities. The introduction of the new system generated controversy, because of suspicions by supporters of the federal unity option that it would advantage the separation option (House of Commons Library, 2013).

In East Timor, the challenges were of a very different kind. The political context made using existing Indonesian electoral machinery out of the question. The qualifications and evidence required to register meant new and substantive procedures had to be devised within a short timeframe. Two hundred domestic registration centres were established in East Timor, as were 13 overseas registration centres. All East Timor electors were required to register in person showing a suitable identity document (United Nations, 1999b, Direction 9). A draft register was then compiled and exhibited for claims and objections before the final register was established (United Nations, 1999b, Directions 15 and 16).

These procedures were soon shown to be problematic in their original form, because of the number of East Timorese without documentation — which had increased enormously as a result of people leaving or being forced from their homes because of violence. An additional criterion of evidence was added to the registration procedures, requiring a person to swear an affidavit before a religious leader or village chief, or before a notary public in the case of out of country voters (International Organization for Migration [IOM], 1999, p. 13).

The original arrangements also proved unable to handle the registration of the high number of internally displaced persons (IDPs) near the western border of East Timor and East Timorese who had crossed the border into West Timor, which is part of Indonesia. Additional registration and polling centres were required and were organised using IOM resources (IOM, 1999, p. 16).

In Southern Sudan, a special registration was also required, and was the responsibility of the Southern Sudan Referendum Commission (SSRC) (SSRA Article 14). People seeking to register were required to produce an identity card, personal identity document, a certificate from Local Government Authority as recommended by a concerned chief, an identity document from the UN High Commissioner for Refugees (UNHCR), or the direct oral or written testimony of the relevant village chief. A duty was placed on the registration officer to seek the help of the relevant chief when no documents were available.

The legislation required the draft register to be placed on public display and the final register to be published three months before polling day. However, some elements of the legal framework for the referendum were not respected in practice. The final register was ultimately completed one day before polling. As the EUEOM

reported, the dominant pragmatic view was that the Comprehensive Peace Agreement of 2004 had mandated that the referendum must be held on 9 January 2011, and other legal stipulations were rendered subservient (EUEOM, 2011).

Soon after its appointment in summer 2010, the SSRC decided that in order to meet the 9 January 2011 deadline for the referendum in the CPA, there would be no centralised electoral register for the referendum, electronic or otherwise, kept at any level above the individual centre for registration. Voters' details would be handwritten in registration books, and a registration card, with a serial number corresponding to the entry in the registration book, would be given to each elector. No photograph of the applicant would be taken (EUEOM, 2011).

The Carter Center (TCC) commented that eligibility criteria for the Southern Sudan referendum reflected the intention of including ethnic Southerners and long-term Southern residents, but did not provide a list or criteria of what constitutes an ethnic or an indigenous community nor the proof necessary to demonstrate whether these criteria were fulfilled. The criteria governing eligibility to participate in the referendum should have been more clearly defined and communicated. In response to questions from technical advisers about which indigenous or ethnic communities are Southern Sudanese, how to prove residency, and other implementation concerns, the SSRC released a document titled *Critical Legal and Procedural Questions: Answers*. However, it did not fully clarify the above issues. Although the SSRC later clarified the eligibility criteria, this clarification did not answer several eligibility questions (TCC, 2011). However, Sen (2015) has suggested that the SSRC may have been wise to refuse to produce a list of qualifying ethnic groups, on the grounds that it may have increased conflict and strife in an environment of intercommunal violence.

Registration proved to be a challenge on the ground, with over 25 percent of data entry forms incorrectly completed at local registration centres (EUEOM, 2011). The EUEOM made an overall assessment that registration took place in an orderly and calm atmosphere, although there were some problems related to the assessment of eligibility. While there was in many places a sincere commitment and intention to a credible identification process, there was no person present to provide direct supporting testimony in 9 percent of locations visited by observers, and unauthorised persons – for example, security or intelligence agents – were found in 28 percent of locations (EUEOM, 2011). In addition, movement of Southern Sudanese citizens of voting age from the north to Southern Sudan took place before, during and after voter registration, thereby significantly reducing the numbers of registered voters (particularly women) and citizens turning up to vote in the northern states (EUEOM, 2011).

In Catalonia in 2014, the short timescale and informality of the process meant that registration to vote took place at the polling station immediately prior to voting. A delegation composed of members of the European Parliament reported in the declaration of their findings that “the process for identifying citizens who wished to vote was carried out rigorously using official documents to identify them. People without identification could not vote (although they were able to vote on the following days). The personal data on each participant was recorded on papers and then confirmed via a computer-based database before voting.” (Government of Catalonia, 2015, pp42-43)

In 2017, the process of drawing up the register was formalised through complementary and implementing regulations under the legislation (CL19 Article 9(2)). In practice, the Catalan authorities were not permitted to access the electoral data held by Spain, and compiled a separate online register to be accessed by polling station commissions. The possibility of legal action meant that details of how this was done are not public (IEERT, 2017).

Although the Nouméa Accord stated that the special register for the forthcoming New Caledonia referendum would be closed a year before the vote took place, France and New Caledonia have agreed that a supplementary registration will take place in early 2018 in order to guarantee the legitimacy and integrity of the vote, noting that nearly 11,000 long term residents of New Caledonia who appear eligible do not appear on the general electoral register (Government of France, 2017).

iii. Registration for the Bougainville referendum

The accuracy and integrity of registers have long been issues in elections across PNG (May, Anere, Haley & Wheen, 2011), and an analysis up to 2012 illustrates them in the particular context of Bougainville (Regan, 2016, pp50–52). Accuracy and integrity of registers remained salient in both the ABG elections of 2015 (Baker & Oppermann, 2015) and the PNG national elections of 2017. Existing registration provisions for both PNG and ABG elections specify franchise qualifications, but implementation procedures are often based on responses to a household canvass that does not lay emphasis on evidence (whether oral or written in a document) verifying claims to register. The possibility that a potential elector has links with more than one location—and is thus enrolled in all of these locations when his/her household is listed—leads inevitably to multiple registrations. Some Bougainvilleans are said to regard ABG and PNG elections differently, and to register for one but not the other. In addition, attempts to improve registers may easily run into the problem that anything which makes it more difficult for unqualified or non-existent electors to gain registration often also deters legitimate applicants and increases the number of validly qualified electors who are not registered—and anything that makes it easier for validly qualified electors to register often also assists the unqualified and the fraudulent to do so.

The option of using the existing register as a base document to compile the electoral register for the Bougainville referendum would carry the advantage that it uses and builds on previous registration and data collection work: its potential disadvantages are that it continues inaccuracies from the previous register, and may be seen by registration staff as yet another unexciting, essentially cut and paste exercise. The option of creating a new register gives rise to the reverse argument: the inspiration and importance of creating a new register for a special electoral process could lead to a better quality and more complete register, but could be accompanied by a danger of errors arising throughout the register because the whole exercise is new. A new register would require careful verification and testing, and would not sit well with any compression of timetables that might take place.

Absent voting

i. Out of country/out of territory voting

The BPA and the OLB make it clear that non-resident Bougainvilleans will be entitled to register and vote in the referendum. This thread is continued in the legislation for ABG elections, which provides a framework for the registration of Bougainvilleans outside Bougainville (Bougainville Elections Act 2007 [BEA] section 54) and for the possibility of setting up polling stations in PNG outside Bougainville (BEA section 55). When provision for postal voting was later introduced into the legislation, Bougainvilleans outside Bougainville on either a permanent or a temporary basis were made eligible (Bougainville Elections (Amendment) Act 2013 [BEAA] section 3, adding new BEA section 55A).

The existence and form of out of country or out of territory voting is one of the most sensitive areas of electoral administration. Design and implementation are not simple, with issues of electoral integrity, inclusion, cost, and timetable to be resolved. In addition, the practical relationship has to be considered between the territory seeking independence and the state within which it is contained or associated, and there are questions of diplomacy and protocol to be addressed regarding the organisation of electoral machinery and the acceptability of electoral campaigning in external countries.

There are four mechanisms for out of country or out of territory voting:

- voting in person, at diplomatic representations for out of country voters;
- voting by post;
- voting through the appointment of a proxy; and
- electronic voting.

These mechanisms are not mutually exclusive: some countries use more than one. However, each pose questions. Voting in person may demand that some electors make long journeys to vote, and for voting in another country

depends (unless there is international involvement in implementation) on the ability of diplomatic representations to handle the electoral process. Voting by post is dependent on the reliability of the postal service in the country where the referendum is being held and also in the country where the elector lives (for out of country voting). However, even if the postal service is reliable, there may also be timetable issues. Voting by proxy is accepted as an effective mechanism in some countries but regarded as a threat to electoral integrity in others. Electronic voting depends on technology capability, and its credibility depends on both actual and perceived technology security in a global environment where the potential for hacking appears substantial and difficult to quantify.

As for voting, so previously for registration. If there is no permanent or pre-existing electoral register, questions as to the qualifications necessary to be an elector and the evidence necessary to support the claim arise — just as for registration in territory. However, out of country or out of territory electoral machinery may not have the same capacity as within territory machinery to handle these questions.

Governments of countries hosting out of country voting may not always be happy to allow external electoral activities to take place within their territory on an unrestricted basis, although this issue has not yet been of major salience in independence referendums. The domestic legislation of Canada, for example, allows out of country voting only by post or in diplomatic premises. In addition, host country governments may identify issues of public policy, order or security associated with campaigning, as for example when the Netherlands declared unwelcome the visit of a Turkish minister campaigning in a referendum on presidential powers in March 2017. The framework for out of country voting needs therefore to be the subject of a formal agreement between the electoral management body or other agency responsible for the electoral process and the host country government (IDEA and IFE, 2007, pp. 137–148).

Where political agreement for a referendum on independence or sovereignty exists, the formal provisions regarding electoral machinery in the part of the country which is not voting on independence are likely to be determined through the overall framework under which the referendum is called. Where political acquiescence exists, these provisions will form part of that acquiescence. However, it is clearly possible that issues akin those in third countries may arise in that part of the country in relation to campaigning and indeed media coverage.

ii. Out of country voting in practice

In practice, out of country voting has been regarded politically as an essential component of many independence referendum processes, although its proposed use for Montenegrins living in Serbia was not carried through (see previous).

In the Falkland Islands, where electoral registers are updated annually, and in Scotland, where a permanent rolling electoral register is in place, the arrangements for out of country voting used for elections were carried over to the referendums. The Falkland Islands allowed postal votes to be sent to addresses in the UK and electors were also entitled to appoint a proxy. Scotland allowed postal votes to be sent to any address anywhere, and also enabled an elector to appoint a proxy.

For East Timor, the 5 May 1999 agreement provided for out of country voting in Australia, Indonesia, Mozambique, Macau, Portugal, and the USA (United Nations, 1999a). The UN requested the International Organization for Migration (IOM) to organise this in all locations except Australia, where it was done by the Australian Electoral Commission (AEC). IOM established an overall coordination centre for out of country voting in Darwin, Australia, which enabled close liaison between IOM and the AEC.

Little reliable information existed as to the number of East Timorese who might register outside East Timor. Informal estimates for Indonesia, for example, varied between a couple of thousand and fifty thousand: the eventual final figure for registrations was only 3,802. Flexible contingency planning by IOM was essential for the early stages of the exercise.

Many of the problems that arose in the out of country registration and voting process, such as the evidence necessary to support registration or the general need for rules and regulations to be clarified early in the process, mirrored those that had arisen in East Timor itself. In its final report, IOM also identified specific administrative

problems associated with out of country voting, including the timescale for planning and shipping of electoral materials to out of country locations, and the receipt and handling of finances especially in locations where no IOM banking facility already existed (IOM, 1999).

IOM was also responsible for the organisation of out of country voting in Southern Sudan, and was able to complete a single overall Memorandum of Understanding (MoU) with the SSRC. This enabled sensitivities to be avoided about the potential use of diplomatic, representation or other premises associated with either Sudan or Southern Sudan. Outside Sudanese territory, polling took place in the locations where there were thought to be over 20,000 Southern Sudanese: Australia, Canada, Egypt, Ethiopia, Kenya, Uganda, the UK, and the USA. The agreements that already existed enabling the presence of IOM in all of these countries bar Canada obviated any need for a special MoU.

Registration took place in cooperation with IOM. As in East Timor, the initial estimate of numbers was much higher than the reality. It was initially thought that 1.5 million potential electors existed, but this figure was ultimately reduced to about 153,500, of whom approximately 60,000 registered at one of the 188 registration centres. Factors contributing to the massive difference probably included both a minimal level of existing demographic knowledge and a tendency to inflate initial estimates to emphasise the importance of the diaspora community.

Eighty polling stations were set up in eight countries. Counting took place at these polling stations, where results were displayed. Results were put on the internet and also sent to the SSRC in Khartoum and the Southern Sudan Referendum Bureau (SSRB) in Juba.

IOM also undertook civic education of a technical nature for both registration and polling. Security was provided by local police in African venues and by private contractors in European and American venues.

In its report on the out of country voting (IOM, 2011), IOM identified that the delineation of responsibilities between the IOM out of country voting offices and the SSRC and its representatives had not been sufficiently clear. The implementation of operational procedures, including accreditation of media and observers, needed to be delegated to the out of country voting offices and not centralised in Khartoum. The financial procedures had been complex and had led to cashflow issues. IOM therefore recommended in its report that in possible future cases, the entity with the authority to take decisions on staffing, including the staffing levels at each stage and the ongoing participation of staff in the different phases, should be clearly spelt out to avoid confusion. The MoU also needs to spell out that only those staff with formal contracts with the specified authority would be deemed to be staff members and thus eligible for payment. IOM made a final strong recommendation that the criteria for determining the number and location of registration/polling centres, the process for agreeing on new centres and the latest date for adding new centres should be spelt out, so that late unilateral changes could be avoided.

In 2014, Catalonia had planned to include Catalans abroad in the non-referendum popular consultation called under Decree 129/2014. In the informal prior consultation vote that ultimately took place, it does not appear to have been possible to include out of country voting given the short timetable and informal nature of the process.

In 2017, however, Catalonia revised and updated its general legislation on Catalans abroad, and its parliament passed the Law on the Catalan Community Abroad 2017. 'Catalans abroad' are defined as Spanish citizens residing abroad whose last place of legal residence was Catalonia and their descendants, and who are entered in the Register of Catalans Living Abroad — the instrument through which the Catalan government has identified citizens living abroad who enjoy the political status of Catalans in accordance with the Catalonia Statute of Autonomy. This register is public: registration is free and voluntary, and is encouraged in order to facilitate access to services and benefits intended for Catalans living abroad.

This law also guarantees wide participation of Catalans living abroad in all electoral processes. The referendum legislation then defines the out of country voting provisions, requiring the issue of complementary and implementing regulations regarding postal votes (CL19 Article 9(2)). Out of country voting took place in the 2017 referendum, with 4,330 votes cast.

From the inception of the referendum in Iraqi Kurdistan, the authorities wished to include the Kurdish diaspora: a mechanism for out of country voting was required by the legislation establishing the EMB (Independent High Electoral and Referendum Commission Law [IHERCL] Article 10). The combination of diplomatic issues — the fact that neither Iraq nor many other countries were supportive of the referendum taking place and would therefore not facilitate it — and practical administrative and logistic issues ruled out personal or postal out of country voting; proxy voting raised unacceptable electoral integrity issues. Despite the risks of hacking or external interference, the EMB decided to go forward with electronic registration and voting (Independent High Electoral and Referendum Commission [IHERC], 2017). Out of country voters were required to register online, uploading personal details and supporting documentation. This process appears to have worked in a satisfactory manner in practice, and not to have been subjected to external cyberattack. Around 97,000 out of country votes were cast, which was about 3 percent of the total.

iii. Absent voting within the country and/or within the territory

Absent voting by post is specifically provided for the Bougainville referendum. Detailed procedures are contained in the organic law (OLB Schedule 1 sections 1.46-1.62). The elector must provide grounds for requesting an absent vote, which include absence from home, illness, pregnancy or childcare, religious observance, and residing abroad.

Postal voting was not included in the 2007 Bougainville legislation covering ABG elections. However, it was subsequently added to the Bougainville electoral framework in 2013 (BEAA section 3, adding new BEA sections 55A – 55E). It is not clear whether and how these provisions were activated in the 2015 ABG elections. Polling stations for Bougainvilleans inside Bougainville (BIB stations) were, however, established in three locations to cater for voters who were not at home on polling day, as were stations for Bougainvilleans outside Bougainville (BOB stations) in some locations elsewhere in PNG (Baker & Oppermann, 2015).

Postal voting took place in Quebec and the Falkland Islands, where the provisions relating to elections were directly carried over, and in Scotland, where the procedures were parallel to those used in elections (SIRA Schedule 2 part 3). The possibility of postal voting was also envisaged in the 2017 legislation in Catalonia (CL19 Article 9(2)). The ruling that Spain considered the referendum illegal meant that the Spanish postal service was precluded from carrying referendum related material (IEERT, 2017), and no in country postal voting was observed to have taken place.

Discussions between France and New Caledonia regarding the forthcoming referendum have specifically considered the importance of ensuring that the electors of New Caledonia's islands are able to effectively exercise the right to vote. In general elections, those registered to vote in the islands must cast their vote at a polling station on their island. As a special arrangement at the referendum, polling stations will be established in Nouméa for electors registered in one of the five island communes but in practice resident on the New Caledonia mainland (Government of France, 2017).

Polling

i. Administrative framework

The administrative detail of polling procedures for referendums may be designed specifically for the referendum context, or may use most or all of an existing framework used for elections. The OLB adopts the latter approach, containing detailed specifications of polling procedures (OLB Schedule 1 sections 1.63 to 1.93) which are very similar to those used in elections (BEA sections 88 to 120). Quebec, Montenegro and the Falkland Islands also provide examples of this approach (QRA section 44; ARSLSM Article 25; FIRO section 15). In Scotland, detailed polling procedures were laid out in the legislation (SIRA Schedule 3) and appear similar to those used for elections: an additional provision carries over an existing entitlement to a postal or proxy vote to be valid for the referendum (SIRA Schedule 1 part 1 section 2).

In Southern Sudan, procedures specific to the referendum were included in the legislation (SSRA sections 33-41); detailed regulations for polling and counting were the responsibility of the SSRC (SSRA section 36). In East

Timor, they were included in the UN Directions which played a role equivalent to legislation (United Nations, 1999b, Directions 21–38); subsidiary regulations were written under UNAMET, on whose behalf much of this work was undertaken by the AEC. East Timor voters were required to produce their registration card and an identity document (United Nations, 1999b, Direction 30).

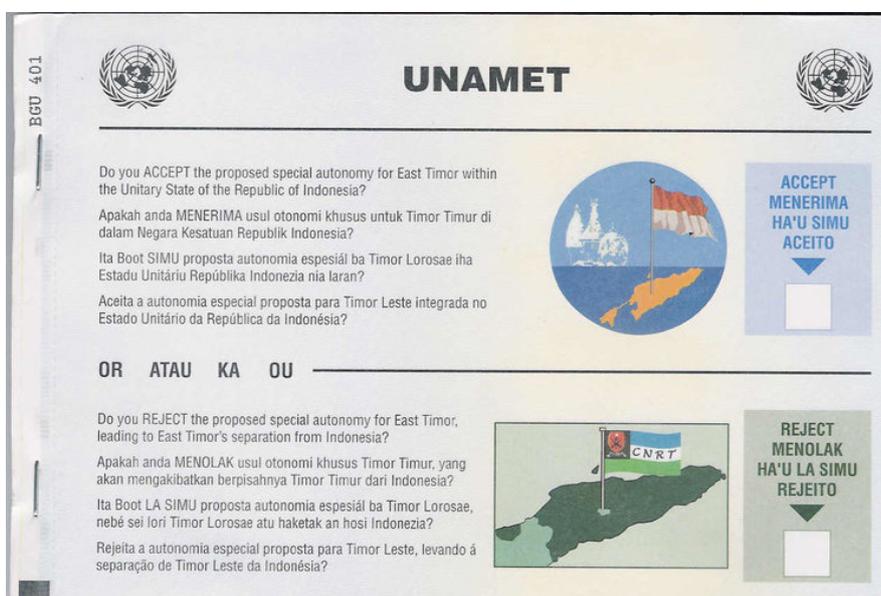
In Catalonia in 2014, the informal nature of the consultation meant that a lack of institutional guarantees existed, although this was claimed not to have had noticeable effects because of the commitment and honesty of the volunteer staff (Government of Catalonia, 2015). In 2017, the legislation empowered the government to issue complementary and implementing regulations detailing voting methods and procedures (CL19 Article 9(2)). The provisions of these regulations generally followed established Catalan and Spanish electoral practice. However, the conflict surrounding the referendum meant that they were not always followed on the day. New polling procedures were introduced, in which any qualified elector could vote at any polling station once verified on the online register – in contrast to regular elections, where electors are allocated to specific polling stations and may not vote elsewhere. The ILOM observation mission assessed that polling staff performed to the best of their ability in trying to cope, and in trying to follow electoral procedures (ILOM, 2017). The IEERT observation mission reported that they did not witness any signs of people trying to falsify the results or take advantage of weakness in electoral process, but that the number and scale of the changes and their deviation from the norms of electoral administration raised grave issues about the integrity of the voting process (IEERT, 2017).

ii. Polling: assistance to voters

Language and literacy issues frequently play a significant role in processes relating to independence and sovereignty. This may be reflected in the design of the ballot paper in independence referendums, both as a practical question of how to facilitate inclusion and sometimes also as a question of major political, cultural and/or symbolic importance. The Organic Law for Bougainville recognises the issues of inclusion and of literacy, providing that a blind voter, a voter with disabilities, or an illiterate voter may appoint no more than two people to accompany him/her in the polling booth (OLB Schedule 1 section 1.87, 1.90 – 1.91). In addition, provision is made for a voter to be accompanied by an interpreter (OLB Schedule 1 sections 1.120 – 1.121). Both these provisions mirror those for ABG elections (BEA sections 115, 117 and 118, 143–144).

For the East Timor referendum, symbols on the ballot paper for illiterate voters were required by the agreement of 5 May 1999. The UN Directions provided that polling station staff should instruct illiterate voters in the manner of voting (United Nations, 1999b, Direction 31). Similarly, symbols were used on the ballot paper for the Southern Sudan referendum.

Figure 1: The ballot paper for the East Timor referendum (1999)



Ballot papers in Quebec used both French and English, and an additional provision in the legislation requires the addition of First Canadian or Inuit language where relevant and possible (QRA Sections 20 and 21). The East Timor ballot paper used four languages: Bahasa Indonesia, English, Portuguese and Tetum (illustrated in TCC, 1999: 41). The Iraqi Kurdistan ballot paper also used four languages: Arabic, Assyrian, Kurdish, and Turkmen. The ballot paper in Catalonia in 2014 carried two languages, Catalan and Spanish; in 2017, three languages, Catalan, Spanish and Occitan were used.

The Catalan legislation of 2017 required the preparation of ballot papers for persons with visual impairment, but provided additionally that in their absence, the chair of the polling station committee or a person trusted by the voter can give assistance (CL19 Article 7(3))—as indeed turned out to be necessary in the environment in which polling took place. Assistance to voters with disabilities was also permitted in the legislative framework in East Timor, in the form of help from a polling official or, with the agreement of the local UN electoral officer, a person chosen by the voter (United Nations 1999b Direction 32).

TCC was broadly positive on how assistance to voters in Southern Sudan worked in practice:

“For the most part, the efforts of referendum centre staff to assist were judged by the Carter Center observers to be well-intentioned and in response to voters’ desire for assistance to cast their ballots. The participating officials seemed to want to mitigate the problems of poorly educated voters and did not appear to be attempting to manipulate the vote. Nonetheless, in seven Southern states, observers reported that referendum centre officials in a small number of centres marked ballots for voters and physically assisted voters to cast ballots, although observers believed that officials generally acted with good intentions (with a few important exceptions)” (TCC, 2011, pp29–30).

However, the EUEOM was more critical, stating that the extremely low number of invalid and blank votes in the south (despite the literacy rate being lower and registration documentation probably less accurate) raised concerns about assisted voting and the effects of pressure of work on polling staff (EUEOM, 2011).

Counting, tabulation and declaration

As with registration and polling, the procedures for counting, tabulation and declaration of results for referendums may be designed to respond to the specific context of the referendum, or may adopt most or all of the framework used for elections. The Organic Law for Bougainville contains detailed provisions relating to counting, tabulation and declaration (OLB Schedule 1 sections 1.94–1.125) that are again similar to existing electoral practice (BEA sections 121-139). Both the OLB and the BEA include here provisions regulating re-counts. In addition, the Bougainville electoral framework was amended in 2013 to permit if desired the introduction of electronic counting (BEAA section 9, adding new BEA sections 128A and 128B).

A choice is also likely to be required on the level of detail to be contained in the declaration of the result. The options are to declare a single result for the whole referendum with no lower level breakdown of numbers, or to declare results for lower level component areas that are then aggregated to give the overall result. The Organic Law provides for a decentralised count which is aggregated by the central EMB for declaration (OLB Schedule 1 section 1.123). It is not specific as to whether the declaration consists solely of the overall figures or whether the numbers from each polling district are also made public.

In East Timor, security issues were the driving factor in UNAMET’s planning of counting arrangements. Fears emerged at an early stage of the potential for retribution against communities that did not vote for the option of autonomy within Indonesia. The procedures adopted involved counting at regional level to avoid the risks associated with carrying uncounted ballot materials to one central point, followed by the aggregation and announcement of one national result by the UN Chief Electoral Officer and its subsequent certification by the electoral commission (United Nations, 1999b, Directions 38, 41 and 42). The breakdown of results at regional level was kept secret, including from observers (IOM, 1999, p. 16). Out of country votes were counted at each external polling venue and totals transmitted to the central counting point in Dili. While these results were also not published, the potential for leaks through diplomatic and other observers certainly existed; however, this did

not appear to happen in practice, reflecting the view of the electoral administrators that the prime security threat lay within East Timor rather than outside.

In Quebec, the initial count took place at the polling station, mirroring the procedures used in Quebec elections. In Montenegro, counting also took place at polling station level, with result protocols completed at the polling station and carried for tabulation from there to regional level and then onwards to the centre – opening the possibility for parallel vote tabulation to take place by the campaigns for the two options or by observers. This reflected the practice in regular elections. The Organization for Security and Cooperation in Europe Office for Democratic Institutions and Human Rights (OSCE/ODIHR) observation mission commented that the speedy publication of preliminary and final results of the referendum strengthened transparency and public confidence in the results process (OSCE/ODIHR, 2006).

In Southern Sudan, the same pattern was adopted, with a count followed by a declaration taking place at each polling station. One copy of the result was displayed there and the other copies were despatched to the county level — the next highest level — and then onwards: from locations in Southern Sudan to the SSRB in Juba and from there to the SSRC in Khartoum, and from other locations directly to the SSRC (SSRA Articles 38-42).

In the Falkland Islands, ballot boxes were brought to a central location, as in regular elections. Counting does not take place at polling station level in elections in Scotland, and, similarly, the referendum count was conducted and announced at district level, and then aggregated and announced centrally (SIRA Section 7 and Schedule 3 sections 29-36).

In Catalonia in 2017, in line with general Catalan and Spanish procedures for elections, counting was undertaken at local level, and results tabulated centrally (ILOM, 2017; IEERT, 2017). However, the local count was in practice often undertaken not at the polling station, but at a second venue, because of the fear that security forces would disrupt counting.

As at parliamentary elections (Kurdistan National Assembly Election Law 1992 [IKNAEL] article 35), counting is undertaken at each polling station in Iraqi Kurdistan and results tabulated centrally.

Assessment of polling, counting and tabulation: global experience

It is worth noting that in none of the cases studied did the conduct of polling and counting become a serious issue of contention. All observer organisations in Southern Sudan reported on the excellent level of training of staff (EUEOM, 2011). In East Timor, UNAMET were assessed as having administered the vote in an unbiased, transparent and professional manner (TCC, 2000). In Quebec, the Falkland Islands and Scotland, the administration was staffed for the most part by people with previous experience and institutional memory and was able to draw upon established training modalities, and procedures ran smoothly.

In Catalonia in 2014, the delegation of European parliamentarians noted that the process was carried out in a positive, friendly and efficient manner and the program used to verify documents was of a high quality; however, although the honesty of the volunteers was never questioned, the way in which they were selected and assigned responsibilities was less satisfactory than if these tasks had been carried out by officials in charge of voting (Government of Catalonia, 2015).

In Montenegro, however, training was identified as problematic: the OSCE/ODIHR observation mission reported that the training provided to polling station staff was inconsistent and could have been substantially improved. Even so, polling was positively evaluated in nearly all locations (OSCE/ODIHR, 2006).

The lesson that may be drawn for polling, counting and tabulation in Bougainville is perhaps twofold: a reminder of the importance of well-designed procedures and timetables and of good training, alongside a recognition that these are not in themselves sufficient to ensure the legitimacy and credibility of the referendum – which depends also on many other factors.

Ch. 2 The Electoral Management Body for the Referendum

Models of electoral administration

The electoral management body (EMB) is the organisation that has the sole purpose of, and is legally responsible for, managing some or all of the essential elements for the conduct of elections or referendums (IDEA, 2014b). It may be created in a form that is institutionally independent and autonomous from executive government; it may be the government ministries or local authorities which organise elections as a function of the executive; or it may be a mixture of these, usually with an independent policy making body combined with executive government responsibility for implementation. Whichever model is chosen, legitimate and credible electoral processes depend on an EMB that demonstrates fearless independence in practice, seeks to guarantee a level playing field for all electoral contestants and is not affected by government, politics or other partisan influences. The majority of EMBs responsible for independence and sovereignty referendums have followed the institutionally independent model, which is usually regarded as best practice.

Many questions about EMB design are common to all electoral processes. Where an independent model EMB is put in place, legislation defines its powers and functions, its composition and the qualifications and appointment procedures for its members. This legislation needs to protect the independence of the members of the EMB by ensuring that its members cannot be removed from office for political reasons and cannot be subject to external pressure through changes in salary or terms and conditions of employment. In the independence referendum context, the relationship of the EMB for the referendum with the authorities both of the territory seeking independence and of the state within which it is contained is an additional issue.

The detailed work of implementing an electoral process will be undertaken by an EMB secretariat. The EMB needs to determine the structure and staffing required for different levels of electoral administration, recruitment, training and human resource policies, and other organisational policies. In addition, it is essential for the EMB to have sufficient budget and to be able to access cashflow to match the needs of the electoral process.

The independent model of electoral administration is used both in PNG as a whole and in Bougainville. The PNG Electoral Commission was established as an independent body in 1975 when the constitution was adopted (Constitution of PNG Article 126(6)). The Bougainville constitution of 2004 (article 106) similarly gave responsibility for the conduct of elections in Bougainville to an independent Bougainville Electoral Commissioner; initially, this function was fulfilled by the PNG electoral commissioner. The decision to establish the Office of the Bougainville Electoral Commissioner (OBEC) was first taken in 2010, and subsequently confirmed in 2014. OBEC took lead responsibility for the conduct of Bougainville elections for the first time in 2015 (OBEC, 2017; Baker & Oppermann, 2015).

The form of the EMB for the Bougainville referendum has already been determined. The organic law contained four options, all of which followed the independent model (OLB sections 56(2), 59 and 60). The governments and electoral commissions of PNG and Bougainville have established the Bougainville Referendum Commission (BRC), a jointly established independent agency (OLB section 58). The BRC will have a chair appointed by the joint supervisory body established under the BPA, the election commissioners of Bougainville and of PNG, and two commissioners from each of PNG and Bougainville—at least one of whom must be a woman—appointed by the respective Executive Councils of PNG. As would be the case in any field of organisation, this kind of joint approach will require clear divisions of responsibility and lines of accountability.

The EMB: Global experience and practice

In Montenegro, responsibility for the referendum was vested in a special electoral commission. This was composed of an external chair, who possessed only a casting vote and was appointed by the parliament (which chose a diplomat from Slovakia), a non-voting secretary, and 16 ordinary members, eight representing each of the two options. The mandate of this EMB expired when the parliament accepted the referendum results. Its powers included making regulations, directing the referendum administration, counting and tabulating the result and reporting to the parliament, and handling funds (ARSLSM Articles 9-12).

Observing the performance of this EMB in practice, the OSCE/ODIHR observation mission noted that referendum commissions at both central and municipal level met frequently and operated in an open and transparent manner throughout the process, providing full access to their meetings for observers and media. All significant decisions by the central EMB were finally taken by consensus rather than by casting vote. However, while the EMB worked well during the referendum itself, relationships were notably less harmonious afterwards (OSCE/ODIHR, 2006).

However, ODIHR expressed concern at the lack of guidelines for the professional behaviour of members of the referendum administration, many of whom continued to participate in partisan or personal activities that created potential conflicts of interest to their public role. Referendum officials were not provided with sufficient professional or technical training on their work and, in particular, the training provided to polling station staff was inconsistent and could have been substantially improved in quality (OSCE/ODIHR, 2006).

The design of the independent model EMB for Southern Sudan was not easy. In an atmosphere where little trust existed, it was necessary to reconcile the sovereignty over the whole of Sudan claimed by the government of Sudan with the demand by the government of Southern Sudan for responsibility for the referendum there. The solution contained in the legislation established a special EMB for the election, the Southern Sudan Referendum Commission (SSRC), with its seat in Khartoum and possessing within its structure the Southern Sudan Referendum Bureau (SSRB) with its seat in Juba (SSRA sections 8 and 9).

The SSRC had nine members, a chair, a deputy chair, and seven ordinary members, whom the legislation stated would provide broader representation to include women and civil society organisations (SSRA section 10). The SSRB was chaired by the deputy chair of the SSRC and had four other members, appointed by SSRC on her/his recommendation (SSRA section 18).

The legislation defined the powers and functions of the SSRC in detail, including organisation of registration, polling and counting, making regulations and developing procedures, staffing structure and human resources matters, approval of the budget for submission for inclusion in the general state budget, and taking action against those who commit electoral offences (SSRA section 14). The SSRC had power to delegate to the SSRB, which in turn had powers (SSRA section 18) to appoint and supervise lower level electoral bodies within Southern Sudan and to compile the results from Southern Sudan to transmit to the SSRC. The referendum accounts were to be audited by the National Audit Chamber (SSRA section 21). Funding was to be provided by the government of Sudan, government of Southern Sudan and the international community (SSRA section 64).

While the conduct of the election generally went well, TCC's observation mission stated that the failure to pay referendum staff in a timely manner or to properly educate them about their payment schedule put the referendum process in unnecessary jeopardy, as discontented staff can easily disrupt an electoral process. TCC recommended that future election staff should be given contracts, adequate information about payment schedules and stipends, and timely payment (TCC, 2011).

In Quebec, the conduct of a referendum is the responsibility of the chief electoral officer of Quebec, a permanently appointed independent official, who has powers parallel to those under which he/she organises elections (QRA sections 13, 43).

Iraqi Kurdistan also adopted the independent model for its EMB. The legislation that established the Independent High Elections and Referendum Commission, a permanent body, was enacted in 2014, giving it

responsibilities that include preparing rules and principles to guarantee free and fair electoral process; organisation of registration, polling and counting; and announcement of results. This EMB approves the structure of the electoral administration secretariat and is responsible for employing staff, drafting financial policy, and drawing up a budget in consultation with the ministry of finance for approval by the parliament. Its nine members are given the rights and privileges of a deputy minister (IHERCL Articles 5 to 8 and 15).

The electoral machinery for East Timor was established by the UN. It was based on the mixed model, with a three member expert commission appointed by the UN secretary-general (United Nations, 1999b Direction 2), and responsibility for running the day to day operation given to UNAMET. Staffing matters and the writing of regulations were the responsibility of UNAMET, with many of the regulations written in practice by the AEC. Under the 5 May 1999 agreement, the UN provided funding (United Nations, 1999a).

In Scotland, the head of the Electoral Management Board for Scotland, a body with the general function of coordinating local government elections in Scotland, was responsible for the conduct of the referendum (SIRA sections 5 and 7). She had responsibility for the appointment of staff, and the right to charge all expenses for the referendum up to a ceiling set by the Scottish government (SIRA section 9). In the Falkland Islands, where electoral administration also falls within the functions of executive government, responsibility for the referendum lay with the chief executive of the government of the Falkland Islands (FIRO section 10).

The ad hoc prior consultation of 2014 in Catalonia was organised by the Catalan government and 943 of 947 municipal authorities, who called for volunteer polling staff. In 2017, in common with the model used generally throughout Spain, Catalonia sought to formalise a mixed approach. The legislation established an independent electoral commission responsible to the parliament with responsibility for validation of registration, polling and counting and the certification of results. A majority of the five members of this EMB were jurists, the remainder political scientists (CL19 sections 17 and 19). Its members could not be removed from office (CL19 section 20(1)). The government electoral administration was to implement the referendum process under the direction of the commission. The government itself was empowered to issue complementary and implementing regulations (CL19 section 9(2)) and was required to make available the necessary material and human resources (CL19 section 25). However, while the Catalan parliament established this body, the EMB dissolved itself on 22 September 2017 following a judgment of the constitutional court of Spain imposing daily fines on its members. In practice, the electoral administration of the referendum was undertaken by mechanisms set up by the Catalan government, many of the details of which have not been made public because of the possibility of prosecution by Spanish authorities for participating in organising the referendum.

Electoral processes in New Caledonia, which is a French territory, follow the mixed model of electoral management used in France as a whole. The oversight body is formed by the Conseil d'Etat, the supreme administrative court, consisting of a member of the Conseil d'Etat as chair, two judges and two magistrates (OLNC Article 219), and the responsibility of implementation of electoral arrangements lies with the government.

Interagency coordination and planning

Whichever model of electoral management is used and however wide or narrow the powers and functions of the EMB, collaboration between the EMB and other public authorities that contribute to the electoral process—for example, security agencies, national statistics agencies, government ministries, broadcasting authorities—is essential. PNG recognised the value of such collaboration by establishing an InterDepartmental Elections Committee (IDEC) for elections held after 2007. Care, however, needs to be taken that this approach does not compromise the independence of the EMB, which may be expected to play the leading role in such collaboration.

The importance of interagency collaboration is sometimes recognised in law. The EMB of Iraqi Kurdistan is required to work towards gaining trust in the electoral process among the people of Kurdistan and increasing awareness through collaborating with all shared parties involved in the election process (IHERCL Article 4). Such collaboration is a two-way responsibility: the 2017 Catalonia legislation gives all public authorities the duty to collaborate within the scope of their powers with the EMB for the proper conduct of its duties (CL19 section 21). The discussions between France and New Caledonia over preparations for the 2018 referendum have

necessitated a working group convened by the administration, comprising representatives of the government and of political forces in the parliament, and including those with specialist expertise when needed (Government of France, 2017).

The EMB for the Bougainville referendum

The composition of the BRC, with an equal number of members from PNG and from Bougainville and a jointly appointed, possibly external chair, appears to follow most closely the model used by Montenegro. The external chair of the Montenegro EMB sought to build consensus for all of its decisions, successfully before polling while the result of the referendum was uncertain, but with substantial difficulty after polling had taken place — when decisions often related to issues and complaints whose resolution would have a direct and clear bearing on the result (OSCE/ODIHR, 2006).

In comparison with many of the other EMBs that have been responsible for independence and sovereignty referendums, the powers given to the BRC to make regulations where gaps are found to exist are very limited. This may turn out to be an area of weakness, in that it is unlikely to be practical for such gaps to be filled by the passage of additional legislation by both the PNG and Bougainville parliaments.

Ch. 3 Campaign participants

Recognition of participants

The task of an EMB to ensure a level playing field for electoral contest poses in the context of a referendum the question of whether campaign participants should be formally recognised in some way. In a range of areas, including transparency and responsibility for campaign advocacy, regulation of the role of money, and consideration of the use and role of media during a campaign period, the administrative framework for a referendum may contain provisions which parallel those which regulate and protect the role of candidates, officially appointed campaign managers and third parties during elections—which implies a need to define who these are in the referendum context. Some referendum frameworks develop this concept further, leading to the formal accreditation by the EMB of two umbrella organisations, one taking the lead role on each side of the referendum campaign.

In contrast to the detailed procedures included in the Bougainville organic law for polling and counting, its provisions, and those of the subsequent Bougainville electoral legislation, are sparse in this area. This is probably unsurprising given the origin of the form of PNG legislation and regulation in historic British practices, which were strong and detailed on procedural specifics but said little or nothing about electoral participants, political parties, finance or media regulation, dispute resolution outside formal challenges to results in the courts, and most other issues of the broader electoral environment. The organic law empowers the BRC as EMB to recognise groups of people with a common interest in the referendum (OLB Schedule 1 section 1.10). However, the drafting of this piece of the legislation appears to be targeted as much at facilitating and controlling presence at polling stations and during counting as it may be at regulating campaigning activity either locally or more widely.

In East Timor, the 5 May 1999 agreement (United Nations, 1999a) provided that ‘supporters and opponents of the autonomy proposal will campaign ahead of the vote in a peaceful and democratic manner during the period designated for this purpose. There will be a Code of Conduct for the campaign, to be proposed by the UN and discussed with the supporters and opponents of the autonomy proposal. The UN will devise the means to provide equal opportunity for the two sides to disseminate their views to the public’. However, the campaign environment was in practice determined by the activities of elements of the Indonesian military and local militias, which engendered a climate of heavy intimidation. It appears that provisions designed to ensure a level playing field were, in practice, irrelevant to what happened.

The legislation in Montenegro recognises the political parties represented in the parliament as campaign participants, and provides that the parties on either side of the campaign should reach a joint participation agreement. Other political parties, and also nongovernmental organisations (NGOs), may then adhere to either side with the consent of those already involved. The joint participation agreements underlie political finance issues, including the receipt of public campaign funding, and access to media (ARSLSM Articles 27-29 and 34).

In Scotland, any political party, registered elector, UK company or unincorporated association was able to make a declaration to the UK Electoral Commission to gain the status of ‘permitted participant’. The Electoral Commission was also empowered to designate one permitted participant on each side that could show that it adequately represented those campaigning on that side. Such designated lead campaigners were entitled to the list of registered electors, campaign broadcasts, a free mailing to each elector, free use of public meeting rooms, for example school halls, and a higher campaign spending limit (SIRA Schedule 4; Electoral Commission, 2014).

No specific recognition of campaign participants took place in Southern Sudan; provisions related to media access drew on the rights of existing registered political parties and of individuals (SSRA Article 46). Recognition of campaign participants was also not considered necessary in the Falkland Islands and was not a relevant issue in the informal framework in Catalonia in 2014. In 2017, political parties represented in the parliament of Catalonia

were granted 70 percent of regulated campaign and media access: the legislation provided for accreditation of other bodies wishing to campaign, which would access the remaining 30 percent (CL19 Articles 9(2) and 11). Some organisations, all supporting the Yes side, were accredited, although the media access provisions did not then appear to operate in practice.

Restrictions

Alongside the formal recognition of participants in referendum campaigns, restrictions are frequently found which constrain or completely ban people or bodies from involvement. These may include the government and public bodies of the territory seeking independence, and the government and public bodies of the state within which it is contained. Involvement by foreigners may also be restricted or banned.

In Montenegro, state and municipal officials were prohibited from campaigning or using public resources. No publicly funded advertisements were allowed except for those supported by the state funding of political parties for the referendum campaigns, and state facilities were only made available for campaign purposes if no other facilities were available and the facilities could be used equally by both sides (ARSLSM Articles 30-31). The EMB was responsible for hearing complaints on misuse and abuse of state resources (ARSLSM Article 32). The Scottish Government and public authorities were not allowed to publish referendum related material (SIRA Schedule 4 section 26). In the 2017 legislation, the Catalan public administration was required to remain neutral and to refrain from using budgetary resources to favour any option in the referendum campaign (CL19 Article 10).

By contrast, these issues were not addressed in Southern Sudan or in the Falkland Islands. They were also not addressed in Catalonia in the context of the informal prior consultation process in 2014.

For East Timor, the 5 May 1999 agreement included a clause under which the governments of Indonesia and Portugal, the signatories of the agreement, would not campaign in the popular consultation (United Nations 1999a). East Timor officials were allowed to campaign in their personal capacity. However, these commitments were not sustained in practice. In a statement on 17 July 1999, TCC noted that according to many credible observers, elements of the Indonesian government and military continued to campaign for the autonomy option in violation of the New York agreements. One senior army leader in Dili was said to have admitted that the military was actively promoting the autonomy package and was distributing food and services to people to encourage votes for autonomy. Such practices violated the Security Agreement attached to the 5 May 1999 agreement, which stated that the absolute neutrality of the Indonesian armed forces and the Indonesian police were essential.

The Venice Commission has collated European practice on this issue for referendums generally (ECDL(VC) 2013 sections 88–92 p. 244). In Portugal and in Russia, authorities and officials are prohibited from campaigning. Restrictions imposed on the authorities are sometimes more limited. In Armenia, they only apply to officials in the exercise of their functions (although for judges, police officers and military personnel, there is an absolute ban on campaigning). In Austria, although the authorities must provide neutral information, they are allowed to campaign; however, they are prohibited from disseminating non-objective or disproportionate mass information. However, other states, such as Hungary, do allow authorities to be involved in the campaign. Most states do not impose any restrictions on individuals. However, foreign citizens and organisations are not allowed to campaign in, for example, Armenia, Georgia and Russia. In Russia, religious associations and charities cannot campaign.

Ch. 4 Civic and voter education

Principles and guidelines

The success of any electoral process depends on an electorate that is adequately informed, both in enabling a person to make a substantive choice, and in the requirements and processes that enable each qualified elector who wishes to vote to register and to cast their vote. This is recognised in the international jurisprudence: CCPR GC25 specifies that “voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community” (UN OHCHR, 1996, paragraph 11).

In its consideration of principles and guidelines, the Venice Commission takes the view that the availability of the text put to the vote is an essential precondition for the electorate to freely develop an informed opinion, and adds that some European countries, such as France, Finland, the Netherlands and Switzerland provide additional objective information (ECDL(VC) 2013, sections 85-87, pp. 243–244).

The design and implementation of the civic and voter education component of a referendum is integral to the electoral process, and should not be considered an optional add-on to the organisation and logistics components. It involves decisions about the most effective approach to content, the best channels to use, and the most effective programming and timing. Perhaps even more than in other aspects of the electoral process, consultation and liaison with stakeholders plays a vital role.

The BRC has been given the function of promoting informed debate on each side of the question or questions to be put at the referendum, and of encouraging wider public interest and involvement in ensuring that the referendum is conducted in a free and fair manner. To realise this function, the BRC is empowered to hold public meetings and to prepare and distribute literature, and is required to develop and publicise a policy for public involvement (OLB Schedule 1 section 1.9).

Civic and voter education: global experience and practice

An active role in voter education has been given to the EMB in the majority of recent referendums on independence and sovereignty issues. In Quebec, the legislation requires the chief electoral officer to send out a booklet to electors explaining each option, giving equal space for text provided by the national committees for each side (QRA section 26). In 1995, millions of copies of referendum related documents were distributed, frequent announcements in both print and broadcast media were sponsored, and a free-to-call information telephone line was established. Voter education materials included booklets on registration in 19 languages, booklets on voting in nine languages, braille and large print material, and audio information (Kennedy, 1996).

In East Timor, civic education was a UN responsibility under the 5 May 1999 Agreement: this included content, procedures, process, and explanation of the implications of both options (United Nations 1999a). The agreement stated that the radio stations and the newspapers in East Timor and other Indonesian and Portuguese media outlets were to be used in the dissemination of this information. Other appropriate means of dissemination would also be made use of as required.

In Southern Sudan, the referendum administration bodies received free and consistent coverage and access to state and private media to inform voters on referendum procedures (EUEOM, 2011). The SSRC was tasked to appoint an independent and impartial media committee for education and enlightenment of Sudanese people in general and the South in particular (SSRA Article 45). In practice, the voter information campaign was designed mainly as a mass media effort, complemented by door-to-door initiatives carried out by local civil society organisations. Directed at a population fluent either in English or standard Arabic, the media campaign's effectiveness was assessed by the EU observation mission as somewhat deficient. Blurring of campaigning and

voter education efforts was sometimes evident in the south: groups such as the ‘Southern Sudan Civic Education Organisation’ mass-produced sample ballot posters with the separation option pre-marked. The Sudan wide NGOs that had performed voter education activities prior to the April 2010 national elections had no specific expertise in targeting Southern Sudanese audiences. The low level of public knowledge of polling procedures, however, caused many voters to ask the chairs of referendum registration and polling centres for detailed explanations on how to vote. This was done to an extent that cast a doubt on the secrecy of the vote in about eight percent of cases observed by the EU mission. The mission suggested that paradoxically, and unfortunately, this was also likely to have been a key reason for the unusually low number of invalid ballot papers (EUEOM, 2011).

The assessment of the TCC observation mission ran along similar lines:

“Overall, voter education was insufficient, as the SSRC, SSRB, and government did not adequately engage in efforts to inform voters about the referendum process, which runs against the state obligation “to take legislative, administrative, or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.” The conduct of outreach to the public on the details of the referendum process and the provision of civic education are key components of the SSRC mandate as outlined in the Referendum Act (SSRA, article 7). While the state bears an obligation to promote public understanding of the democratic process, it is essential that election administration provide for objective, nonpartisan voter education and information campaigns.

The large majority of voter education activities observed in Southern Sudan were led by civil society groups and often mixed voter education efforts with advocacy in favor of secession. Political parties in Southern Sudan—aside from the SPLM—informed TCC observers that they wanted to conduct voter education but lacked the resources to do so.

TCC observers reported very few voter education activities in Northern Sudan. This may partially explain the inadequate understanding by Southerners in Northern Sudan as to whether they were eligible to participate in the referendum. Voter education in both regions increased in the latter part of the voter registration process. In the north, there was intensified engagement by civil society groups, the SSRC, and the NCP. In the south, local chiefs, churches, women’s groups, the SPLM, and members of the state or county referendum taskforces conducted voter education.

In addition to voter education and information, Sudanese officials were obligated to provide widespread civic education throughout the different phases of the process. Given the significant impact of the decision to vote for unity or secession and the need to ensure that voters understand the options and implications of the vote before casting their ballots, special efforts should have been made to inform voters of post-referendum arrangements. The failure to engage the population in a meaningful discussion about unity or secession and the failure to come to an agreement on the future citizenship status of Southerners in the North and Northerners in the South before the referendum meant that participants in the referendum were unable to make an entirely informed choice about the impact of their vote. International norms and best practice suggest that Sudan and referendum authorities could have done more to fully explain how their rights and freedoms were affected by the two government and administrative systems resulting from either unity or secession.” (TCC, 2011, pp22-23).

The legislation in the Falkland Islands required the production and circulation of an official information leaflet providing an objective, fair and balanced explanation of the issues involved in the referendum (FIRO section 9), the text of which is shown Appendix 1. The electoral administration worked with media outlets to disseminate information, dates and deadlines for the referendum process: residents told the RIOM/MIOR observation mission that the information campaign had been sustained and detailed. The mission believed that the public information campaign was a contributing factor to the very high turnout (RIOM/MIOR, 2013).

In Scotland, the responsibility for promoting public awareness and understanding regarding the referendum, the question, and polling procedures lay with the UK Electoral Commission (SIRA section 23). The Electoral

Commission decided that its public awareness work would have two broad aims: to ensure that all eligible electors knew that they had to be registered and how and when to do this, and to ensure that eligible voters had enough information to cast their vote confidently. As the legislation was in a settled state from an early stage in the parliamentary process, the Commission was able to introduce potential campaigners to its role as regulator, the main campaigning rules and the reasons for them through a series of updates issued from September 2013 onwards. These updates continued throughout the referendum period, including after polling day, reminding campaigners of key dates and responsibilities, any updates to the guidance and the Electoral Commission's role in regulating campaign spending. The Commission offered advice and guidance proactively in the run up to the start of, and throughout, the referendum period, offering to meet potential campaigners: it met with 24 groups before the start of the referendum period and was in contact with other potential campaigners. This included meetings with the larger campaign groups and with the political parties who intended to campaign at the referendum, discussing in detail how the rules would apply to their campaign plans (Electoral Commission, 2014).

The centrepiece of the voter education effort was a 12-page voting guide compiled and delivered to every household in Scotland, alongside a simultaneous campaign conducted through television, radio and print media, poster advertising, and online. The voting guide contained information on eligibility to vote, registration procedures and voting methods: a joint statement from the UK and Scottish governments outlining the process that would follow either outcome of the referendum; and information statements from the lead campaign organisations on both sides (Electoral Commission, 2014, annex 4). The voting guide was made available in large print, Easy Read and braille versions, and translated into other languages. An additional specific awareness campaign was also developed targeted at 16 and 17 year olds, who were able to vote for the first time.

In its post-referendum assessment report, the UK Electoral Commission stated that “we were clear from the outset that we did not interpret the scope of this duty to include any obligation on us to provide information to voters on what independence might mean, particularly as the poll's result would not mean the commencement or otherwise of an already enacted piece of legislation with the terms of independence already set out in detail. We were aware from our own experience and that of other electoral commissions that undertaking any public awareness activity on the potential consequences of a yes or no vote would pose an unacceptably high risk to public perceptions of our impartiality” (Electoral Commission, 2014).

The UK Electoral Commission also noted that its question assessment research showed that people expected to receive neutral, factual information before the referendum about what would happen after it. It had recommended that the Scottish and UK Governments should clarify what process would follow the referendum in sufficient detail to inform people what would happen if most voters vote Yes or if most voters vote No (Electoral Commission, 2013)—a recommendation which was duly reflected in the content of the Voting Guide.

In Montenegro, however, no legal requirement existed for the EMB or any other neutral body to provide voter education initiatives to promote public awareness on citizens' rights related to suffrage and the procedures for polling. The OSCE/ODIHR observation mission considered this as contrary to best international practice (OSCE/ODIHR, 2006).

In Catalonia, the informal nature of the 2014 prior consultation process meant that no formal voter education took place, although Catalan News reported that 305 venues (241 social centres and 64 cultural venues) were made available by Catalan Government for ‘hosting campaign events’. The 2017 legislation also did not give the EMB the function of itself directly undertaking voter education.

The detailed organisation of the 2018 referendum in New Caledonia will be defined in the decree calling the referendum to be issued by the Government of France. However, the special arrangement for polling stations in Nouméa for those registered on the islands but resident on the mainland will be accompanied by a specific voter education campaign (Government of France, 2017).

Civic and voter education: assessment of practice

In most recent independence referendums, the EMB has issued voter education material explaining the technicalities of registration and of voting. This was not done in Montenegro, and was the subject of criticism.

Although it has been suggested that best international practice also places an obligation on the EMB to undertake wider civic education activity explaining the implications of the two choices available in the referendum, many EMBs, regarding the need to be perceived as impartial as critical, are very wary of doing so. The two clear exceptions to this in practice have been Timor-Leste, where the electoral administration was established by the UN, and the Falkland Islands.

In Quebec and Scotland, where strong divisions and polarisation were evident, the EMB did not itself prepare material on the implications of the Yes and No options. However, it did distribute statements provided by the Yes and No campaigns within a common format specified by the EMB.

The dissemination channels for civic and voter education vary widely in different societies: the local communications environment is the most salient factor informing the decision as to which channels will be most effective. Print media, broadcast media and social media may all play a significant role, and it is clear that successful dissemination strategies seek to use a variety of media, developing messages for each which reinforce each other. In this context, the Bougainville Audience Study (University of Goroka CSCM, 2017) provides an important basis for the Bougainville discussion.

Ch. 5 The campaign environment: regulatory and oversight issues

Role and regulation of the media

Freedom of opinion and expression, transparency, and access to information are all characteristics of legitimate and credible electoral processes derived in particular from obligations under ICCPR (Article 19) and ICERD (Article 4). The need to realise these principles in practice is commonly reflected through legislation and regulation. This may cover two areas: general provisions seeking to ensure a level playing field for participants and campaigners in the referendum to put across their viewpoint, and specific provisions entitling them to free coverage or airtime.

i. Media regulation: global experience and practice

While legislation and regulation of the role of media in sovereignty referendums is the common practice, it has not been universal. The speed, ad hoc nature and informality of the 2014 process in Catalonia meant that there was no formal regulation of media coverage. Nor did regulation exist in East Timor, because the UN legal framework for the referendum could not bind third parties.

In Montenegro, the legislation provided for regulation of media coverage in line with international documents on human rights and freedoms. The specific provisions included equal time for both sides on public media, a requirement that private media may not discriminate in accepting paid advertising, and a code of conduct for fair coverage in private media (ARSLSM Articles 43–51). The parliament was required to establish a twelve member committee (six from each side) monitoring compliance with these legal provisions and handling media related complaints (ARSLSM Articles 52–54).

In Southern Sudan, the SSRC and the governments of both Sudan and Southern Sudan were required in the legislation to provide and guarantee equal opportunities and just treatment for advocates of the two options (SSRA Articles 45–46). The EUEOM reported that the campaign was regulated through the Media Campaign Regulations (MCRs) 2010, issued by SSRC on 8 December, 2010, and the Media Rules and Guarantees included in the legislation (EUEOM, 2011). According to the MCRs, only advocacy groups — civil society organisations, political parties or individuals registered with the SSRC — were entitled to campaign; however, no official list of advocacy groups was ever released. An Independent Media Committee was established with responsibility for allocation of time and space in the state-owned media, aiming to provide equal access to the media for both options and the realisation of a comprehensive voter education campaign.

The EU observation mission reported that in practice, an almost complete absence of pro-unity campaigning in Southern Sudan created an environment where debate on the consequences of secession or the continued unity of Sudan was drowned out. Campaigning in the northern states, conversely, focusing on pro-unity messages, was much more subdued (EUEOM, 2011).

A referendum silence period was provided under Article 25 of the MCRs and started on 8 January 2011, one day before the opening of polls. According to the EU observation mission, this provision was, however, not respected by most media in Southern Sudan. General messages to mobilise people to vote—and more direct calls to vote for separation as well as pro-separation referendum songs—were broadcast in several electronic media outlets. Campaigning was also observed inside six percent of referendum polling centres while polling was under way, in breach of regulations. The referendum campaign also continued in the northern media during polling days (EUEOM, 2011).

In Scotland, in common with the rest of the UK, news reports, features and editorials in print or online media are not subject to electoral law, and the law does not require them to be impartial. However, broadcast media are required by the terms of their licence to observe the Broadcasting Code drawn up by the UK media regulator Ofcom (Ofcom 2013 is the version in place at the time of the referendum). This code contains general provisions relating to news (Section 5), and specific provisions relating to elections and referendums (Section 6).

The British Broadcasting Corporation (BBC), the public broadcaster, maintains general editorial guidelines, and conducted a consultation to derive specific guidelines for the Scottish referendum (BBC, 2014). These state that due impartiality is not necessarily achieved by the application of a simple mathematical formula or a stopwatch. The objective—in a referendum with two alternatives—must be to achieve a proper balance between the two sides, irrespective of indications of relative levels of support. However, referendums are seldom fought purely on the basis of just two opposing standpoints—on each side, where there is a range of views or perspectives, these should be reflected appropriately during the campaign. Achieving due impartiality during the campaign means finding “broad balance” between the arguments (not necessarily between the designated campaign groups for each side).

Private broadcast media are required to report news with due accuracy and present it with due impartiality. On programs covering matters of political controversy, which include elections and referendums, views and facts must not be misrepresented. Views must also be presented with due weight over appropriate timeframes. Any personal interest of a reporter or presenter, which would call into question the due impartiality of the program, must be made clear to the audience. Presenters and reporters (with the exception of news presenters and reporters in news programs), presenters of “personal view” or “authored” programs or items, and chairs of discussion programs may express their own views on matters of political or industrial controversy or matters relating to current public policy. However, alternative viewpoints must be adequately represented either in the program, or in a series of programs taken as a whole. Additionally, presenters must not use the advantage of regular appearances to promote their views in a way that compromises the requirement for due impartiality. Presenter phone-ins must encourage and must not exclude alternative views.

The responsibilities of the EMB in Iraqi Kurdistan included, in addition to a general duty of building trust and increasing awareness in electoral processes, a specific function of accrediting media covering the process (IHERCL Article 4). A regulation was issued specifically containing the requirement that media coverage should be accurate and impartial, reiterating the 48-hour ‘quiet period’ before the opening of polls in which political parties could no longer campaign, and enabling the accreditation of media to enter polling stations subject to non-interference in the process of polling and the maintenance of voter confidentiality (IHERC Regulation 7/2017).

The ad hoc nature of the process in Catalonia in 2014 meant that there was no formal regulation of media coverage. However, the 2017 legislation laid down a regulatory framework (CL19 Article 12). Under its provisions, media outlets that are publicly owned or the majority of whose funding was public were required during the campaign to guarantee the principles of political and social pluralism, editorial neutrality and equality of opportunity, and to neither express nor show support for any option. Privately owned media outlets were required to respect the principles of political and social pluralism, equality of opportunity, and of editorial proportionality and neutrality in electoral debates and interviews. As long as these principles were respected, private media outlets were permitted to express or show support for an option, provided that they treated the opposing option equitably and reasonably. The EMB was required to guarantee compliance with these principles and was given powers to issue necessary instructions and resolve complaints in accordance with the procedures it itself establishes. In the case of non-compliance, it was empowered to adopt compensatory measures to re-establish balance between the two options.

While the provision of free airtime to campaigners in independence referendums is not the common practice, it was included in the legislation in Catalonia in 2017. Political formations with parliamentary representation had the right to use 70 percent of the free public information spaces to be provided in the publicly owned media.

The electoral administration was required to allocate the use of the space between these parties in accordance with the results obtained in the most recent elections to Parliament. The remaining 30 percent of free airtime was to be allocated amongst accredited stakeholder organisations, in accordance with the number of signatures submitted (CL19 Article 11(2)).

However, the dissolution of the electoral commission ten days before polling day made compliance activity theoretical. In any event, the issue in contention in practice in the days leading up to polling day was not the question of independence that was on the ballot paper, but the question of whether or not the referendum would go ahead – for which the regulatory framework was essentially irrelevant. None of the media regulatory provisions appeared to operate in practice in the circumstances in which the referendum took place.

ii. Media regulation: assessment of practice

Media analysis frequently forms part of the work of electoral observation missions, providing commentary on whether the requirements, safeguards or guidelines of the legislative framework are matched by the reality. In Montenegro, the media analysis found that the government campaigned for the yes option and issued declarations of future policy during the campaign which assumed the success of the yes option (CLRA, 2006).

In Southern Sudan, the EUEOM included a specific media monitoring component. This noted that overall, radio was the dominant medium: the one state owned TV station in Southern Sudan had very limited reach. All print media were private, and the lack of any printing plant in Southern Sudan meant that any print media had to be brought in from outside.

The monitoring of the media found that effective implementation of the media campaign regulations was limited by their late release, lack of communication to media stakeholders, the absence of specific binding rules on time and space allocation and the minimal coverage of the events organised. Electronic media coverage in Southern Sudan was largely favourable to the cause of separation: there was barely any presence of pro unity arguments in Southern Sudan TV, which devoted 97 percent of its airtime to subjects standing for separation. The state-owned Southern Sudan Radio allotted 86 percent to the same group along with private radio stations which dedicated to pro separation subjects. Media houses admitted that their coverage was not balanced but in favour of separation only; according to them this was due to the difficulty to find individuals and groups supporting unity, or the unwillingness of unity supporters to freely express their view when interviewed for fear of possible persecution from supporters of secession. In the print media, the monitoring confirmed one sided pro unity coverage in the north, while some of Southern Sudan print media also devoted more coverage (between 43 and 62 percent) to pro unity subjects – although this was assessed not to have been a consequence of a pro unity editorial line (EUEOM, 2011).

The RIOM/MIOR observation mission assessed the media landscape in the Falkland Islands as having been conducted in an open and transparent manner, permitting equal opportunity to both Yes and No campaigns (RIOM/MIOR, 2013).

In Catalonia in 2017, the IEERT observation mission assessed media coverage during the campaign period as focused on the conflict between the Catalan and Spanish governments and on the question whether the referendum would in the vent take place, rather than on the arguments for and against independence (IEERT, 2017).

Political finance and campaign funding

The influence of money, both licit and illicit, has become a central area of concern in the legitimacy of electoral processes. This is reflected in the obligations relating to transparency and to anti-corruption measures assumed under international treaties, including, in particular, ICCPR (Article 19(2)) and UNCAC (Article 7). The result has been increasing attempts at regulation to promote a level playing field for electoral participants. These can be described as falling into five categories:

- reporting requirements, under which electoral participants are required to declare their campaign income

and expenditure to the EMB;

- transparency mechanisms, under which the EMB publishes political finance reports for public inspection;
- limits on allowable income;
- limits on allowable expenditure; and
- bans on financing from specified sources, for example, public bodies, anonymous donors, or foreigners.

i. Political finance regulation: global experience and practice

In Quebec, referendum campaigns were only permitted to receive income from Government subsidy, gifts or loans from political parties, and direct contributions by electors (QRA section 37). Expenditure was also regulated, with a requirement for all payments to be made by or on behalf of an official campaign agent out of a special fund established for that purpose (QRA section 36). This did not prove adequate to control the use of money during the 1995 referendum campaign period. For example, the Quebec EMB announced in 2007 that it had identified substantial unauthorised spending during the referendum period by the federal Department of Canadian Heritage for the No option. Controversy over funding issues was still alive in 2013 (House of Commons Library, 2013, p. 24).

The regulation of political finance has been a staple of discussion in Montenegro for a long time. At the time of the referendum in 2006, the legislation in force was the law on financing political parties passed in 2004. A number of its provisions were carried over into the referendum legislation: these included limits on the size of donations, and the ban on campaign income given by state institutions, religious organisations, gambling, international and overseas bodies, and anonymous donors (CEMI, 2006 p. 28; ARSLSM Article 38). Also in line with the practice in elections, public funding of campaigns was provided. Each side received 1 million euro for campaign expenses as defined in the political party financing law, to be handled through a special campaign account. Submission of the account of income and expenditure was required from each side not more than 30 days after polling: these documents were then officially published (CEMI, 2006 pp. 64–73; ARSLSM Article 34, 39–42). The task of regulation of the oversight of political financing was given to a Referendum Financing Committee to be set up by the parliament, consisting of six members, three supporting each side (ARSLSM Articles 36 and 37).

In Scotland, individuals and organisations spending more than £10,000 on referendum campaigning were required to register as ‘permitted participants’. Permitted participants could only receive their income from registered electors, UK companies and unincorporated bodies, and political parties (SIRA Schedule 4 section 1(2)). Their expenditure was subject to an overall limit: £1,500,000 for the umbrella campaigns, and £150,000 for other campaigners (although a higher limit existed for larger political parties) (SIRA Schedule 4 section 19). A declaration of expenditure was required from all permitted participants, which was open to public inspection (SIRA Schedule 4 sections 21, 25). Where a campaign spent more than £250,000, an audit report was required (SIRA Schedule 4 section 22).

The Scottish Government took a policy decision that no publicly funded campaign grant would be available. The UK Electoral Commission report noted that in practice both designated lead campaigners were well funded, and found no evidence that the lack of provision of public funding was an issue (Electoral Commission 2014).

This model was also used in a greatly scaled down form in the Falkland Islands. Individuals and private organisations spending more than £1000 on campaigning were required to register their expenses with the electoral administration, and were subject to an overall expenditure limit of £10,000. In practice, no registration was received (RIOM/MIOR, 2013).

The legal framework of the East Timor referendum, where the directions issued by the UN to UNAMET could not bind external parties, meant that no regulatory framework for political finance existed. In practice, the issues of violence and intimidation during the campaign period meant that other regulatory issues had very limited profile or relevance.

Neither did regulation of political finance take place in the Southern Sudan referendum, even though provisions for it exist in the electoral legislation of Sudan for this purpose: these include a ban on foreign funding, an overall campaign expenditure limit, and a requirement to submit audited accounts of campaign income and expenditure within 30 days of polling.

In the informal consultation of Catalonia 2014, it is clearly not relevant to consider political finance regulation. Nor did any provision relating to political finance appear in the 2017 legislation.

No provisions regulating political finance exist for elections in Iraqi Kurdistan, and no provisions were introduced for the referendum.

Ch. 6 Security

Principles governing security in the electoral context

The right to security of the person is included in the obligations incurred by countries which accede to the ICCPR (Article 9). The relationship between electoral authorities and security agencies is a key part of the planning and implementation of a successful electoral process. Major issues include the anticipation, prevention and control of violence and disturbance and the security of sensitive ballot materials both before and after polling. Long term familiarisation, dialogue, risk assessment and joint understanding of potential threats is essential to building a relationship between institutions which often have very different backgrounds, cultures and working practices. Global tools to assist EMBs with the general practice of electoral risk management, such as the IDEA Electoral Risk Management Tool, are now freely available (IDEA 2013).

The need for security assessment relating to elections has been identified in the past in PNG. Assessment of the 2007 elections led to a priority recommendation that a national security framework should be developed for the 2012 elections. This would encompass an elections security toolkit, including a national set of standards for the conduct of security forces in relation to election offences, examples of best practice, and examples of successful contingency plans; a nationally consistent training program; and operational strategies that scope the potential security needs of each electorate and determine the level of deployment (Anere & When, 2009).

Nonetheless, security issues remain salient in PNG elections, although the most serious concerns do not emanate from Bougainville. At the 2015 ABG elections, security issues were also present but were limited in scope (Baker & Oppermann, 2015).

In its final report, the EUEOM in Southern Sudan enunciated general principles surrounding the role of security forces in supporting electoral processes, stating that ‘The use of state security forces to assist with the electoral processes in a logistical and security fashion is to be welcomed and encouraged. State security forces, however, including police, should maintain an institutional and physical separation from electoral events. This includes not checking voter or ID documents, or indeed being present at voter registration centres/polling centres in a conspicuous and intimidatory manner. The intervention of police and military forces in electoral events should be upon the request of EMB officials only, or where there is a real threat to public order. Public order legislation should apply to electoral campaign events but in a manner that allows maximum discretion for registered political parties/candidates to gather their supporters and communicate their message freely. State security organs charged with granting permission for and policing electoral campaign events and other political gatherings should respect the rights of political groups to campaign freely, and should endeavour to facilitate a level playing field for all parties/candidates (EUEOM, 2011).

Security at independence referendums: global experience and practice

The basic principle underlying the relationship between electoral authorities and security agencies on the ground is often defined in the electoral legislation. The common practice is that the security forces within a polling station are subject to the direction of the head of the polling station committee. In Montenegro, the law stated that police may not enter a polling station in uniform except on request of the chair of the polling station committee to prevent a direct threat to public order and safety inside (ARSLSM Article 33). The Falkland Islands electoral legislation, used also for the referendum, provides that it is the duty of the polling station commission chair to keep order there (Electoral Ordinance 1988; [FIEO] section 105(1)). The legislation for elections in Iraqi Kurdistan also gives the duty of maintaining order to the chair of the polling station commission, stating in addition that security forces and armed personnel may not enter the station except on his/her invitation (IKNAEL Article 30). This provision was carried over for the referendum.

In East Timor, the local electoral officer in charge of a registration or polling centre was given the power to exclude anyone not an electoral official, observer or a person casting her/his vote, and to take any steps he or she deemed necessary for the protection of himself/herself and other electoral officials or for stopping and preventing violence or disturbance in or in the vicinity of the electoral location (United Nations, 1999b, Direction 26).

These powers were not sufficient in scope and still less sufficient in timescale to prevent intimidation and violence being the defining issues of the East Timor referendum. The security of the referendum process was the responsibility of Indonesia under the 5 May 1999 agreement (United Nations, 1999a, Section G). However, the role of the Indonesian military and local militias was identified at an early stage as a serious threat to the conduct of the referendum. For example, the TCC observation mission reported on 17 July 1999 that

”the large majority of the people of East Timor are committed to participating in a peaceful, fair and democratic consultation. However, this commitment is being severely tested by an atmosphere of violence, intimidation, and insecurity that continues to pervade most areas of East Timor. Information gathered in direct interviews during field visits by Carter Center observers and from other independent reports from all parts of East Timor, indicate that pro-integration militias in many areas are threatening to harm or kill those who do not vote for autonomy. Similar reports indicate that the militias also are largely responsible for creating tens of thousands of internally displaced persons and preventing them from returning to their homes to participate in the consultation. (TCC, 2000, p56)”

In its final report, TCC concluded that

“TNI (Tentara Nasional Indonesia, the Indonesian military) created, supported, directed, funded, and armed pro-integration militias in an attempt to influence the outcome of the popular consultation through violence and intimidation. The Indonesian government, TNI, and the militias bear primary responsibility for the fear and violence that prevailed during the public consultation process. The Indonesian police failed to maintain law and order and in many cases actively colluded with violent pro-integration groups. The TNI, police, and local government officials actively campaigned and provided resources in support of the integration option. International observers, UNAMET staff, foreign diplomats, and international journalists were threatened and intimidated by TNI soldiers, police, and militia members before and after the vote” (TCC, 2000, p10).

The security situation in Southern Sudan was also difficult. The government of Southern Sudan was responsible for the formation of security committees from the Southern Sudan Police and the national security services present in Southern Sudan. The government of Sudan was responsible for the formation of form security committees in the rest of the country from the national police and national security services. All security committees were under the instructions of SSRC, in line with its power to determine and oversee measures to ensure maintenance of order, freedom, fairness and secrecy in the conduct of registration and polling (SSRA section 14(2)(f)).

The EUEOM noted that the presence of Government of Southern Sudan security personnel was conspicuous in many locations (EUEOM, 2011), and TCC’s observation mission noted that security forces were present at 20 percent of the referendum centres visited by its observers in Southern Sudan. In both Northern and Southern Sudan, TCC observers recorded large and seemingly disproportionate numbers of security officials outside referendum centres. TCC recommended that for future elections, there should be limits to the numbers of security officials outside registration and polling centres — with the exception of responses to incidents — and security officials should be properly trained to remain a certain distance from the centre unless requested inside by election staff (TCC, 2011).

From these case studies and more generally, analysis of the responsibility for security not only during polling but throughout the electoral process points to the desirability of its concentration in the hands of the referendum administration (Sen, 2015). However, it is clear the international agreement for the East Timor process was only reached under the condition that security remained in the hands of Indonesia. Best practice may not always be achievable.

A further point which emerges from the case studies is that security issues may be most acute in the period following polling and in particular following declaration (Sen, 2015). While it perhaps does not fall strictly under the heading of electoral process administration, the integration of post-election security thinking into wider electoral process planning is evident good practice. This may be particularly important where significant actors have expectations of the outcome which may appear unlikely to be realistic.

Ch.7 Observation

The openness of electoral processes to observation derives directly from international obligations. The right to a secret ballot contained in the ICCPR (Article 25(b)) is not restricted to the vote itself and covers independent scrutiny of the voting and counting process so that electors have confidence in the security of the ballot and the counting of the votes.

International observation

The BPA contains a commitment that international observers will be invited for the referendum (BPA Article 319). The basis of international election observation is laid out in the Declaration of Principles for International Election Observation, commemorated at the UN in 2005 by a wide range of intergovernmental and international NGOs. This Declaration (United Nations, 2005) defines international election observation:

”the systematic, comprehensive and accurate gathering of information concerning the laws, processes and institutions related to the conduct of elections and other factors concerning the overall electoral environment; the impartial and professional analysis of such information; and the drawing of conclusions about the character of electoral processes based on the highest standards for accuracy of information and impartiality of analysis. International election observation should, when possible, offer recommendations for improving the integrity and effectiveness of electoral and related processes, while not interfering in and thus hindering such processes... International election observation is conducted for the benefit of the people of the country holding the elections and for the benefit of the international community. It is process oriented, not concerned with any particular electoral result, and is concerned with results only to the degree that they are reported honestly and accurately in a transparent and timely manner.”

This Declaration applies to observation of referendums as well as to observation of elections.

Domestic observation

The Declaration of Principles for Non-Partisan Election Observation Monitoring by Citizen Organisations and Code of Conduct for Non-Partisan Citizen Election Observers and Monitors (United Nations, 2012) was commemorated at the UN in 2012 by over 160 global, regional and country level nonpartisan election monitoring organisations, and supported by intergovernmental and international NGOs. Its text parallels that of the Declaration of Principles for International Observation. It defines nonpartisan election observation and monitoring by citizen organisations as ‘the mobilisation of citizens in a politically neutral, impartial and non-discriminatory manner to exercise their right of participation in public affairs by witnessing and reporting on electoral developments advocating for improvements in legal frameworks for elections, their implementation through electoral related administration and removal of impediments to full citizen participation in electoral and political processes’ and as ”independent of electoral authorities, including government, and conducted for the benefit of the people of a country in order to promote and safeguard the right of citizens to participate in government and public affairs directly or through freely chosen representatives elected in genuine democratic elections.” Again, the text of this Declaration refers to the observation of referendums as well as to elections.

Accreditation

The status of observer carries rights and responsibilities. In order to observe effectively, observers need, for example, freedom of operation and movement, and unimpeded access to all aspects of the electoral process — as laid out in more detail in the two Declarations of Principles. Observers and observer organisations equally have responsibilities, which include non-partisanship, independence of government and of electoral authorities, respect for the law, and impartial, accurate and timely reporting; these are laid out in more detail in the Codes of

Conduct that accompany the two Declarations. The electoral authority needs to establish an efficient and timely process to provide accreditation.

In addition to accreditation in relation to the electoral process itself, which would normally fall under the responsibility of the electoral management body, the status of international observation missions and individual international observers raises questions for host government authorities. The applicable visa regime needs to be defined. Bodies despatching international observation missions are likely to seek agreements covering, for example, immunities for observers in respect of things said or written, immunities of observers from civil legal actions, import of equipment, international transfer of money, and liability to duties and taxation. In a context where independence or sovereignty is at issue, it is likely to be necessary to ensure that all parties are on side.

Observation: global experience and practice

In East Timor, international observation took place under terms laid down by the UN. One mission, from TCC, was accredited. The 5 May 1999 agreement also provided for Indonesia and Portugal to send equal number of observers to all phases of the process both inside and outside East Timor (United Nations, 1999a).

In Montenegro, the legislation calling the referendum stated (ARSLSM Article 56) that the EU, other international organisations, international NGOs, and representatives of individual countries could observe the electoral process, specifying that this included the work of authorities in charge for administration of the referendum and other state authorities, monitoring of media coverage of the referendum, exercise of the right to vote and other connected political and civil rights in the referendum process. Domestic NGOs were also able to observe (ARSLSM Article 58). One joint International Referendum Observation Mission was formed by the OSCE Office for Democratic Institutions and Human Rights, the OSCE Parliamentary Assembly, the Council of Europe Council of Local and Regional Authorities, the Parliamentary Assembly of the Council of Europe, and the European Parliament, and was duly accredited.

In Southern Sudan, the legislation calling the referendum provided for international, regional and domestic observation (SSRA Articles 61 and 62). Invitations were issued by the government of Sudan and the government of Southern Sudan, with accreditation then the responsibility of the Southern Sudan Referendum Commission. The powers of observers were specified as relating to registration, polling, sorting and counting. International observation missions were accredited from TCC, the EU, the African Union, the League of Arab States, and the InterGovernmental Authority on Development. Three domestic observer organisations were accredited, which between them covered 96 percent of polling stations (EUEOM, 2011). In addition, the legislation committed different levels of governance to ensuring the presence of national, regional and international civil society organisations to observe all the procedures pertinent to the referendum related awareness campaign (SSRA Article 7(e)).

The procedures and implementation for observer accreditation for Southern Sudan attracted criticism. TCC noted its concern at delays in the accreditation of domestic observers (TCC, 2011). TCC also observed confusion over whether domestic observers required a photograph for accreditation, a practice not contained in the regulations but implied by the accreditation form – a practice which was not logistically sustainable (TCC, 2011). IOM commented that the accreditation of observers for out of country voting appeared not to have been thought through. All observers had to be accredited through the SSRC in Khartoum, which unsurprisingly proved cumbersome (IOM, 2011).

The Falkland Islands accredited a team of eight international observers (RIOM/MIOR) funded by CANADEM, a Canadian international non-governmental organisation. In Scotland in 2014, the legislation provided for accreditation to be handled by the Electoral Commission (SIRA sections 19 and 20) for observers to be present at the issue and receipt of postal ballots, polling and counting. This legislation also required the Electoral Commission to produce a code of practice on the accreditation, attendance and activities of observers (SIRA section 22).

A multiparty delegation of European Parliament members was present in Catalonia in 2014 to observe the

informal process, although it did not have the status of an official delegation of the European Parliament. Domestic observation, by the Catalan Association of Political Scientists and Sociologists, also took place.

The legislation establishing the EMB of Iraqi Kurdistan gave it authority to accredit international election observers (IHERCL Article 6(3)). International organisations did not send formal delegations: however, some 60 observers were accredited on a personal basis.

Similarly, the 2017 legislation in Catalonia empowered the EMB to accredit international observers, giving accredited observers the right to freely attend all processes associated with holding the referendum (CL19 Article 15). Again, no international organisation sent a formal delegation, although three multinational groups of international observers were nonetheless accredited (IEERT, 2017; ILOM, 2017). Access by observers to the electoral administration was, however, limited. Provision was also included in the law for social organisations to apply for accreditation as domestic observers (CL19 Article 14(2)), although no organisations did so in practice.

Observation in Bougainville

Provisions for the invitation and accreditation of international observers for the Bougainville referendum are specified in the organic law (OLB Schedule 1 section 1.11). However, the definition focuses on polling, transport of ballots, and counting, and does not specify observation of the wider campaign environment. There are no provisions in the organic law that directly refer to domestic observation, although the accreditation on domestic observers as an interest group under the provisions for registration of campaign participants (OLB Schedule 1 section 1.10) would appear to be possible. Since observers at the 2015 ABG elections have suggested the presence of domestic observers was not always welcomed (Baker & Oppermann, 2015), it may be helpful if these provisions are strengthened and the role of domestic observers communicated.

The two Declarations of Principles make it clear that observation relates to the entire electoral process, not merely events that are closely linked to polling and counting. In several of the recent independence referendums, the conduct and accuracy of registration has been a key element when assessing the electoral process. TCC mission in Timor-Leste was able to deploy just over three weeks after the establishment of the UN electoral administration and was thus able to observe registration (TCC, 2000). Similarly, the OSCE/ODIHR observation mission for Montenegro was able to deploy under four weeks after the passage of the referendum law, midway through the period for display and updating the electoral register (OSCE/ODIHR, 2006). In Southern Sudan, where the date of the referendum was known a long way in advance, TCC mission was able to deploy five months before polling, again able to observe registration (TCC, 2011). Although observers in the Falkland Islands (RIOM/MIOR, 2013) and in Scotland deployed only shortly before polling day, the electoral register in both cases was based on established administrative mechanisms that had a high degree of trust. Where registration is likely to be controversial, as the history of electoral processes in PNG suggests may be the case in Bougainville, early invitation to the EMB to observe would be of considerable importance.

Ch.8 Gender issues

There are at least two areas in which the gender related commitments and obligations that have been assumed through international treaties (ICCPR Article 3; CEDAW Article 7) can lead to specific action in electoral processes, including referendum processes. The first is the active engagement of women in the campaigns and arguments put forward on both sides of the referendum. The second is the active effort of the EMB to recruit and encourage women at all levels of the electoral administration and to ensure that voter education actively involves women and is targeted at the involvement of both women and men.

No specific consideration of gender issues appears to have taken place in the planning or implementation of the referendums in Catalonia, East Timor, the Falkland Islands or Scotland. The same was true of Montenegro, where observation missions commented on the low number of women members and even lower number of women chairs of polling station committees, and the absence of women in senior positions in the national campaigns of both sides. Although images of women featured strongly in the campaign materials, there were fewer instances of women playing an active role at campaign events (OSCE/ODIHR, 2006; CLRA, 2006). In Scotland, however, one observation mission noted a balance between women and men as polling station committee chairs, and a preponderance of women as members of polling station committees (ISCA-AIDC, 2014).

TCC observers in Southern Sudan noted that although there were some women in high level positions in the electoral administration, a comparatively low number of women served as officials at registration and polling centres (TCC, 2011). The EU observation mission noted the age limit on referendum staff, who were required to be 40 years old, resulted in the disqualification of women: access to education for girls had been significantly improved in the 1990s, but its beneficiaries were not yet old enough to serve as electoral officials. However, a large proportion, often a majority, of domestic observers were women (EUEOM, 2011).

Ch.9 Dispute resolution

Dispute resolution mechanisms are intrinsic to international electoral obligations. The ICCPR includes the provision that any person whose rights or freedoms are violated should have an effective remedy (ICCPR Article 2(3)) and supporting jurisprudence emphasises expeditious resolution, equal access to courts and tribunals, and ‘equality of arms’ before those bodies. The competence, impartiality and independence of those tribunals is an absolute right to which no exceptions are permitted.

The resolution of disputes during electoral processes may be considered in two categories: the handling of complaints during the electoral period, and the hearing and resolution of formal challenges to results. Both categories are matters for civil proceedings and are usually conducted at an administrative level or (especially in the case of appeals and final resolution hearings) at a judicial level. Criminal proceedings may arise when offences contrary to electoral law are alleged to have been committed during an electoral process (IDEA, 2010, chapter 4).

This categorisation can also be applied to referendums. The priority when designing civil proceeding dispute resolution processes is likely to be their effective timely resolution, without which the electoral process may be delayed or in some way destabilised. Civil proceedings are also likely to be determined on the balance of probabilities. Criminal proceedings, however, may affect the liberty, assets and reputation of those against whom charges are brought. Electoral process related proceedings are like any other criminal proceedings and require full investigation and are decided on a burden of proof (along the lines of ‘beyond reasonable doubt’).

As with many other aspects of administration and procedures, there are some examples where specific provisions have been designed, and some examples where the procedures used for elections are carried over to the referendum context.

Complaints during the electoral period

In Montenegro, no procedures for handling complaints and appeals specific to the referendum were adopted, and the procedures used were therefore those defined for elections. The OSCE/ODIHR observation mission noted that although the complaints and appeals procedures established by the 2000 election law were generally satisfactory, they provided unrealistic timeframes and unclear deadlines for the submission and resolution of disputes relating to the referendum process—which proved particularly problematic during the post-referendum phase (OSCE/ODIHR, 2006).

Most complaints submitted before polling day related to alleged problems with the electoral register. However, at least 20 alleged criminal acts, including pressure on employees, to vote in favour of independence or to not vote: these were forwarded to the public prosecutor. One high profile conviction resulted in the imprisonment of pro-independence activists for vote-buying activities. Following the announcement of the preliminary results, some 210 complaints were submitted by the pro-union bloc, the majority of which related to the electoral register. All of these complaints were dismissed by the national EMB, with the chair using his casting vote (OSCE/ODIHR, 2006).

In Southern Sudan, the legislation provided that the head of each referendum registration and polling centre would appoint a consideration committee to hear complaints about registration applications (SSRA section 30(2)). However, the EU observation mission noted that their role was undermined by late establishment, inaccessibility and lack of information as to their role and location (EUEOM, 2011). A specific provision existed in the legislation for a right of appeal against this administrative determination of an objection to the register, to be lodged with a court within seven days and then heard within a further five days (SSRA section 31). According to the SSRC, no such appeals were lodged anywhere. Although the SSRC presented this as evidence that there

were no problems, the EU observation mission suspected it more likely reflected difficulties with information, access and distance (EUEOM, 2011).

Although not envisaged in the original legislation, these consideration committees were subsequently given a similar role in relation to polling. However, they were operational in only 60 percent of the referendum registration centres observed by the EU observation mission, which concluded that given the poor understanding of the role of these committees by voters, referendum staff and domestic observers, they were rarely used as an avenue for voters' complaints, except in a few cases regarding lost cards (EUEOM, 2011).

The consideration committee mechanism had specific tasks at referendum registration and polling centres. There was no general dispute resolution mechanism, or formal mechanism to air complaints about the actions of the SSRC in preparing the referendum. The EU observation mission regarded this as a significant shortcoming, and as failure to respect Sudan's electoral commitment to provide an effective legal remedy. Important questions about the location of registration and polling centres, the interpretation of the eligibility criteria for registration, or the failure of the SSRC to publish a list of ethnic and indigenous communities eligible to participate, could not be addressed through an administrative complaint system within the SSRC or by court challenge. Lists of grievances and complaints were, in fact, addressed to the SSRC by the campaigners for the unity option, and an attempt was made to address these: for example, by removing referendum officials younger than the required statutory age of 40. Ultimately, some of these issues were included in applications to the Constitutional Court prior to the referendum (EUEOM, 2011).

In the Falkland Islands, as is commonly the case in electoral administration systems whose origin lies in the UK, there is no formal civil dispute resolution role for electoral administration, and this remained the case for the 2013 referendum. In Scotland, however, the legislation gave powers to the UK Election Commission to impose civil sanctions for campaign offences, including fines and stop notices (SIRA Schedule 6).

In Iraqi Kurdistan, the EMB holds a general power to use its authority to solve problems in the preparation and conduct of elections and referendums. Appeals against its decisions may be made to a three judge commission formed by the Court of Appeal. Appeals must be submitted within three days, and determined within a further seven days: the appeal judgment is final. In addition, the EMB authorises criminal investigation relating to allegations relating to the integrity of the electoral process (IHERCL Article 9).

For the Catalonia referendum in 2014, the informal nature of the electoral process meant no dispute resolution mechanism existed. In 2017, the legislation provided that those with subjective rights and legitimate interests could submit complaints, queries or incidents to the electoral administration within two days of the events upon which they were based taking place or becoming known. Where these cases were initially local in nature, a right of appeal to the central EMB then existed. The central EMB would also hear cases on wider complaints, queries or incidents both at first instance and on appeal; in appeal cases, three members of the EMB, two of whom different from those who ruled in the first instance, were to rule first on admissibility. If admissible, the plenary EMB ruled on the substance. Any appeal had to be lodged within two days, and resolved within a further five days. No further appeal existed against plenary EMB appeal decisions (CL19 Articles 26-27).

Challenges to results

The legislation in Quebec provides for the establishment of the Conseil du Referendum, a special three judge court, to hear any judicial proceedings relating to a referendum (QRA section 2). The right to challenge the validity of a referendum or to apply for a recount is restricted to the chair of the national committee supporting either option. The Conseil only hears a case if the allegations could, if true, have changed the declared result (QRA sections 41 and 42).

In Southern Sudan, any voter was able to appeal to a court against the result in his/her polling centre within three days. Determination of this appeal was then required within a week. However, no appeal mechanism existed against the aggregated result declared by the SSRC (SSRA section 43). In practice, no appeals to the preliminary results were made to either the National Supreme Court in Khartoum or the Supreme Court of Southern Sudan

in Juba during the window for applications, and the final results were announced by the SSRC without appeals or challenges.

In Montenegro, the procedure for challenging the result followed that for elections: an appeal to the Constitutional Court. However, the leaders of the losing side doubted the impartiality of that court, and no further appeals were submitted (OSCE/ODIHR, 2006).

In Scotland, a challenge to the result required an application to court for a judicial review, in line with the practice in UK elections generally. Any challenge had to be submitted within six weeks of the declaration (SIRA section 34). A challenge to the result in the Falkland Islands required the submission of an election petition using the procedures in place for elections (FIEO sections 168–181). In practice, there was no challenge in either case.

In East Timor, the 5 May 1999 agreement contained no mechanism for a challenge to the result. The informal nature of the 2014 consultation in Catalonia also meant that no mechanism for challenge existed. In 2017, the legislation did not provide any specific mechanism for a challenge to the result declared by the EMB. Since the exceptional legal regime that it created expired on proclamation of the referendum result, the impact of its provision that existing local, regional and national Spanish law would continue to be applicable to the extent that the referendum law did not contravene it (CL19 Article 3(2) and Final Provision) is not clear. (Spanish electoral legislation includes provision for judicial challenge to results.) Events rendered this question irrelevant in practice.

The organic law of New Caledonia provides that any elector qualified to vote in the referendum, and in addition the head of the government administration, may within 10 days of the declaration of the result challenge the result through the dispute hearing procedures of the Conseil d'Etat, the supreme administrative court (OLNC Article 220).

Ch.10 Conclusion

Referendums on independence and sovereignty are not isolated electoral events, but landmarks in longer term political processes that have potential long-lasting consequences. The independence/sovereignty referendums of recent years show political agreement—or its absence—between the territory whose independence is under consideration and the state within which the territory is contained may be the most important factor affecting the peaceful outcome of a referendum process within the rule of law. Acquiescence by authorities at both of these levels may well be sufficient in a referendum, but its active lack of acceptance by influential actors at either level is likely to be followed by violence. In this respect, the process derived from the BPA may appear more soundly based than other recent independence and sovereignty referendums.

Security of any referendum is integral to a successful process, both in the period before polling and in declaration of the result and sometimes, even more importantly, during the period that follows, as winners and losers digest and react to the result. Although conventional definitions of the electoral process may not extend to the political and security environment after results are declared, it is wise to regard this as integral to the referendum process and to incorporate into it active thinking about both the political consequences of the result of an independence referendum, and security considerations in the period following polling.

Although the broader political and security environment can eclipse all other aspects of the referendum process, a referendum is, in essence, a particular kind of electoral process. There are three factors to consider when planning a referendum: factors specific to the referendum as the mechanism for making a policy choice; factors common to the success of any electoral process; and factors characteristic of the successful functioning of any organisation. For all three factors, legitimacy and credibility depend both on design and on implementation. Good design does not alone guarantee success, but bad or inappropriate design can be a major factor in failure.

Much of this report is devoted to design issues that are specific to referendum processes in particular or to electoral processes in general. In the Bougainville context, the legacy of British forms of regulation and practice has enabled past elections to be completed both in Bougainville and in PNG as a whole, although often subject to a substantial degree of criticism. This legacy is characterised by detailed and perhaps sometimes over-prescriptive, definition of technical processes, and a complete vacuum on broader electoral environmental questions such as voter education, political finance, the role of the media, and complaints and disputes outside a formal judicial context. The importance of the issues under discussion in the Bougainville referendum requires a critical discussion within the whole stakeholder community of the impact of the deficiencies and limitations of this heritage. On one hand, a case can be made for major changes in the electoral framework to remedy a base which may not be up to the more intensive pressure and scrutiny that the independence referendum is likely to bring. On the other hand, such major changes may not work, especially if time for testing new procedures is limited, and may in addition be open to suspicion that some political player must be seeking to gain an advantage by introducing them for such an important event.

This discussion is particularly important in the context of proposals to increase the use of technology in PNG elections. These proposals are emerging from the review being conducted by the PNG Electoral Commission of the 2017 electoral process. The most important aim of these proposals is implementing improvements for the 2022 PNG national election. Although there may be temptation to use the Bougainville referendum as an opportunity to pilot changes for the 2022 PNG national election, the importance of holding a legitimate and credible referendum counsels extreme caution in doing so. Further, the joint approach to electoral administration embodied in the composition of the Bougainville Referendum Commission (BRC) must not lead to loss of time while differences of approach are discussed and resolved.

The substance of many of the referendum practicalities is challenging. Compiling an electoral register that is

robust enough to be widely regarded as legitimate and credible requires a design that is as accessible and inclusive as possible. Limitations of the existing model of registration are known from a long series of elections, and solutions to some problems may make another dimension worse. Similarly, registration for and facilitation of out of territory voting, agreed for Bougainvilleans outside Bougainville in the BPA, may be particularly sensitive and complex and require issues of electoral integrity, inclusion, cost, and timetable to be resolved. For voting outside PNG, there are practicalities and questions of diplomacy and protocol regarding the electoral machinery and the acceptability of electoral campaigning to be addressed.

Good decisions on these and many other aspects of the electoral framework, however, are only half the story. Effective and timely implementation is essential. Decisions about management, administrative and financial structures and practicalities are required. Many of these relate to issues that are not specific to the electoral field, but must be addressed in any organisation in order to make it function well. Although general questions of management and implementation do not occupy as much of this report as do the specifically electoral questions, they are just as important.

These decisions need to be linked to a realistic understanding of the administrative, financial and human resources management skills that exist; systems need not only to look good on paper but to be functional based on the competences and resources that are available. Registration, for example, requires effective organisation, training and logistics, good communication and voter education, and a secure atmosphere. The more training and practice that is done for registration, polling and counting, the better.

Budget and cashflow therefore need to be available well in advance of polling day. The financing of elections and referendums always depends on the political will and capability to make the necessary resources available at the right time. Assessments of the Southern Sudan referendum of 2011, the ABG elections of 2015, and the PNG national elections of 2017 all identified late payment or non-payment of polling station staff as one of the most potent threats to a successful electoral process.

This sends a clear message to Bougainville referendum planners that a focus on management and funding issues, not only electoral issues, is crucial. Ensuring that an organisation works involves building capacity and functionality: these cannot be created at the last minute. A timely start and a timetable that includes contingency for delays are both critical.

Delivering a referendum process of sufficient quality may be more challenging because of the adverse dynamics of timing inherent when an electoral process is not part of a regular cycle with an established institutional memory. In early phases, design and framework questions are negotiated between political actors, and, in common with all negotiation processes, these actors wait until the final deadline or even beyond in order to extract maximum value for the concessions that they finally make. This means the time available for implementation phases, which come afterwards, is frequently considerably less than planned. This pressure on the timetable cannot usually be recouped by delaying polling day — the political actors merely seize the extra time, and the final phases of the electoral process are no better than before. In addition, when an electoral process relies on funding from the international community, the potential funders often do not focus on what is needed until the upcoming vote hits their political radar — this may not occur until close to polling day, and the procedures for mobilising development assistance money may then not be instantaneous. Truncation of electoral preparations and corner-cutting then result from politically-induced delays and cashflow-induced delays.

It is almost inevitable that holding an electoral process for the first time, or holding a one off electoral process like an independence referendum conducted by a specially created body, will result in organisational and administrative rough edges. If in addition the existing institutional culture includes the belief that things will

be good enough on the day and a tendency towards last minute solutions, severe dangers to legitimacy and credibility are likely to arise as a result of rushed or inadequate implementation—however good the design of the process has been. Although June 2019 is still 15 months away at the time of writing, time is of the essence. The more that decisions about how the Bougainville referendum process will work are delayed, the more will acceptance of the integrity of the referendum outcome—whichever option is chosen by the voters—be open to question.

It is natural and desirable for those designing, planning and implementing electoral processes to be committed to success, seeking to build a positive culture and approach into the election machinery. Indeed, such an attitude on the part of electoral administrators is probably essential. In parallel with the detailed hard work on both electoral and managerial issues that is required, it is important to remember not everyone shares this commitment, and that even supporters of the electoral process may have vested interests or partisan advantage to seek. As a decision maker or designer of any part of an electoral process, including its administrative, organisational and financial elements, it is always desirable to be asking not only how it will ideally work, but also what opponents of the process may do to undermine or circumvent it and what other special interests may do to try to redirect it to their own benefit. The answers may identify areas that need particular attention, or discover weaknesses that it is essential to address.

Many of the challenges that face the planners and organisers of the Bougainville referendum are already known from experience of elections for the parliament of PNG and for the ABG. The comparative experience of other independence and sovereignty referendums conducted in different countries contains a rich and wide range of ideas and practices which may be useful in suggesting approaches to issues of design and of implementation, both on specifically electoral matters and on the effective management and delivery of the process. However, none of that experience can be flown in to Bougainville, unpacked from a crate and assembled with any expectation that it will work the same way as it did at its point of origin, or indeed make any positive contribution. It can, however, provide valuable information and insight for stakeholders in design, planning and organisation in Bougainville and across PNG. This study seeks to assist them in that process.

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Appendix 1: The information leaflet distributed for the Falkland Islands referendum (2013)



The Falkland Islands Government

Referendum

On the political future of the Falkland Islands

About this booklet

On the 10th and 11th March 2013, there will be a referendum on the political future of the Falkland Islands. This booklet explains the referendum, and what your vote would mean.

What is a referendum?

A referendum is a general vote by the electorate on a single political question. This particular referendum is a consultative referendum and is being held to seek your opinion on the political status of the Falkland Islands.

Why are we having this referendum?

The United Kingdom has sovereignty of the Falkland Islands. Argentina meanwhile claims that the Islands are theirs, and have requested that the UK Government enter into negotiations over this sovereignty. The UK Government support the Falkland Islanders' right of self-determination, allowing the people of the Falkland Islands to decide their future. The Argentine Government states that it does not believe that the Islanders have this right and, as evidenced in their Constitution, claim full sovereignty of the Islands. The purpose of this referendum is to give Falkland Islanders the opportunity to clearly state, through an open and observed democratic process, what they wish the political status of the Falkland Islands to be.

What is the question?

A referendum asks you to vote yes or no to a proposal. For this referendum, you will receive a ballot paper with this question:

The current political status of the Falkland Islands is that they are an Overseas Territory of the United Kingdom. The Islands are internally self-governing, with the United Kingdom being responsible for matters including defence and foreign affairs. The people of the Falkland Islands have and will continue to have the right of self-determination, and this is recognised under the Falkland Islands Constitution. Given that Argentina is calling for negotiations over the sovereignty of the Falkland Islands, this referendum is being undertaken to consult the people regarding their views on the political status of the Falkland Islands. Should the majority of votes cast be against the current status, the Falkland Islands Government will undertake necessary consultation and preparatory work in order to conduct a further referendum on alternative options.

Do you wish the Falkland Islands to retain their current political status as an Overseas Territory of the United Kingdom?

YES or NO

What is the current political status of the Falkland Islands?

The Falkland Islands are one of 14 Overseas Territories (OTs) of the UK. Each of these OTs has its own constitution, its own government and its own local laws. They are therefore all different and there is no blueprint for the administration of the OTs. But there are some common themes, which of course apply to the Falkland Islands. These themes are described in detail in the June 2012 White Paper [The Overseas Territories: Security Success and Sustainability] (<http://bit.ly/LiPmM9>). In short, the relationship between the UK and its OTs is based on the principles of self-determination and autonomy, whilst recognising mutual responsibility and a pledge of UK support when needed. The relationship between the Falkland Islands and the UK is essentially described in the Falkland Islands Constitution Order 2008 (<http://bit.ly/V5LqDt>). This spells out the degree of autonomy of the Falkland Islands Government whilst also describing the responsibilities of the UK towards the Islands.

The UK Government maintains a long-standing position on independence for the OTs, recognising that any decision to sever the constitutional link between the UK and an OT should be on the basis of the wishes of the people of the OT. Where independence is an option and it is the clear and constitutionally expressed wish of the people to pursue independence, the UK Government will meet its obligation to help the OT achieve this aim.

What is the Argentine position on the Falkland Islands?

The Argentine Constitution (<http://bit.ly/zvdOvm>) is clear that the Argentine Government claims full sovereignty over the Falkland Islands:

“The Argentine Nation ratifies its legitimate and non-prescribing sovereignty over the Malvinas, Georgias del Sur and Sandwich del Sur Islands and over the corresponding maritime and insular zones, as they are an integral part of the National territory. The recovery of said territories and the full exercise of sovereignty, respectful of the way of life of their inhabitants and according to the principles of international law, are a permanent and unrelinquished goal of the Argentine people.”

What does a yes vote mean?

If more people vote ‘yes’ than ‘no’ then the Falkland Islands Government will confirm to the UK government that the Falkland Islands wish to remain a UK Overseas Territory, retaining the current status and preserving the right to self-determination, which would allow the Falkland Islands to review its status at any time. This could include full independence in the future.

What does a no vote mean?

If more people vote ‘no’ than ‘yes’ then Falkland Islands Government will undertake further consultation and preparatory work leading to a further referendum on alternative options. These alternatives would be representative of public opinion, as identified through open and free consultation



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