

SCRAMBLE FOR RESOURCES

THE INTERNATIONAL RACE FOR
BOUGAINVILLE'S MINERAL WEALTH








ABOUT JUBILEE AUSTRALIA RESEARCH CENTRE

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ACKNOWLEDGMENTS

Thank you to Ulster University for generously supporting this project.

Thank you also to all those who provided information, review and documents to assist in the production of this report.

Cover image: Bougainville's derelict Panguna mine.

All information correct as at 10 May 2022.

ACKNOWLEDGMENT OF COUNTRY

We acknowledge and pay our respects to the Gadigal people of the Eora Nation as the Traditional Custodians of the land on which our office sits. We pay our respects to First Nations peoples of all the lands on which we work, live and play, their culture and Elders past and present. We recognise that this land was and always will be Aboriginal and Torres Strait Islander land, because sovereignty was never ceded.

PUBLICATION NOTE

In preparation of this report, Jubilee Australia sought comment by letter, email and/or phone from: 3RE Group Pty Ltd, Bougainville Copper Limited, Caballus Mining Pty Ltd, Central Exploration Pty Limited, MCB Resources Limited, Numa Numa Resources Limited, RTG Mining Inc, Wyndale Investment Limited and Wyndale Holdings Limited, as well as personally from David Johnston, Nikolais Zuks and Ian de Renzie Duncan. Responses were received from or on behalf of 3RE Group Pty Ltd, Bougainville Copper Limited, Central Exploration Pty Limited, MCB Resources Limited, Mr Johnston and Mr Duncan. Jubilee also spoke with a representative of Panguna Development Company Limited and had written correspondence with Special Mining Lease Osikaiyang Landowner Association. Jubilee contacted these companies and individuals as their operations were substantially the focus of the report, and opted not to contact other companies and entities whose operations were covered more briefly in the report.

FOREWORD

Like most Australians, I was infuriated by revelations in 2020 that a blasting crew from one of the world's biggest mining companies, Rio Tinto, had destroyed a priceless piece of Australia's cultural inheritance.

At 46,000 years old, the Juukan Gorge rock shelters in Western Australia were nine-times older than Stonehenge, 18-times older than the Athenian Parthenon and 75-times older than Machu Picchu. They were not only just sacred to the local Puutu Kunti Kurrama and Pinikura peoples, but formed part of our shared heritage as human beings. Rio Tinto made a public display of wringing its hands, despite evidence it knew about the caves' archaeological significance. The company's long-serving CEO walked away with a golden parachute valued around \$20 million.

Sadly, Rio Tinto's indifference to ordinary Australians was not an isolated incident. As prime minister in 2010, my government proposed an additional tax on the \$90 billion in super-profits that Australia's three biggest mining companies had extracted from the mining boom while returning less than 10 per cent to the Australian people. The industry poured tens of millions into a six-week advertising blitz and tipped another \$1.9 million into Liberal and National party coffers – all to avoid giving Australians a fair slice of the minerals they owned.

Australians know these stories because they unfolded here in Australia where the spotlight of public scrutiny can be intense. But this isn't always the case. For example, many Australians are unaware of the story of Panguna – the mine that, for almost two decades, Rio Tinto operated on the remote Papua New Guinean island of Bougainville, 2000km north of Queensland.

One of the world's largest operating gold mines, Panguna sparked a ten-year war that killed thousands. Panguna was also the source of enormous wealth for Conzinc Riotinto of Australia which, over almost

two decades, dumped an estimated billion tonnes of mining waste containing heavy metals into local rivers. After twenty years of peace, and with Port Moresby now contemplating Bougainville's request for independence, Rio Tinto may only now be beginning to take responsibility for cleaning up its mess.

Scramble for Resources: The International Race for Bougainville's Mineral Wealth shines much-needed light on the practices of the new waves of mining and exploration companies in Bougainville. Given the sheer number of Australian companies involved in this stampede for Bougainville's resources, and the consequences for people living on the island, its findings should cause Australians to sit up and take notice. The report details allegations of exploration company executives preparing presentations advising Bougainville's nascent autonomous government to make offshore financial arrangements that minimise transparency. It also warns that competition between landowners is being amplified by payments to local intermediaries, further exacerbating tensions in a region that has fought so hard to build and maintain peace.

When Australian companies operate overseas, they represent our nation on the world stage. Most of the companies referenced in this report maintain headquarters in Australia; they are managed by Australian executives, are owned by Australian shareholders and some benefit from investment through Australia's world-leading system of compulsory superannuation. Whether we like it or not, Australian businesspeople are unofficial ambassadors for our nation. The commonwealth government therefore has clear interests at stake when Australian companies' practices are out of step with Australian voters' expectations.

THE HONOURABLE KEVIN RUDD
26TH PRIME MINISTER OF AUSTRALIA



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INTRODUCTION

Over the past decade, the Autonomous Region of Bougainville has become the target of a scramble for the natural resources that lie under its fertile soil. Once the site of the world's largest copper and gold mine, Bougainville emerged in the early 2000s from a devastating conflict, in which the Panguna mine played a pivotal role. Following an overwhelming vote in favour of independence from PNG in its 2019 referendum, the focus has turned again to the role that mining could play in supporting the revenue base of a new independent nation.

As Bougainville considers the options for reopening the Panguna mine, companies large and small have lined up to present themselves as candidates to develop the mine's vast resources, or to explore for minerals in other sites across Bougainville island. Many of these corporate actors, and their shareholders, are tied to offshore jurisdictions, centring on Australia but also including the United States, Canada, the Philippines, the British Virgin Islands, Panama and the Bahamas, to name just a few examples. Decisions around whether or not to resume mining, and if so, with whom, are key questions for Bougainville.

PURPOSE OF THIS REPORT

This report surveys the companies competing for the rights to Bougainville's mineral resources by reviewing material available through corporate records, court records, leaked documents, news reports and other publicly available sources. It aims to share information about the various parties that are or have been seeking access to mining rights in Bougainville, in order to support informed debate.

The report also highlights areas where the scramble for Bougainville's resources has raised important questions regarding corporate ethics, including what conduct is acceptable when pursuing a mining interest, and what constitutes responsible political engagement by corporates in a sensitive, post-conflict environment.

Jubilee Australia acknowledges that individuals and groups within Bougainville, including customary landowners and the Autonomous Bougainville Government (ABG), have the right to determine their own development priorities. It is critical in this context that the public, decision makers, and policy makers, have access to independent analysis and research. It is also important this information is made available to

the public and policy makers in the home jurisdictions of mining companies seeking to develop Bougainville's mineral resources, not least due to credible historical concerns on Bougainville that the profits and benefits of these operations have largely accrued abroad.

The resumption of mining in Bougainville is a contentious issue, with a range of views and perspectives held, which are inextricably entwined with the traumatic decade long conflict prompted by the Panguna mine. This report does not aim to impugn any individuals or groups in Bougainville who are working to support the development in the interests of their village, clan or country.

We hope that this report will contribute to discussion and debate within and outside Bougainville and Australia about mining, the broader ethical and human rights obligations of companies pursuing mining interests in fragile or post-conflict settings, and the necessity for asymmetries in information and bargaining power to be the subject of independent scrutiny, especially if communities are to enjoy autonomy over their resources.

1 CONTEXT: THE PANGUNA MINE AND BOUGAINVILLE'S JOURNEY TO INDEPENDENCE

The Autonomous Region of Bougainville comprises two main islands: Bougainville Island and Buka Island, along with many small islands and atolls. In total, the region's area covers approximately 9,384 square kilometres, with a population of approximately 300,000 people.¹ The region was under Australian control from 1914 to 1975 before being incorporated into Papua New Guinea in a process that was met with strong opposition from many Bougainvilleans.² Following major protests and an independence referendum conducted by Bougainvilleans themselves, an autonomy arrangement was reached in 1976.

1.1 THE PANGUNA MINE AND THE CONFLICT

A key asset for the Australian and Papua New Guinean (PNG) administrations was the valuable Panguna mine, a large-scale copper and gold mine that was operated by Bougainville Copper Limited from 1972 to 1989. Conzinc

Polluted water from the Panguna mine pit entering the Kaverong river.



Rio Tinto of Australia (CRA), a predecessor of today's Rio Tinto, began exploration in Panguna in 1964 and, in 1967, incorporated its own subsidiary, Bougainville Copper Limited (BCL) to operate the mine. BCL concluded an agreement with the Australian administration, without adequate consultation with the local landowners and without the consent of enough of the constituency of the relevant landowner groups.³ The company secured an 84-year lease and opened the mine in 1972.

BCL's entitlements and its obligations relating to taxation, royalties and benefits were set out in legislation enacted by the colonial regime. With its independence in 1975, the PNG government obtained a 20% equity stake in BCL. According to CRA figures, the mine generated a total of K1.7 billion in revenue (approximately US\$2 billion) during its lifetime, of which 32.8% went to non-government shareholders (dividends), 61.5% went to the PNG national government, 4.3% went to the North Solomons provincial government (the predecessor of the ABG) (royalties and tax), and a mere 1.4% went to landholders (royalties and compensation).⁴

Over the period in which the mine was in operation, around a billion tonnes of mining waste containing heavy metals was dumped into the Kawerong and Jaba rivers, with devastating environmental consequences.⁵ Massive siltation and contamination of surrounding lands deprived the affected peoples of their livelihoods and cultural assets. The environmental destruction caused by the mine has left the river polluted to this day, restricting access to drinking water and causing serious health conditions for local communities. Following the abandonment of the mine, ongoing pollution from the mine pit and the vast quantities of waste tailings left by the mine continue to contaminate the Kawerong and Jaba rivers.⁶

Construction of the mine also brought with it an influx of outsiders, ushering in social issues and resentment at the relatively few skilled jobs for Bougainvilleans. The inadequate compensation that landowners and affected communities had received under the Australian colonial regime and the miniscule ongoing benefits they received from the mine exacerbated local resentment.⁷

During 1988, a landowner group led a peaceful campaign of rallies, protests and blockades, presenting their concerns and demands to the company. With these demands unmet, the community proceeded to a campaign of industrial sabotage, resulting in the closure of the mine for eight days. In response, BCL (then a subsidiary of Rio Tinto) asked the PNG Government to deploy riot squads. Landowners organised into a guerrilla force, known as the Bougainville Revolutionary Army (BRA) and in turn

the PNG Defence Force and mobile squad units engaged in a brutal campaign of suppression, sacking villages and forcibly moving citizens into detention camps.⁸

The ensuing ten-year war resulted in the deaths of up to 15,000 people.⁹ It included a naval blockade of Bougainville by PNG, supported by BCL executives and Australia, that exacerbated the existing humanitarian disaster, including denying access to medicines and essential goods. In 1997, after an unsuccessful attempt by PNG to deploy mercenaries to regain control of the mine, a ceasefire was reached. The ceasefire also reflected the culmination of significant peacebuilding work by civil society on both sides, with women's groups playing a critical role.

In 2001, PNG leaders and leaders representing the people of Bougainville signed the Bougainville Peace Agreement. The agreement provided for a deferred referendum on independence and, importantly, transferred power to Bougainville over mining, land and natural resources.¹⁰ In 2004, these powers were then enshrined in the Constitution of the Autonomous Region of Bougainville, and in 2005, the people of Bougainville participated in the first elections of the Autonomous Bougainville Government (ABG).

Bougainville has continued to repair the wounds of its destructive conflict and move to independence. In December 2019, people voted in their long-awaited referendum, which yielded an overwhelming vote in favour of independence from PNG – almost 98%. Independence talks continue between Bougainville and PNG as the region prepares to become the world's newest nation.

1.2 THE MINING ACT 2015

In March 2015, the Bougainville Parliament passed the *Bougainville Mining Act 2015*, formally transferring governance of mining from PNG to the ABG and laying the groundwork for resumption of mining in Bougainville. In his second reading speech, the then president of the ABG, Grand Chief Dr John Momis, hailed the new law as “a rejection of the past”, noting that under the new law “the rights and the needs of the owners of the minerals will be given the highest level of protection”.¹¹

The *Mining Act* gives significant power to landowner organisations by specifying that a developer wishing to obtain a mining lease must obtain landowner permission.¹² On customary land, this is granted by an “approved landowner organisation”, an entity formed by customary landowners to represent their interests

and act on their behalf.¹³ This model builds on the experience of the ABG in establishing landowner groups to represent the interests of customary landowners in the area around the Panguna mine.¹⁴

Despite this, the Act falls short of giving landowners full power to veto mining on their land. It sets out a process that requires landowners who do not grant permission for a mining lease to participate in discussions and mediations with the explicit purpose of obtaining permission for the mining lease. If permission is still not granted, the Bougainville Executive Council (the Bougainvillean Cabinet) must then use its “best endeavours” to reach “a mutually acceptable decision”.¹⁵

1.3 THE REOPENING OF PANGUNA

While the Panguna mine is closed, it remains the site of very valuable mineral resources. A recent valuation, cited in legal proceedings, suggested the Panguna mine tenements have a potential development value of between US\$5.1 billion and US\$34 billion.¹⁶

Discussion about reopening Panguna began in earnest in the 2000s. Following his election in 2010, then President Dr John Momis signalled the ABG’s intention to reopen the Panguna mine.¹⁷ President Momis argued

that the mine was necessary to generate enough revenue to support an independent Bougainville.¹⁸

The ABG initiated a process of landowner consultation in areas covered by the Panguna mine, one outcome of which was the formation of nine landowner associations, each representing the interests of a distinct landowner group in the Panguna area.²⁰ Despite the government’s claims of almost universal support for reopening Panguna at this time, other accounts prepared by the UNDP and Jubilee Australia reported more mixed views among communities in the Panguna region and beyond.²¹

By the end of 2017, plans to reopen Panguna were again on hold, with the ABG declaring an indefinite moratorium on mining in Panguna (although not in the rest of Bougainville).

“

PRESIDENT MOMIS

We will not allow [the Panguna] project once again to reignite the wounds of the Bougainville crisis and distract our focus for restoring peace and our preparation for our referendum in 2019.¹⁹



Polluted water from the Panguna mine pit entering the Kaverong river.



THE TRAVEL BAN

On 3 October 2018, then President Momis sought to issue a travel ban on certain foreign company executives and shareholders. The proposed ban covered seven individuals, including four directors of RTG Mining,²² a director of Central Exploration and a former director of Kalia Holdings Limited, Nikolajs Zuks. The ban was extended in September 2019 and again in December 2019, with President Momis stating these individuals were “still continuing to disrespect our customs and laws, and causing disharmony amongst our people at such a critical time in Bougainville’s history”.²³

In a letter to Jubilee Australia, via its legal representatives, RTG and Central Exploration pointed out that, as immigration policies for Bougainville are not delegated to the ABG, it was not in the ABG’s power to ban executives from travelling to Bougainville. They stated that the PNG government did not recognise the ban, and that executives of RTG continued to travel to Bougainville after October 2018.²⁴

In February 2022, the ABG Vice President reportedly lifted the travel ban for Mr Zuks, now a director of Wyndale Investment.²⁵

Since then, the ABG has engaged in discussions with various potential developers about the possible reopening of the mine (many of which are detailed below), but the moratorium has remained. Shortly after his election, ABG President Ishmael Toroama issued a statement confirming that there was no plan for a particular company to reopen the mine at that time.

In September 2020, Australia’s Human Rights Law Centre lodged a complaint with the Australian OECD National Contact Point against Rio Tinto on behalf of 156 Bougainvillean community members. The complaint alleged that the massive volume of mine waste from Panguna continues to have a damaging impact on communities’ lives and livelihoods.²⁶ On 21 July 2021, Rio Tinto publicly committed to funding an independent environmental and human rights impact assessment of the Panguna mine site, which will also develop recommendations for addressing those impacts. BCL (no longer a subsidiary of Rio Tinto) has also agreed to contribute to the assessment, which will be overseen by a committee including representatives of the ABG and Government of PNG as well as landowner and community representatives.²⁷ The Panguna Mine Legacy Impact Assessment Process commenced at the end of 2021, with initial work to consult stakeholders and establish structures to oversee the process.

In a separate but parallel process, the ABG began consultations in October 2021 with landowners from the Panguna mine area. On 4 May 2022, the ABG published a media release stating that clan chiefs from around the Panguna area had met with the ABG and signed an agreement to reopen the Panguna mine. The release stated the ABG and landowners also agreed that they would establish “a completely new Bougainville entity

to develop the mine, not an existing entity that has had history with the Panguna mine.”²⁸ The new entity is to be owned by the ABG and the Panguna mine landowners.



**PRESIDENT
ISHMAEL
TOROAMA**
MAY 2022

The Panguna Mine was the economic guarantee for Papua New Guinea’s independence in 1975, in the same manner the Panguna will be the economic guarantor for Bougainville’s Independence.

While the plans to reopen Panguna continue to be developed, there remain some unanswered questions. One key question is whether the new proposed Bougainvillean entity will partner with one or more large investors or mining companies to develop the mine. In practical terms, reopening the mine will require significant capital, making it likely that the entity responsible for the mine would need to bring in partners or investors to finance the mine or develop it on behalf of or in partnership with the local entity. As this report outlines below, several companies have been vying for exploration rights at the mine site and could be considered potential development partners.

Aside from the question of whether an investor or mining operator will be brought in to develop the mine, there is also the question of whether the mine is economically viable at all. Managing the volume of waste rock and tailings from a mine at Panguna, which is in an area of high rainfall and high seismic activity, would be a complex and expensive challenge with the potential for massive environmental damage if not done well.²⁹ This issue is discussed further below.

2 THE SCRAMBLE FOR BOUGAINVILLE'S RESOURCES

Although Bougainville's land area is small – less than 10,000 square kilometres - approximately the size of greater Melbourne – the region's rich copper and gold deposits have attracted large and small companies from across the globe who are looking to secure their place in any future mining boom.

This paper looks at the behaviour of some of the corporations involved and how they are vying for access. Many of these companies have connections to Australia – either through corporate registration, ASX listing or individual directors. While the scramble has the potential to make or break the fortunes of some of these operators, given Bougainville's fragile security context is shaped by credible historical grievances over the exploitation of its natural resources, its potential consequences reach further than company bottom lines.

2.1 BOUGAINVILLE COPPER LIMITED

No longer a subsidiary of Rio Tinto, the former operator of the Panguna mine, Bougainville Copper Limited (BCL), remains one of the companies competing for mineral rights over the Panguna mine should it reopen.

In 2016, Rio Tinto transferred its majority shareholding in BCL to the governments of PNG and Bougainville.³⁰ This decision may have been prompted by the passage of ABG's mining legislation, in which BCL lost the rights over seven exploration and mining leases, leaving it only with an exploration licence over the former Special Mining Lease area in Panguna.³¹ In 2017, the PNG National Executive Council resolved to transfer a portion of PNG's shareholding to the landowners of Panguna, and in March 2020 the PNG Prime Minister affirmed that the full 36.4% PNG share would be transferred to ABG.³² This would give the ABG a substantial 72.8% shareholding. However, at the time of writing neither parcel of shares had been transferred.³³

BCL also has Australian shareholders. Custodian fund BNP Paribas (representing Clearstream) had a 14% shareholding in BCL while other Australian institutional investment firms owned small shareholdings in BCL (less than 2% each), including Citicorp, National Nominees (affiliated with NAB) and HSBC.³⁴

Current mining interests

For a long time, BCL appeared to be the front runner in any reopening of Panguna. In discussing the reopening

of Panguna in 2014, then President Momis argued that BCL was the preferred operator for landowners from the Panguna mine lease area, with landowners preferring “the devil they know”.³⁵

From 2014-18, BCL was also the only company to hold an Exploration Licence over the Panguna mine site.³⁶ This licence expired in 2016 and BCL applied to renew it (resulting in the automatic extension of the licence until the determination of the application).³⁷

A number of landowners, including landowner group Special Mining Lease Osikaiyang Landowners Association (SMLOLA) (which supported an alternative developer) attended the Mining Warden's 2017 hearing on BCL's licence application and opposed its extension.³⁸ BCL's application for a licence was refused in January 2018, and BCL subsequently filed a suit in the National Court seeking judicial review of this decision.³⁹ At the time of publication, this lawsuit was still underway.

BCL supports and has support from the Panguna Development Company Limited (PDCL) and, at the end of 2020, had the support of eight of the nine landowner organisations around the Panguna area (with the exception of the group based on the mine site itself).⁴⁰ Incorporated in 2018, PDCL describes itself as “owned by five major clans from Panguna area including the recognised Lands Title Commission agents who represent block owners in the former special mining lease area”.⁴¹ In a meeting with Jubilee Australia, PDCL's General Manager stated that PDCL represents the original agents who have the licence over the land in and around Panguna, their next of kin and family members. He indicated PDCL was formed to bring landowners together to ensure that they had a united voice and could benefit from development in the area.⁴²

All of PDCL's ten directors are PNG nationals resident in Bougainville.⁴³ The company's current chair is Michael Pariu, listed on the BCL website as a “Bougainville Copper Envoy”.⁴⁴ Previously, Pariu was a member of the ‘old’ Panguna Landowners Association which fell into dispute with the ‘new’ Panguna Landowners Association in 1987/88 over the latter's efforts to close the Panguna mine.⁴⁵ PDCL's filings (last updated in 2018) list a Bougainvillean man, who died in 2019, as the sole shareholder of the company.⁴⁶ In response to a query from Jubilee Australia, PDCL noted it is looking into this issue.⁴⁷

Rival landowner group, SMLOLA has questioned the validity of PDCL as a landowner company, claiming that it was established by BCL.⁴⁸ PDCL denies this, describing its organisation as “a home grown model”.⁴⁹



Palm fruit growing on Bougainville.



While BCL continues to pursue access to Panguna, its ability to redevelop the mine without Rio Tinto’s financial reserves and technical capacity (or those of another large mining company) is in question. The market appears to have confidence in its prospects: in February 2022, following the announcement of a Panguna landowners’ agreement to reopen the mine, BCL’s share price jumped. In response to queries from ASX, BCL clarified that it had not been involved in the landowner summit and attributed the rise in price to the signs of landowner unity and increased confidence in the Autonomous Region of Bougainville.⁵⁰

2.2 RTG MINING INC. AND CENTRAL EXPLORATION PTY LTD

Mining and exploration companies RTG Mining Inc and Central Exploration Pty Ltd are also seeking to redevelop the Panguna mine, in partnership with the Special Mining Lease Osikaiyang Land Owners Association (SMLOLA).⁵¹

While headquartered in Western Australia and registered on the ASX, RTG is a British Virgin Islands company.⁵²

RTG claims a 26-year global track record, noting that its management team led Rolute Mining, AGR (acquired by Centerra) and CGA (acquired by B2Gold).⁵³ RTG’s largest shareholders include several large Australian custodian firms as well as a fund registered in the Bahamas.⁵⁴

RTG owns a majority stake in Central Exploration, an Australian registered company that was “incorporated for the purpose of establishing a joint venture with landowner groups in the Panguna region of Bougainville”.⁵⁵ Central Exploration has four directors based in Australia. Two directors are also directors of RTG Mining Inc.⁵⁶ In June 2018, RTG announced it had procured a 70% stake in Central Exploration by acquiring A2V Mining Inc, which at that time held 32% of the shares in Central Exploration.⁵⁷ A2V Mining Inc is a British Virgin Islands company with a registered office in WA.⁵⁸

Central Exploration’s third-largest shareholder, Duncan Mining Pty Ltd, is wholly-owned by a former director of Central Exploration from 2015-2018 who has played an active role in negotiations of its interests in Bougainville.⁵⁹

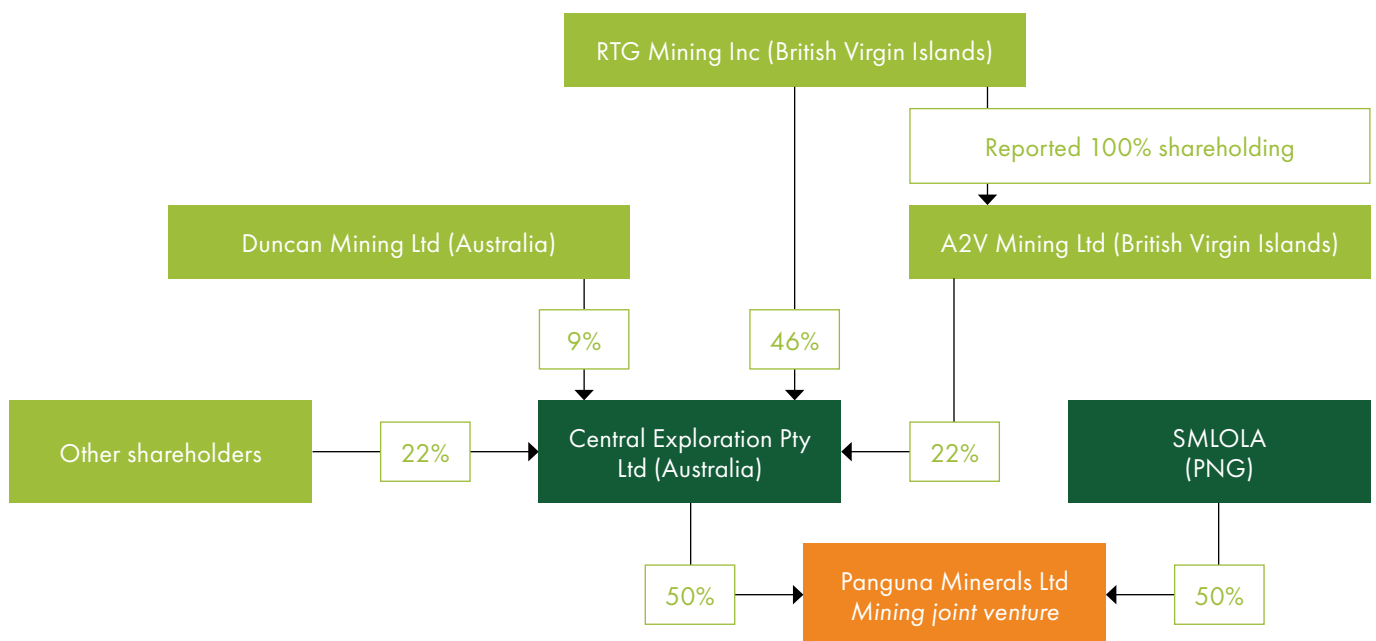


Figure 1: RTG’s relationship to Panguna Minerals Ltd. Information obtained from IPA and ASIC filings. Data correct as at March 2022. Note: percentage figures in boxes denote percentage of shares held.

Current mining interests

Central Exploration Pty Ltd has entered into a joint venture with the Special Mining Lease Osikaiyang Landowners Association (SMLOLA) to redevelop the Panguna mine and surrounding areas. According to an interlocutory decision handed down by the Victorian

Supreme Court, the joint venture partners also included the Me'ekamui Government of Unity, a Panguna-based group.⁶⁰ The joint venture has created PNG company Panguna Minerals Limited (originally called Central Me'ekamui Exploration Limited).⁶¹ Central Exploration and SMLOLA each own 50% of shares in Panguna Minerals Limited.⁶²

THE SPECIAL MINING LEASE OSIKAIYANG LAND OWNERS ASSOCIATION

The Special Mining Lease Osikaiyang Landowners Association (SMLOLA) was registered in Papua New Guinea in 2011.⁶³ Its Constitution provides that a person is a member of SMLOLA if that person "is an osikaiyang of Moroni, Pirurari, Pakia, Dapera, Guava, Kokore and Kupei villages in accordance with the Nasioi custom in the Special Mining Lease area of Panguna mine".⁶⁴ SMLOLA's Chairman is Mr Philip Miriori.

In a communication to Jubilee Australia, SMLOLA's Chairman advised that SMLOLA and its Constitution were established by the ABG for and on behalf of all the Customary Landowners who own all the land contained within the area covered by the Special Mining Lease at Panguna and now the subject of the expired EL 01. It currently has in excess of 3,500 members. Its purpose, as set out in its Constitution, includes to maximise the commercial benefits of its members in the Panguna Mine and promote peace, unity and co-operation amongst landowners in a sustainable manner. The Chairman also stated that the governing body of SMLOLA is elected every three years.⁶⁵

Central Exploration's relationship with SMLOLA can be traced back to earlier ventures between Transpacific Ventures and the Me'ekamui Government of Unity.⁶⁶ The Executive Director of Transpacific Ventures is now a shareholder and former director of Central Exploration, while Philip Miriori, Chairman of SMLOLA, was the president of the Me'ekamui Government of Unity. The Me'ekamui Government of Unity had previously engaged with several other corporate actors around the possibility of reopening the Panguna mine.⁶⁷ In a statement to Jubilee Australia, Mr Miriori indicated SMLOLA was introduced to RTG in July 2016 by "an Australian based lawyer committed to social justice and indigenous rights", and that SMLOLA has since worked closely with RTG. Mr Miriori noted that RTG explained its previous mining developments, operations and community engagement, and that the group considered "their experience is exactly what we needed".⁶⁸

RTG's interest in Panguna appears to date back to 2016, when Central Exploration entered into its joint venture with SMLOLA and the Me'ekamui Government of Unity.⁶⁹ At the same time, Central Exploration and RTG developed a strategy for a staged progressive expansion of mining activities of the Panguna mine itself, should BCL not succeed in renewing its exploration licence.⁷⁰ Over 2016 and 2017, the joint venture partners submitted

several applications for exploration licences, covering the Panguna Mine site and adjacent areas.⁷¹ The joint venture partners also had several meetings with the ABG. At the time that the ABG placed its moratorium on mining in late 2017 the question of the Panguna exploration licence remained outstanding.⁷²

In a letter to Jubilee Australia, RTG Mining Inc advised that:

SMLOLA, from as early as March of 2017, has offered in writing on several occasions to collapse the joint venture structure and offer 100% of Panguna to the ABG, as it is recognised by them that Panguna is for the future of all Bougainvilleans. As you appreciate, that was encouraged by ourselves and we are prepared to stand on our own merits to earn a role as the developer.⁷³



RTG advised that "PML [Panguna Minerals Limited] does not conduct business in country and as mentioned above



will be collapsed once there is an agreed solution with landowners and the Government on how to best move forward with Panguna”. SMLOLA in its correspondence with Jubilee Australia also made mention of this offer to collapse the joint venture and assign SMLOLA’s interest to the ABG.⁷⁴

In response to extracts from this report, RTG Mining Inc and Central Exploration Limited stated (via their lawyers) that they had “worked consistently with the Panguna landowners over a five year period providing measured, professional, open and supportive advice and assistance to the landowner-led Panguna Minerals

Limited Joint Venture, including during the period of the mining moratorium in respect of Panguna, the transition to a new government, and the independence referendum process” and that their involvement in the region had been “steady, longstanding and patient”.⁷⁵ The letter also pointed to RTG Mining Inc’s June 2021 Quarterly Activities Report, which stated that landowners in Panguna had met with the new Mining Minister and had been advised that “the Department is committed to working co-operatively with the Customary Landowners to find a redevelopment solution for Panguna that meets all the needs of Bougainville”.

CENTRAL EXPLORATION V JUBILEE AUSTRALIA RESEARCH CENTRE

During the preparation of this report, Jubilee Australia sent extracts from an earlier draft to a number of the companies named to seek their and comments. In response, lawyers acting for Central Exploration, RTG Mining Inc and several individuals provided information and responses to the issues raised in Jubilee Australia's draft extracts and specific questions put to each of them. Their lawyers also asked Jubilee Australia to give an undertaking to the effect that that it would not publish any of the words in those extracts, or anything of the same sense or substance. Given the extremely broad scope of this undertaking, Jubilee Australia had no choice but to refuse, instead offering to give an undertaking to the effect that we would not publish the extracts in the precise form provided to Central and others.

In October 2020, Central Exploration Pty Ltd, RTG Mining Inc, two individual directors and one former director, applied for an injunction in the Federal Court of Australia to prevent Jubilee Australia from publishing any of the words in the extracts provided or anything of the same sense or substance. The morning of the court hearing, Central Exploration and the other applicants agreed to discontinue the action provided Jubilee Australia agreed not to publish the report extracts in the form originally provided to them in draft form in September 2021. Jubilee Australia agreed to this undertaking on the basis that it reflected Jubilee Australia's purpose in providing the relevant extracts to those parties (that is, to obtain their responses and to take those responses into account in preparing the final report), and because it reflected good research practice – namely, that a report of this kind would ordinarily be updated for balance and accuracy when companies or individuals share relevant information prior to publication.

Jubilee Australia has considered the content shared by Central Exploration and related parties and has made substantial revisions to the original version of the report to incorporate additional information and perspectives shared by those parties, where relevant. The same approach has been taken with information shared by other companies named in this report.

2.3 MCB RESOURCES LIMITED (FORMERLY KALIA LIMITED)

Western Australian mining company MCB Resources Limited, formerly known as Kalia Limited,⁷⁶ is an exploration company currently focused on copper and gold in Bougainville. The company previously held interests in Australia. MCB resources was listed on the ASX but was delisted in February 2021.⁷⁷

As at September 2020 (when MCB's last publicly available annual report was published), the top two shareholders of MCB Resources (Hereford Securities and Management and Grestal Investments) appear to be registered in Belize.⁷⁸ Other shareholders in the top ten at that time include Australian companies and fund managers, individual investors and custodial firm JP Morgan Nominees Australia Pty Limited.⁷⁹

MCB Resources Limited is exploring for copper, gold and energy metals in the Mt Tore region in the northern part of Bougainville island.⁸⁰ It holds a 75 per cent equity interest in the Tore Joint Venture which held two large Exploration Licences, ELs 03 and 04, in the

northern portion of Bougainville Island. The licences were granted for three years in November 2017.⁸¹ MCB applied for renewal of the licences in August 2020 but there was a significant delay in renewal.⁸² After protests at the Bougainville Mining Office in October 2021, the Mining Minister announced he had approved the group's application for an exploration licence (but that this licence had not been officially gazetted).⁸³

MCB is in partnership with a group known as the Toremana Resources Owners Association, which it says represents the seven major clans on ELo3 and ELo4.⁸⁴ In January 2018, MCB announced it had signed an Exploration Land Access and Compensation Agreement with the group, and in August 2018, MCB entered into the Toremana Joint Venture Limited with a 75% stake held by Kalia Investments Limited (a PNG-based subsidiary of MCB) and a 25% stake held by Toremana Resources Limited.⁸⁵ According to its most recent filings, the joint venture company has four directors – two Bougainvillean and two Australian.⁸⁶ Toremana Resources Ltd is a PNG company jointly owned by seven men with residential addresses in Bougainville.⁸⁷

Tinputz in northern Bougainville Island, close to the MCB Resources exploration area.



In 2017, the PNG Post Courier reported that a group of landowners in the area (the Teosirivi landowner group) did not agree on the mining or exploration of Mt Tore.



**JUDAH SATUI
AVEINU**
TEOSIRIVI
LANDOWNER
GROUP⁸⁸

GB Energy Limited [former name of MCB Resources], we the landowners don't agree on the mining or exploration of Mt Toremana. Please don't allow Kalia Holdings to fool you. There's no agreement with the landowners. We warn that you don't trespass on our land.

In December 2019, a PNG geologist who was working with MCB was killed.⁸⁹ MCB initially reported that his death was the result of “injuries in a fall” whilst undertaking fieldwork on the company's Mount Tore tenements.⁹⁰ Several days later, the company issued a further update clarifying that “the team [led by Mr Kilya, the geologist] was attacked by an outside group leading to Mr Kilya experiencing fatal injuries from a fall. Seven other personnel suffered various stab wounds, lacerations, and soft tissue injuries.” While MCB described the attackers as an outside group, other reports at the time referred to them as “disgruntled landowners”.⁹¹

The then Bougainville Police Service Commander noted “as always throughout PNG, there will always be difference among the landowners over such project and that exploration area is huge. So the exploration of that area is through the arrangement with some other landowners and other landowners must have been angry. A lot of people are now claiming ownership of that area.”⁹²

On 16 December 2019, President Momis expressed “disgust and disappointment” that the company had allowed its employees into the area knowing that there was resistance to exploration. He noted, “the company has miserably failed to address its social issues and to fulfil its corporate social responsibility as a client of the ABG” and announced that the Bougainville Executive Council had decided to suspend all exploration activities of the company in the ELo3 and ELo4 tenements. He also announced suspension of all exploration activities in Isina and Kokoda until further notice, to allow Bougainville to focus on the upcoming referendum.⁹³

MCB Resources has advised Jubilee Australia that, contrary to public statements made by former President Momis, the MCB exploration team entered the Mellilup area in December 2019 with the signed approval of the local landowners, and with the participation of the sons

and daughter of the paramount Chief as part of the field team, to provide “on site approval and consultation”. MCB also advised that the group that reportedly attacked the field team were not landowners for that area.⁹⁴

On 19 December 2019, the company voluntarily suspended its securities from quotation, pending an announcement about the status of the company's exploration licences in Bougainville.⁹⁵

2.4 CABALLUS MINING

Caballus Mining Pty Ltd, an Australian company with a single director and ultimate shareholder - Jeffery McGlenn - emerged in 2019 as a party interested in reopening Panguna.⁹⁶ The company appeared to secure the ABG's support for its proposals to develop a new entity to manage the Panguna mine, in which Caballus would hold a significant shareholding. With the change in Bougainville's Presidency following the 2020 elections, these plans appear to have been shelved, but the emergence of a new landowner group supporting Caballus's interests suggests it has not abandoned its plans in the area.

Caballus Mining Pty Ltd is a wholly-owned subsidiary of Caballus Pty Ltd, a proprietary company in which 100% of shares are held by Jeffery McGlenn and McGlenn is the sole director.⁹⁷ Both Caballus Mining and its parent company have small paid-in capital – Caballus Mining Pty Ltd has paid in capital of AU\$100, while Caballus Pty Ltd has paid in capital of \$50.⁹⁸

While Caballus itself has no track record in mining, Jeffery McGlenn was the co-founder of Western Australia-based NRW Holdings Ltd, which he resigned from in 2010.⁹⁹ NRW holdings is a contractor for the mining and construction services offering services including equipment, earthworks, drill and blast and contract mining. Prior to founding Caballus Mining, McGlenn was also involved in Arabian horse breeding and worked as a luxury brands promoter.¹⁰⁰

In 2021, Caballus appeared to be working with a group called the Panguna Tangku'urang Chiefs, represented by Vincent Bangki. In a January 2021 statement, Mr Bangki announced that the group had chosen Jeffery McGlenn and Caballus Mining to partner with them in reopening Panguna mine. The statement noted that the former chair of the Panguna Tangku'urang Chiefs had spent three weeks in Australia, with McGlenn facilitating meetings with the Deputy Prime Minister and Attorney-General of Australia. The statement also says “[t]he ABG had already chosen Caballus as their partner, however were just

awaiting for Panguna Tangku'urang Chiefs to perform their own due diligence.”¹⁰¹

An earlier statement in January 2021, Mr Bangki stated “We will never allow BCL to recommence mining operations on our land, and believe that as long as BCL continues its reign of tyranny, with the latest battle being carried out in the Supreme Court, the war will never truly be over.” Mr Bangki argued for the transfer of the PNG government’s shares in BCL to ABG-controlled Bougainville Minerals Limited “as a matter of urgency”.¹⁰²

After the media releases from the Panguna Tangku'urang Chiefs, President Ishmael Toroama issued a swift correction, stating: “[t]he idea of Caballus operating a mine on Bougainville has long been shelved after their failed attempt to co-sponsor the mining amendments with the former Momis led ABG”.¹⁰³

In February 2021, McGlinn was appointed as a Director of WA-based Medusa Mining (now Ten Sixty-Four Mining), which has mining interests in the Philippines. Medusa’s press release referred to his experience with Caballus and the company’s relationship with the Panguna Tanku'urang Chiefs.¹⁰⁴

2.5 NUMA NUMA RESOURCES LIMITED

A collection of companies, operating under the umbrella of “Numa Numa Resources Limited” has announced its aim to control “approximately 90% of Bougainville’s prospective lands”.¹⁰⁵ Numa Numa Resources is a US private company registered in Nevada in 2019.¹⁰⁶

It has two Directors – John D Kuhns and Mary E Fellows who also manage Bougainville Fund Management LLC.¹⁰⁷ Kuhns is also a novelist, whose most recent novel, *They Call Me Ishmael*, is a fictionalised account of a friendship between a US investor and a former leader of the Bougainville Revolutionary Army.¹⁰⁸

According to a 2021 presentation to investors, Numa Numa Resources is the parent of a network of operations involved in alluvial gold mining, refining and export as well as limestone quarrying and energy generation.¹⁰⁹ It describes obtaining exploration licences as its “top priority”, with six Exploration Licence applications in the pipeline.¹¹⁰ Its interests include:

- Bougainville Fund Management LLC, based in Connecticut, US, which describes itself as “an investment advisory and management organization”.¹¹¹ Bougainville Fund Management’s website is almost identical to Numa Numa Resources Limited’s website.

- Bougainville Gold Exchange, which claims to be the largest gold dealer on Bougainville.¹¹² Numa Numa Resources Limited owns an 80% stake, with the remaining 20% held by BRORC Group Limited. One of BRORC Group’s directors was formerly involved with Invincible Resources and Morumbi Resources (see History Repeating, 4.1 below).¹¹³
- Lakeville Mines Ltd, a company that has applied to conduct mechanized alluvial gold mining in the Panguna tailings area. Jubilee Australia understands that two applications for Alluvial Gold Mining Licences were approved in 2020 to proponents linked to companies owned by Lakeville Mines Ltd. Lakeville Mines is wholly owned by Numa Numa Resources Limited.¹¹⁴
- Conduit Power Corporation, which has outlined plans to purchase and redevelop Rio Tinto’s Panguna hydroelectric infrastructure to sell to the local market. It projects electricity sales revenue of \$13.5 million by 2023.¹¹⁵
- The Manetai Limestone Project, a limestone quarrying project on the Eastern coast of Bougainville which is one of the Toroama Government’s priority projects.¹¹⁶ Numa Numa’s investor presentation indicates it has been granted an exception from the ABG’s moratorium on mining. The company claims that the future developer of the Panguna mine will “probably” need to make a deal with the company due to lack of other limestone sources.¹¹⁷

Numa Numa Resources’ 2021 investor presentation heavily hints at an interest in the Panguna mine, which it describes as “clearly the jewel in Bougainville’s crown”.¹¹⁸ Bougainville Fund Management has previously made offers to the office of the ABG President to facilitate introductions with the aim of opening the Panguna mine.¹¹⁹

Numa Numa’s materials do not discuss any formal MOU with landowners. However the company has claimed that the most important value of its gold refining business is the “strategic relationships it forges with Bougainville’s gold panners”, noting these are the same landowners that need to invite Numa Numa to their lands if it wishes to obtain Exploration Licences.¹²⁰



Who owns the Panguna Mine? The short answer is the Panguna customary landowners—the same landowners to whom Bougainville Power & Light will be providing electricity.

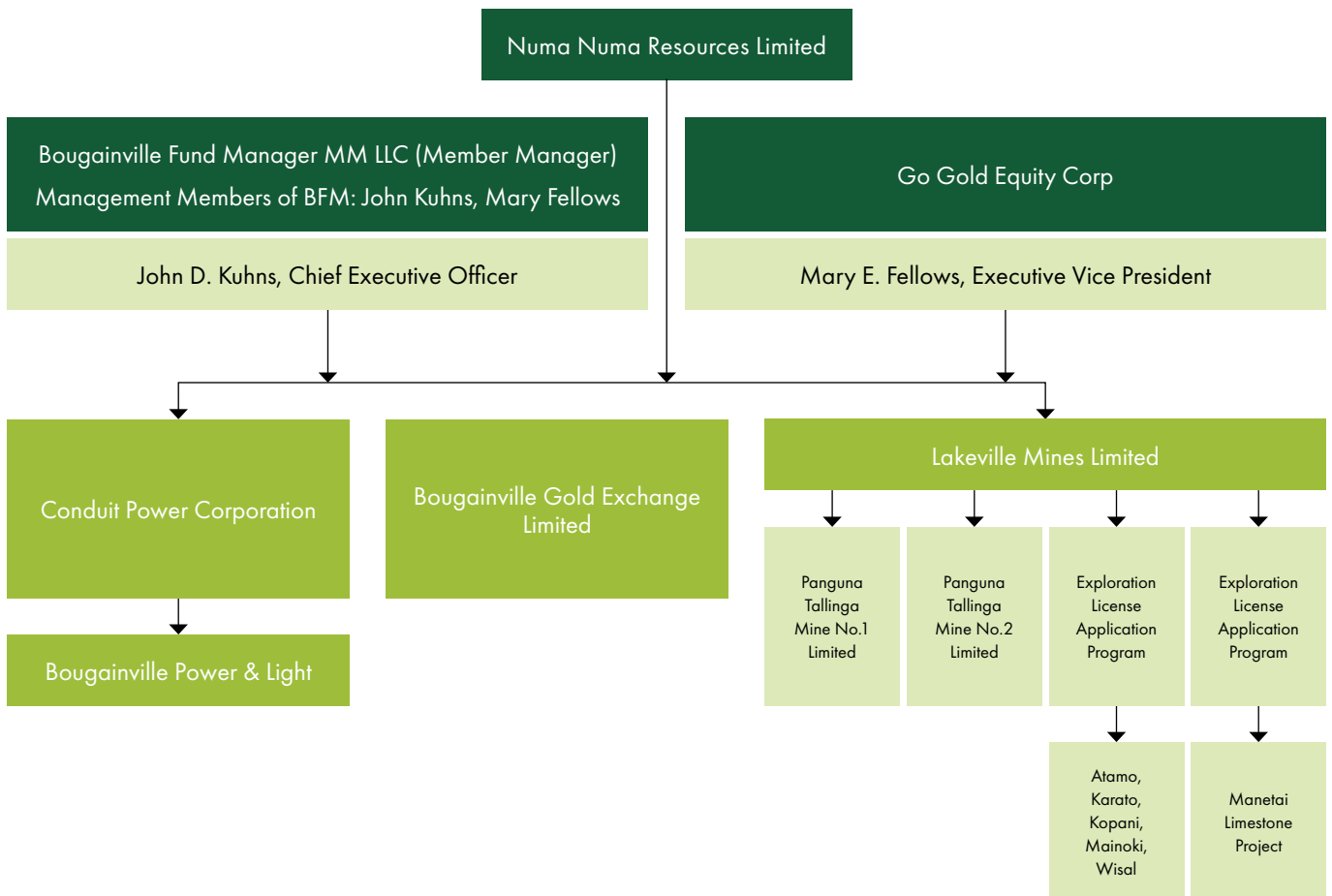


Figure 2: Numa Numa Resources corporate structure. Source: Numa Numa Resources Limited Investor Presentation, April 2021

People panning for gold along the Kawerong river in Panguna.



Kuhns and Fellows have been involved with a number of other business ventures within and outside the US. Kuhns was the founder, Chairman and Co-CEO of China Hydroelectric Corporation, which is described in Numa Numa’s investor presentation as “the largest foreign owner and operator of electric power projects in China.”¹²¹ Kuhns and Fellows left the company in 2012, as part of a settlement deal, after a group of minority investors put forward a successful bid to replace company management. In their bid, the investors alleged that the company had engaged in “questionable related party transactions” with other companies in which Kuhns was involved¹²² In turn, Kuhns lodged a complaint with the SEC relating to the notice from the minority shareholders alleging, among other things, failure to file accurate disclosures. The case settled and Kuhns and Fellows stepped down from the company.¹²³

2.6 WYNDALE INVESTMENT LIMITED

A relatively recent company to emerge on the Bougainville mining scene is Wyndale Investment Limited, a Papua New Guinean company wholly owned by Australian company Wyndale Holdings Pty Ltd.¹²⁴

One of Wyndale Investment’s two directors is Nikolajs Zuks – a former director of Kalia Limited and Central Exploration Limited. Zuks’ involvement in Kalia and Central was the subject of court proceedings in the Federal Court of Australia, in which Central Exploration alleged that Zuks had misused confidential information he obtained while a director of Central Exploration to inform a spin-off venture with other Kalia Limited directors (see 4.2 below).¹²⁵ Those court proceedings were dismissed in 2021 with consent of the parties, so no ruling was made in relation to those allegations.

Wyndale Holdings is owned by a number of shareholders, primarily Australian individuals and proprietary companies. Mr Zuks, his company Enzed Nominees and others with a shared residential address collectively own just over half of the shares of the company.¹²⁶

In August 2021, Wyndale Investments signed a Memorandum of Understanding with landowners and local company Karatapo Resources for a road building project from Jaba to the Kuraro River in South Bougainville and then on to Suema and Paruparu.¹²⁷ Two months later, in November 2021, the Karatapo Resource Owners reportedly lifted a traditional moratorium on mining that had been in place since 1965. In his statement to the media about this event, the Chairman of Karatapo Resources commented on their partnership with Nik Zuks and Wyndale Investments.¹²⁸ In January 2022, Wyndale Investments also donated a boat to the Torokina constituency, a remote area on the West coast of Bougainville Island.¹²⁹

In February 2022, the Vice-President of the ABG reportedly lifted the travel ban that former President Momis had sought to place on Zuks (see above), stating that members of the Karatapo Landowner Group had begged for Zuks' return to the island and had then put in a submission to the Bougainville Executive Council.¹³⁰ In April 2022, the Mining Minister issued a statement responding to allegations made on social media that Mr Zuks had been granted a mineral licence in Bougainville, stating "Zuks has no licenced mineral project in Bougainville under his name and/or his company Wyndale".¹³¹

2.7 THE OTHER PLAYERS

There are a number of other companies with interests in Bougainville that are either emerging, or seem to have become dormant. For example, news reports from 2018 indicated that PNG-registered company SRMI Bougainville was granted an exploration licence in the Isina and Kokoda area of central Bougainville.¹³² While registered in PNG, SRMI Bougainville's current directors are based in the Philippines, and its shares are held by four companies registered in the Philippines and one individual based in the Philippines.¹³³ Recently, reports of SMRI's operations in Bougainville have died down, and it remains to be seen

whether their operations will recommence following the COVID-19 pandemic.

Another mining company that has previously been linked to Bougainville is Australian mining giant Fortescue Metals. News reports in 2019 indicated Fortescue was exploring opportunities in Bougainville and the company incorporated a subsidiary, Bougainville Fortescue Limited.¹³⁴ Fortescue has since signed an agreement to develop a hydropower project in PNG and there have not been further news reports of interest in Bougainville.

Most recently, startup environmental project management firm 3RE Group has generated interest in Bougainville with a proposal to extract the Panguna mine tailings at the Jaba River with a view to selling the sand and other products to export markets, while rehabilitating the river system. The company proposes to remove 700 million tonnes of the old Panguna mine tailings (a volume 1.4 times that of Sydney Harbour) from the Jaba River system. Tailings will be processed to separate out sand, rare minerals, scrap metals and other recyclable components. Components are proposed to be used both for export and to supply local requirements.¹³⁵ The company also proposes to undertake flood mitigation activities in the Panguna tailings area, construct a hydroelectric facility at the Panguna site, a solar farm, approximately 30km of new roads along the Jaba River to Empress Augusta Bay, new port infrastructure, an airport and a medical centre.¹³⁶ It is unclear at this stage whether this project would require an exploration licence or mining lease, given it involves extracting minerals.

In discussions with Jubilee Australia, a representative of 3RE emphasised that the aim is that in 15 or 20 years time there would be a Bougainvillean owned and operated company taking this work forward. When Jubilee queried the feasibility of the proposal (3RE as a company is less than two years old)¹³⁷ the spokesperson clarified that the proposal sets out their vision for the enterprise, and that a feasibility study needs to be undertaken once travel to Bougainville is possible again. He also stated that the primary purpose of the project is rehabilitation of the river, and that 3RE is not interested in mining in Panguna.¹³⁸



3 CORPORATE CONDUCT: PLAYING LOCAL POLITICS

With Bougainville's Mining Act placing emphasis on the consent of landowners, it is unsurprising that different mining companies have sought preference from different landowner groups.

Several of the companies attempting to stake a claim to Bougainville's resources have built up a narrative of strong landowner support and fostered the perception that their company is the preferred player. However, these narratives have bigger consequences than company share prices and risk exacerbating divisions in the region.

3.1 THE LANDOWNERS' DEVELOPER OF CHOICE?

In the scramble for resources, exploration companies have presented an overly simplified image of landowning communities, where there is in fact a diversity of opinions and leadership structures. In particular, a number of the main players outlined above have claimed to being the preferred the company to hold rights to or develop the valuable Panguna mine.

Land ownership in the Panguna region is governed by complex forms of customs and traditions, that do not neatly fit with Western legal norms. Land ownership centres around kinship relationships, and usually land is parcelled out as a package of use rights awarded to

actors on the basis of different familial claims. The owning unit is a kinship unit, with individual members of that unit enjoying custodial rights and responsibilities during their life.¹³⁹ Within this complex system of land tenure, there are likely to be individuals and groups opposed to any form of mining, some that are amenable to small-scale mining, and others open to the possibility of more large-scale ventures. But this complex and contested environment, and the cultural characteristics of land tenure systems on Bougainville, does not readily fit with the needs of exploration companies vying for licenses, who are seeking to cement their claim with unequivocal forms of consent.

Both BCL and RTG have issued statements asserting that they have the support of landowners in the Panguna area. RTG has even gone so far as to label itself “Landowner’s Developer of Choice” and the “[o]nly developer to have secured critical Landowner support”.¹⁴¹ RTG’s website states “under the Bougainville Mining Act (2015), the Special Mining Lease Osikaiyang Land Owners Association (SMLOLA) own the mineral rights at the Panguna Mine”.¹⁴² It also states: “since denial of BCL’s EL renewal, landowner unity has been achieved with extensive awareness programs to achieve 90 per cent consensus backing RTG development proposal”.¹⁴³

In letters sent to Jubilee Australia, both BCL and RTG referred to bad behaviour by other corporate actors. RTG stated “We have seen many groups come and go, over the five years we have been involved, who it is rumored, have

sought primarily to corrupt the past Administration” and noted “there has been a lot of unethical behaviour and human rights abuses but RTG has not been a part at all, in any of that”.¹⁴⁴ BCL in turn stated:

It is worth noting that Panguna has been highly factionalised since the Bougainville crisis. Numerous factions exist with varying views about any future redevelopment. Outside interests – who do not hold tenure rights – have sought to take advantage of this and weak governance arrangements in Bougainville to deal directly with factional leaders as their primary interface.¹⁴⁵



While Caballus mining has not itself claimed to be the landowners’ preferred developer for Panguna, in January 2021 a representative from the “Panguna Tangku’urang Chiefs” issued a media release claiming that the group had chosen Jeff McGlinn and Caballus Mining as their preferred development partner. The media release asserted that: “[t]he ABG had already chosen Caballus as their partner, however were just awaiting for Panguna Tangku’urang Chiefs to perform their own due diligence.”¹⁴⁶ The release prompted a swift and unequivocal dismissal from President Toroama.



Figure 3: Competing claims for legitimacy, BCL, RTG and Caballus¹⁴⁰



**PRESIDENT
ISHMAEL
TOROAMA¹⁴⁷**

Let me make it clear that the current ABG under my Presidency is not in colluding with Caballus, RTZ, Bougainville Copper Limited (BCL) or any landowner group to redevelop the Panguna Mine at this time.

Numa Numa Resources' recent investor presentation could also be read as implying that that company has an advantage over others in building relationships with the Panguna landowners, and fails to mention that two other companies have relationships with landowner groups in the area.

Most foreigners, upon landing in Bougainville, can't help themselves and as soon as possible begin to inquire about the Panguna Mine. They'll be shunned, judged to be just like all the other carpetbaggers who have come with bags of cash, trying to bribe chiefs and government officials and get rich quick. There's been dozens of them, and they've all gone home emptyhanded.



**NUMA NUMA
RESOURCES**

Is Bougainville going to redevelop the Panguna Mine? Of course—with someone they trust. How can one win such trust? It helps to live there.¹⁴⁸

These different statements, far from illustrating an organised landowning community speaking as one through a legitimate and widely respected authorised landowner organisation, indicates differences of opinion within and among communities that have a stake in the reopening of Panguna. The various different structures in which customary landowners are organised makes assessing these statements complex. For example, PDCL refers to support from clans and 'Lands Title Commission agents who represent block owners' (a system of dividing landowner groups established in the pre-independence period),¹⁴⁹ while SMLOLA is part of a different structure of nine landowner organisations established by the ABG in 2013. Neither is formally an 'Approved Landowner Organisation' under the Bougainville Mining Act. As noted above, clan structures are also relevant in this

context and the recent declaration on reopening the Panguna mine was signed by clan chiefs, rather than other landowner groups.¹⁵⁰

Not only are there divisions between different pro-mining factions supporting different corporate operators, there are also divisions within communities around Panguna and more generally, over the merits of large-scale mining, with significant opposition remaining to Panguna's reopening in the short to medium term. Companies claiming to have the unequivocal support of the "genuine" landowners of Panguna risk oversimplifying a complex reality.

3.2 PAYMENTS TO LANDOWNER REPRESENTATIVES

As in other contexts, the practice of companies providing support to local communities in which they operate is not uncommon in PNG and Bougainville. However, where the individuals receiving support are also those whose permission is required for a mining permit, complex ethical issues arise. In Bougainville, several companies have made payments to landowner representatives (or have been alleged to have done so), raising questions about when such payments infringe on the principle of free, prior and informed consent.

It is important to note that landowner leaders are not elected officials who form part of a formal governmental institution, and therefore payments to landowners do not amount to bribery from a legal perspective. There is no suggestion that any of the companies named in this report have made payments to ABG representatives. While individuals organised into landowner groups under the *Mining Act 2015* (whether or not approved under the Act) play a critical role in government decisions over mining lease applications, they are not 'public officials' under Australia's anti-bribery laws. The Victorian Supreme Court in *BCL v RTG and Central Exploration* upheld this interpretation, holding that SMLOLA, as a landowner organisation, was not a government office and its leaders were not government officials.¹⁵¹ The judgment did not refer to any other landholder organisation.

Central Exploration

In 2017, the then President of the ABG made allegations that Central Exploration was making payments to landowners.¹⁵² A March 2017 letter from the Director of the Office of Panguna Mine Negotiations to the Mining

Minister accused Central Exploration of “dishing out cash to different individuals and groups to undermine the process ABG has put in place to address the issues in Panguna”.¹⁵³ He requested a then director of Central Exploration be banned from entry to Bougainville. Jubilee Australia notes these comments were made in 2017 by members of the previous ABG administration, and is not suggesting these views are shared by the current administration.

RTG Mining Inc (majority shareholder of Central Exploration) issued an ASX announcement in December 2017 acknowledging that the work of “seeking to commercialise their mineral ownership interests in a manner that protects the members” was a full-time job for the SMLOLA executive, and thus Central Exploration had “ensured these persons have been fairly compensated on arms’ length terms in an honest and transparent manner and at normal commercial rates”.¹⁵⁴ In a letter to Jubilee Australia, RTG and Central (via their legal representatives) commented that “the SMLOLA has expressly addressed the previous ABG administration’s comments in relation to employment payments made to customary landowners, to the ABG’s full satisfaction, and the current administration of the ABG maintains no complaint in relation to the payments.”¹⁵⁵ In a separate letter to Jubilee Australia, RTG stated “the joint venture has employed parties to work on unity and social programs and engage with the Government, the benefits of which have been shared by the community. They are arms’ length and are simply time based for work performed – there are no pecuniary or other benefits provided in a form designed to influence decisions.” RTG also pointed to comments supporting this from the Victorian Supreme Court, and noted that RTG itself has made no payments to SMLOLA or others.¹⁵⁶

There is some evidence that the unity and social programs to be undertaken by SMLOLA may have included promoting the interests of RTG and companies associated with it. A PNG National Court judgment from 2018 quoted from a settlement deed between the current and former Chairman of SMLOLA. This settlement deed stated, among other things, that the two men “would work cooperatively with each other in seeking to further the aims and objectives of the respondent [SMLOLA] ‘in respect of any matter relating to the development of the Panguna mine’, including working together to unite the members behind the aims and objectives of Miriori and the respondent [SMLOLA] ‘in the appointment of RTG Mining Inc as the developer for any redevelopment of the Panguna Mine’.”¹⁵⁷

In a written statement supplied to Jubilee Australia, SMLOLA’s Chairman stated that:

the Constitution mandates SMLOLA to partner in any redevelopment of Panguna and to conduct awareness programmes and other activities in respect of all matters involving Panguna, including the sustainable use of their members’ mineral resources, land and rivers. The Supreme Court [of Victoria] found that these were appropriate, natural and expected JV [Joint Venture] activities, consistent with our Articles of Association and with the need to employ landowners, and it was absolutely correct and appropriate that the members of SMLOLA who carry out these functions are paid fairly.



The Chairman also noted that customary landowners want to directly participate in the development of Panguna. He stated “RTG’s development track record is outstanding and relationship strong as we trust them and appreciate their support”, pointing to RTG’s previous projects in the Philippines, Tanzania and Mongolia. He also commented that RTG “helped us defend against the attacks of many foreigners without integrity, who have sought to take advantage of our people, our Government and our lands.”¹⁵⁸

The issue of payments to landowners also arose in a Victorian Supreme Court interlocutory action brought by BCL in 2018. In that case, BCL sought access to documents from RTG and Central Exploration to determine whether there was a basis for BCL to commence proceedings against RTG on the basis that RTG made “unlawful payments of money” to customary landowners or SMLOLA officials, leading landowners to shift their support from BCL to Central Exploration and RTG.¹⁵⁹ The case turned on the question of whether BCL had reasonable grounds to believe that this had happened. In response, Central Exploration and RTG both argued that they had not made any “unlawful” payments and that all dealings with SMLOLA or the Me’ekamui Government of Unity were “conducted at arm’s length and in a lawful manner”.¹⁶⁰ The court rejected BCL’s application, finding that BCL’s allegations regarding bribery and corruption lacked a reasonable basis on the objective evidence before the Court.¹⁶¹

BCL

BCL's preferred landowner group, PDCL, also appears to have financial ties to that company. In 2020, BCL noted it "provides modest assistance to the PDCL during its establishment phase".¹⁶² The PDCL Chairman and General Manager are both employed by BCL.¹⁶³ PDCL's filings (last updated in 2018) indicate that the sole shareholder of the company is a Bougainvillean man who died in May 2019, and was an employee of BCL among other roles in the community.¹⁶⁴ BCL's website also lists six other residents of the Panguna mine area as "village liaison officers".¹⁶⁵

In a meeting with Jubilee Australia, PDCL's General Manager Jeffrey Clason confirmed that BCL provides a monthly grant to PDCL, noting that this is to cover the costs associated with community organising. However, he stated that BCL has no input into PDCL's decisions and that PDCL's aim is to bring the landowners together. Mr Clason noted that, other than PDCL's Chairman and General Manager, BCL's village liaison officers do not have roles in PDCL. The role of village liaison officers is to liaise with people on the ground, share information and relay information back to BCL. BCL pays village liaison officers a taxable salary. Regarding conflict of interest, Mr Clason acknowledged that he and PDCL's Chairman "wear two caps" as both BCL employees and officeholders of PDCL, but stated that this does not prevent them raising issues with BCL.

In response to questions from Jubilee Australia, BCL confirmed that

“

[i]n 2019, following a request from the PDCL, BCL entered a formal agreement to provide modest levels of financial support (currently K10,400 per month) to assist the company's administrative activities during its establishment phase. This support has been publicly disclosed. BCL has also engaged PDCL at going commercial rates for maintenance work at the company's Arawa office and for other catering services.

BCL stated that it does not make individual payments to landowner leaders save in the manner outlined above and that it does not expect anything in return for the assistance provided to PDCL. It noted that it is common and culturally expected for individuals and businesses to

be engaged in multiple intersecting roles, and confirmed Mr Clason's and Mr Pariu's dual roles with PDCL and BCL, noting that "both are engaged transparently under normal PNG employment conditions" and that they are well-qualified and well-respected in their roles. BCL advised that Mr Pariu will relinquish the chairmanship of PDCL at the company's next AGM in accordance with its constitution.¹⁶⁶

MCB Resources

In response to questions raised by Jubilee Australia, MCB Resources noted that:

“

MCB has made various compensation payments (land access payments, fees for camp sites, etc) to the eight registered Landowner Associations within the areas covered by its two Exploration Licences.

All payments have been made in accordance with the Bougainville Mining Act, and the registered Land Access and Compensation Agreements that cover the two ELs. All payments have been documented and accounted for with the Department of Mineral and Energy Resources.¹⁶⁷

MCB resources also noted that:

“

MCB and its subsidiaries had not made any payments to any representatives of the ABG, but had provided funds to the Bougainville Police Service on three occasions, at the request of the Police Service and at the direction of the Department of Mineral and Energy Resources, to cover costs associated with logistics for operations within the area of EL03. The largest payment (K25,000) was in relation to the murder of Terry Kilya [the company geologist], to facilitate police operations to arrest the alleged perpetrators. The company still awaits the completion of this action.¹⁶⁸

The practice of companies making payments to police services is not uncommon in PNG, particularly where companies are operating in remote areas and police services are under-resourced. However, this practice also clearly has the potential to result in an actual or perceived conflict of interest for police, particularly should an incident arise in which police are expected to resolve a conflict between the company and local communities. The context of logging operations in PNG, in which it is common for logging companies to make payments to local police forces, has also seen allegations of physical abuse of anti-logging community members by local police.¹⁶⁹ While Jubilee Australia is not suggesting a similar situation has occurred here, in general terms, the practice of private companies funding police operations could create concern with respect to potential conflicts of interest.

3.3 IMPACT ON THE RIGHT TO FREE, PRIOR AND INFORMED CONSENT

The principle that Indigenous customary landowners have the right to consent to development is well understood in international law. The Declaration on the Rights of Indigenous Peoples provides that Indigenous peoples have the right to determine priorities for the development or use of their lands and other resources, and requires states to obtain their free, prior and informed consent prior to approving projects that affect their land.¹⁷⁰ The *UN Guiding Principles on Business and Human Rights* provide that businesses have an obligation to respect human rights, avoid infringing on the human rights of others and address adverse human rights impacts with which they are involved.¹⁷¹ While PNG has not ratified the UN Declaration on the Rights of Indigenous Peoples, the *UN Guiding Principles* make it clear that enterprises' responsibility to respect human rights exists over and above compliance with domestic law.¹⁷² Although the *Guiding Principles* are non-binding, they articulate the acceptable global standard for enterprises. The International Council on Mining and Metals has also committed its members to "Work to obtain the consent" of Indigenous communities for projects on customary land.¹⁷³

Bougainville's *Mining Act 2015* also requires that landowners give their permission for mining before a mining lease is granted.¹⁷⁴ For customary land, "landowner permission" means permission of every approved landowner organisation representing the owners of the land, as well as permission from any customary landowners who are not part of a landowner organisation.¹⁷⁵

In this context, payments to any landowner organisations or their leaders have the potential to undermine legitimate processes of community consent to mining development. While neither SMLOLA nor PDCL are registered as approved landowner organisations under the Mining Act (and therefore do not have the power to prevent the granting of a mining lease under the *Mining Act 2015*), they are both organisations that purport to represent the interests of customary landowners in the Panguna area. Community consent processes rely on landowner organisations representing the interests of their communities first and foremost. If those organisations also receive funds directly from developer companies, this could give rise to an actual or perceived conflict of interest. While both SMLOLA and PDCL have denied that payments from developer companies have led to such a conflict of interest in this case, the potential for this remains, particularly if a situation should arise where the interests of landowners and the company collide.

The practice of companies seeking exploration licences or mining leases promoting the interests of one group of landowners when ownership is contested also falls short of the standard of consultation needed to obtain free, prior and informed consent. Genuine consent would require the consent of a wide range of people both in the mine site and in areas that could be affected by mining operations. Recent evidence, discussed above, would suggest that at minimum there is disagreement about the preferred operator of the Panguna mine among those living in affected areas. While this disagreement exists, no operator can be said to genuinely have the free, prior and informed consent of the relevant communities.

The OECD *Due Diligence Guidance for Meaningful Engagement in the Extractive Sector* provides guidance for businesses on good practice consultation with communities that are affected by mining operations. It includes guidance on identifying appropriate stakeholder representatives to consult with, noting that "[e]nterprises will often rely on representatives of stakeholder groups throughout engagement activities. If such representatives are not well selected or verified, the actual views of all stakeholders may not be represented, which can undermine the objectives of stakeholder engagement and damage relationships". The guidance sets out several questions for enterprises to ask themselves, including whether representatives or interlocutors are independent of the enterprise. It notes: "Enterprises should allow stakeholders to select their own representatives and should avoid interfering with these selections, for example through

Rusting mine buildings in Panguna.



Bridges constructed during the time of the Panguna mine's operation are now gone or in poor shape. This a tyre bridge constructed which people still use to cross the river.



using capacity building to favour more enterprise-friendly interlocutors.”¹⁷⁶ Providing financial support to a particular group of stakeholder representatives, in a context in which there are several other groups acting as representatives of the affected communities, is at odds with this good practice guidance.

Tensions and disagreements between landowner groups in the Panguna region also have the potential to be amplified by competing companies supporting different groups of landowners. Although the Bougainville Peace Agreement was signed in 2001, the

process of peacebuilding and reconciliation is long and ongoing. Peacebuilding requires an approach that brings together the various interests in the mining area for a shared solution that reflects the interests and perspectives of all communities that could be affected by the mining. Public corporate announcements stating that one particular group in the area has greater rights than others may be useful to reassure investors, but may serve to amplify existing divisions between landowners. This in turn, may undermine efforts to build peace and unity in this emerging nation.

In response to extracts from this report, RTG advised:

We have worked tirelessly on supporting and encouraging unity and reconciliation both between landowners and between landowners and the Autonomous Bougainville Government (ABG) as all stakeholders are important and without that, there is no Panguna, which could provide a platform for their Independence plans. We fully understand if we are not widely supported and trusted, by all groups, there will not be a role for RTG. With what Bougainville has been through, there is no other way to make a success of Panguna.¹⁷⁷



BCL in turn stated that “BCL as a long-time tenure holder, has always adopted a multi-stakeholder approach to engagement, with a key focus on government, legitimate landowner representatives as well as ex-combatants and women leaders.” It also stated that “BCL does not consider itself in competition with RTG or any other company. BCL is simply operating in accordance with our tenure rights (which are subject to a judicial review) and inline with current mining legislation and the processes and frameworks mentioned earlier.”¹⁷⁸

4 CORPORATE POLITICAL ENGAGEMENT: QUESTIONABLE ADVICE

As in other countries, it is common for companies seeking to access Bougainville’s resources to meet with government representatives as part of their efforts to acquire mining permits. Over the past five years, there have been many meetings between exploration company executives and representatives of the ABG. While it is not inherently inappropriate for companies to make their case to government, in two cases, leaked presentations prepared for the ABG contain advice on the economy and legal system that goes well beyond a company presenting its case.

As Transparency International has outlined

Corporate political engagement is a legitimate activity when done responsibly. It can result in laws and regulations that are well designed and in the public interest. It can even be viewed as a critical element of public decision-making processes, as it enables interest groups to understand, track and shape the development of legislation and regulation. However, when engagement is disproportionate and opaque, it can lead to corruption and conflict of interest.¹⁷⁹



4.1 CABALLUS MINING – ADVICE ON THE MINING ACT

An example of outside mining interests soliciting questionable advice to the ABG, involves Caballus Mining and its role in the development of amendments to Bougainville’s Mining Act.

In 2019, the ABG proposed amendments to the Mining Act 2015 as well as two other related bills. The proposed changes aimed to develop a revised mining regime in Bougainville that would grant special exploration licences and mining leases to a new “Special Bougainville Entity”.¹⁸⁰ The Special Bougainville Entity was to be 60 per cent owned by the ABG and the resource owners of Bougainville. The Explanatory Memorandum for these amendments explicitly outlined that Caballus Mining Limited was the ABG’s preferred partner and that it would hold the remaining 40% of the shareholding of Bougainville Advance Mining.¹⁸¹

The model set out in the bills was very similar to a model outlined in a leaked presentation entitled “The Rebirth of Bougainville”, which bore the logos of Caballus Mining Limited and Bougainville Advance Mining.¹⁸² Jubilee Australia is not aware of evidence that this specific presentation was ever delivered or provided to the ABG.

The document specified that Bougainville Advance Mining would be registered in the British Virgin Islands.¹⁸³ Incorporation in a secrecy haven such as the British Virgin Islands, would in effect deny the public on Bougainville access to all corporate filings. It would

serve to conceal from public viewing the shareholding structure and financial standing of the offshore vehicle.

In the leaked presentation, Caballus proposed to assist the ABG with initial capital raising from international investors – sovereign states and private investors – for pre-construction and pre-operation costs of USD\$150 million.¹⁸⁴

Most crucially, however, the document outlined a plan for legislative reform that would establish a “Bougainville Special Entity”, which would have a significant advantage, if not a monopoly, over large-scale mining in Bougainville.¹⁸⁵ The “Bougainville Special Entity” would be 60% owned by the ABG and 40% by a “chosen partner”. The implication from the presentation is that the proposed offshore company Bougainville Advance Mining would be the Bougainville Special Entity, although this is not spelled out explicitly. The four-step plan outlined in the presentation included passing amendments in 2019 to Bougainville’s *Mining Act 2015* to “solely enable the Bougainville Special Entity to cut through the red tape of the current application process (which will continue to be in force for all other mining operators) to ensure the mining operations of the Bougainville Special Entity are not unnecessarily delayed... so that the commencement of mining operations coincide with the referendum for independence”.¹⁸⁶

The presentation outlined that the following step would be that selected delegates of the ABG would be empowered to issue “special mining leases ONLY to the Bougainville Special Entity in respect of mining tenements in Bougainville”.¹⁸⁷ Further, the Bougainville Special Entity would then “commence mining operations at specific locations chosen by the ABG on a rapid basis, whilst maintaining stringent environmental controls and mechanisms”.¹⁸⁸

In the document, bullet points listed the responsibilities and roles of Bougainville Advance Mining, Caballus Mining, the ABG and traditional owners were listed. The very last consideration bullet-pointed for traditional owners was to: “obtain appropriate landowner approval”.¹⁸⁹

The roles envisaged for Caballus Mining in the proposal included, “capital raising; public listing; mining and corporate expertise; corporate governance; corporate advisory; corporate mentoring; and distribution, administration and maintenance of [Bougainville Advance Mining] shareholding to additional investors”.¹⁹⁰ This proposal was predicated on the assumption that Caballus Mining, then a two-year old company with paid-in capital of AU\$100 and only one individual shareholder, would be able to raise USD \$150 million in initial capital.

The Explanatory Memorandum to the ABG’s Bills also outlined that the new Bougainville Special Entity would be exempt from the current requirement that leaseholders commence mining activities within 12-18 months of the grant of a mining lease.¹⁹¹ The consequence of this amendment would appear to be that a company lacking the necessary capital to develop the mine could be granted mining rights and then allowed to sit on the mine lease while soliciting investors.

In mid-June 2019, the House of Representatives Legislation Committee rejected the proposed legislation as “poorly drafted, ambiguous and drawn up without meaningful public consultation”. The committee’s report also said that there was “overwhelming public opposition to the bills”.¹⁹² The committee further recommended that the legislation should be reassessed, redrafted and resubmitted after referendum on independence from PNG, which the ABG agreed to do.¹⁹³ The amendments were resubmitted in 2020 but failed to pass.¹⁹⁴

HISTORY REPEATING? THE SAGA OF INVINCIBLE RESOURCES AND MORUMBI RESOURCES

In 2009, reports surfaced that former Bougainville President Joseph Kabui had entered into a secret deal that would give foreign company Invincible Resources up to 70% of Bougainville's resources, excluding Panguna, for five years – through the formation of a new joint venture company.¹⁹⁵

In 2006, Invincible had reportedly advanced 20 million kina to the ABG in return for a net smelter royalty of 0.5% on any mineral development on Bougainville over 40 million kina.¹⁹⁶ However, after the death of the then President, the ABG under new President James Tanis moved away from the deal.¹⁹⁷

After this setback, one of the directors of Invincible Resources re-emerged linked to another player – Morumbi Resources, a Toronto-based mining company.¹⁹⁸ In March 2011, the company reportedly entered into an agreement with a local company to explore for minerals in Isina and Kokoda area of Central Bougainville.¹⁹⁹ According to academic Anthony Regan, Morumbi subsidiaries signed seven MOUs with different Bougainville landowner companies which purported to give Morumbi exclusive mineral exploration and development rights over large areas lasting up to 55 years. Regan indicated that many of the landowners subsequently complained to the ABG that their rights had been sold without consultation or approval.²⁰⁰

However, Morumbi's plans also did not come to fruition. News reports from 2013 claimed that the Canadian Mounted Police had travelled to Bougainville to investigate possible breaches of Canadian law by Invincible Resources and Morumbi Resources.²⁰¹ The passage of the *Bougainville Mining (Transitional Arrangements) Act 2014* also overrode the interests of Invincible and Morumbi.²⁰² In December 2016, Morumbi Resources changed its name to Ascendant Resources and its most recently available annual report makes no mention of Bougainville.²⁰³ Invincible Resources remains registered in PNG, but has not filed anything with the IPA since 2007.²⁰⁴

4.2 INNOVATIVE ECONOMIC SOLUTIONS – ADVICE ON RESTRUCTURING PANGUNA

In 2019, a leaked powerpoint presentation from August 2017 surfaced on the Papua New Guinea Mine Watch blog, purportedly prepared by “IES – Innovative Economic Solutions”.

The presentation noted that IES received letters of mandate from ABG on 15 and 17 July 2017 “to assist in developing the economy of Bougainville in order to secure AROB’s future”.²⁰⁵ Labelled “extremely sensitive”, the presentation recommended four channels to achieve fiscal self-reliance for Bougainville, including leveraging “the Panguna asset”.²⁰⁶

WHO IS INNOVATIVE ECONOMIC SOLUTIONS?

Despite having purportedly held a mandate to provide important economic advice to the Bougainville government, Innovative Economic Solutions has a limited online presence. No company of that name is currently registered with ASIC or currently holds an Australian Business Number, and a web search reveals no easily available company website or address.

In a court case filed in the Supreme Court of Western Australia, RTG and Central Exploration alleged that Innovative Economic Solutions was a partnership between three individuals who were at that time directors of Kalia Holdings and three other individuals, one of whom later became a director of Kalia Limited.²⁰⁷ Elements of that claim were disputed and some parts of RTG and Central’s Statement of Claim were struck out.²⁰⁸ The case was dismissed with consent of the parties in July 2021, so these claims were never tested in Court.²⁰⁹

The leaked presentation from 2017 lists “DAL Johnston” as the point of contact for IES, with the email address “david.albert.lloyd.johnston@gmail.com”.²¹⁰ This appears to refer to David Albert Lloyd Johnston, a former Australian politician from Western Australia who served as a Minister for Defence in the government of Prime Minister Tony Abbott during 2013-14. Mr Johnston was Chair of Kalia Holdings in August 2017. Mr Johnston, via his legal representatives, has informed Jubilee Australia that he was not involved in the IES presentation of August 2017 and that his name was used without his authority or knowledge. He also denied that there was a partnership under the name IES, as alleged in the Supreme Court of WA proceedings. He noted that he and others were asked by the ABG for advice from time to time and assisted the ABG as requested.²¹¹

In pleadings filed with the Supreme Court of Western Australia in 2017, RTG and Central Exploration alleged that the August 2017 presentation was “published to persons in Bougainville”, and that in October 2017 two directors of Kalia Holdings delivered a follow up presentation to the ABG focused on Panguna and the economic development of Bougainville.²¹² As noted above, the case was dismissed by consent and these claims were therefore never tested in Court.

While Jubilee Australia does not have evidence that the August 2017 presentation was in fact delivered to the ABG, its recommendations raise important questions about the limits of responsible corporate advice to government, echoing issues raised in section 4.1.

The August presentation recommended that ABG achieve at least 50% representation on the BCL board

of directors, and then “appoint advisors in ‘behind the scenes’ role to guide & support ABG directors on BCL board”. These advisors, also referred to as “shadow directors”, were to be allowed access to historical records, management contracts, environmental data, and insurance programs. This access to documentation was labelled “IMPERATIVE”. The advisors were to “conduct a strategic review to re-purpose BCL without Panguna”, either by developing an alternative operating model for BCL “that benefits ABG and other shareholders” or dissolving BCL and distributing remaining funds to shareholders.²¹³ While not spelled out in the presentation, the effect of this “re-purposing” of BCL would be to free up the Panguna mine for other developers.

Central Exploration Pty Ltd has argued that they planned to pitch a similar proposal to the ABG. According

to the Statement of Claim filed by RTG and Central Exploration in the Supreme Court of WA litigation, in 2016, the directors of Central Exploration “discussed a confidential strategy of proposing to the ABG that the ABG seek the winding up or dissolution of BCL and a distribution of cash in BCL”.²¹⁴ It is not clear, however, whether Central Exploration ever made this proposal to the ABG.

The recommendation in the IES August presentation to appoint “shadow directors” also raises governance issues – unlike the ABG directors, these advisors would not be under any obligation to consider the interests of the people of Bougainville or subject to the duties and obligations of company directors.

Creating an offshore company

Having recommended separating the Panguna mine from BCL, the IES August presentation goes on to recommend that the ABG create a wholly-owned offshore company (Liberty Minerals), which would be the holder of the Panguna mining licence. According to RTG and Central’s Statement of Claim in the WA case, and data available through the Pandora Papers, Liberty Minerals was in fact incorporated in November 2017 in the British Virgin Islands, with one of Kalia Limited’s directors its ultimate beneficial owner.²¹⁵

The IES August presentation notes that after assuming ultimate ownership of the Panguna licence, the ABG, with landowners’ consent, can “sell all or part / JV/ with developer / operator”. The future operator is also to “assist mine area landowners to incorporate, possibly similar to Toremana, holding interests”.²¹⁶ Toremana is the landowner company partnering with MCB in the Mt Tore area.

Shifting environmental responsibility and locking out landowners

The presentation also makes a number of concerning recommendations from an environmental and social standpoint. In its section on BCL, ABG was advised to “consider indemnifying BCL against environmental issues”.²¹⁷ The presentation did not recommend how the responsibility for addressing environmental degradation at Panguna would be allocated should BCL be indemnified against potential claims. The presentation also recommended delineating the Panguna area from the tailings areas, to “assist in landowner alignment and approvals” and “segregate potential contentious areas from a Landowner, Investor and NGO perspective”.²¹⁸

It is difficult to see what this move would achieve. One reading is that it could potentially lock communities affected by the mine tailings disposal out of the consent and decision-making process for reopening the mine. Excluding affected indigenous communities from decision-making in this way would have contravened international human rights instruments.²¹⁹

4.3 WHEN IS CORPORATE POLITICAL ENGAGEMENT INAPPROPRIATE?

It is not inherently inappropriate for representatives of a company to share information with government representatives. Indeed, this practice is common. However, when this engagement is not undertaken responsibly and transparently, it risks eroding public trust and good governance. Consultancy Carnstone recently produced a Responsible Lobbying Framework, drawing together recommendations from 14 sources including the OECD, Bill and Melinda Gates Foundation, Transparency International and the UN. The Framework sets out five principles of responsible lobbying:

1. Legitimacy: responsible lobbying will never be inconsistent with the public interest
2. Transparency: responsible lobbying organisations will be open, complete and truthful in their communications on the topic
3. Consistency: responsible lobbying organisations will practice what they preach, remaining consistent with their professional codes, organizational values and other public positions
4. Accountability: responsible lobbying organisations and those who lobby for them will be accountable to their stakeholders for their actions
5. Opportunity: responsible lobbying organisations will coordinate and align activities with others when they identify issues that further the public interest and are of common concern.²²⁰

Both Caballus’s and IES’s presentation fall short of the first of these standards – legitimacy. In both cases, the arrangements as outlined carry significant risks to Bougainville. The financial proposals recommended by IES, including leveraging the PNG government debt and creating a Special Economic Zone have the potential to leave Bougainville exposed to financial risk, including significant debt. The proposals from the presentation by Caballus and Bougainville Advance Mining, which would have allowed Bougainville Advance Mining to circumvent some of the safeguards in the current mining approval process, also risked undermining

the economic, environmental and social objectives underpinning that law.

The proposals to establish companies in the British Virgin Islands, a tax haven and secrecy jurisdiction, could make it very difficult for citizens of Bougainville to obtain information about the governance and operations of the company. This is at odds with international best practice on corporate disclosure: for example, the OECD Guidelines on Multinational Enterprises recommend that “enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance.”²²¹ A similar disclosure recommendation appears in the OECD’s *Principles of Corporate Governance*, which specifies that information on major share ownership, including beneficial ownership, is important “for enforcement purposes, and to identify potential conflicts of interest, related party transactions and insider trading”.²²² Establishing offshore companies in jurisdictions known for their lack of transparency would result in information about share ownership and beneficial ownership, for example, being screened from public view.

Holding mining assets in tax havens could also result in a loss of tax revenue for the people of Bougainville. This falls short of the accepted standard set out in the OECD Guidelines, which recommends that enterprises comply with “both the letter and the spirit” of the tax law in the countries where they operate.²²³ Practically speaking, given the important role this revenue would play in the national budget, hiding it in tax havens could have real implications for the health and wellbeing of the people of Bougainville.

The IES presentation – assuming it was delivered to the ABG - would also fall foul of the second principle of the Responsible Lobbying Framework – transparency. While there is limited information available about the IES presentation, the information that is available from court filings and the presentation itself suggests that the several IES advisors were also directors of Kalia Holdings, which potentially stood to gain from any opening up of development opportunities at Panguna. (Note: in a letter to Jubilee Australia, David Johnston advised (via his legal representatives) that during the time he was Chairman of MCB and a director of Kalia Holdings Ltd, neither company was developing plans to conduct exploration or other activities in the Panguna mine area to his knowledge. MCB Resources has also advised it “has no plans for any activities in the Panguna mine area”.²²⁴) Despite this, the IES presentation does not include information about any link to Kalia Holdings.

MCB Resources has neither confirmed nor denied a link between Kalia and IES, beyond noting that the current Board of MCB appointed in August 2019 was not aware of any presentation from Innovative Economic Solutions in August 2017 and that MCB acquired its interest in Kalia Holdings in September 2017.²²⁵ This lack of transparency prevents stakeholders within Bougainville from assessing the information that has been presented to their government.

5 WHAT IS AUSTRALIA’S RESPONSIBILITY?

This report raises questions about the ethics of some of the behaviour of Australia-linked companies in Bougainville that appears to fall below established international standards. In some cases, this behaviour could undermine communities’ rights to give Free, Prior and Informed Consent to development projects that affect them. In others, it has involved the provision of advice that had the potential to benefit the corporate advisors more than the ABG.

The issues discussed in this report raise a broader range of questions about corporate accountability, adherence to good corporate practice and who is responsible for safeguarding human rights like the right to give free, prior and informed consent to development. This in turn raises the question: what is Australia’s responsibility and role in regulating corporate behaviour overseas?

Undermining Australia’s strategic interests

A strong and stable Bougainville is in Australia’s strategic interest. Australia has long recognised the strategic importance of offering support to its near neighbours, and PNG is the largest recipient of Australian aid, receiving close to AUD\$600 million in 2020-21.²²⁶ Australia is also a significant aid donor to Bougainville, providing it with AU\$47.8 million in development assistance in 2020-21, including \$20 million focused on governance, economic growth and peacebuilding initiatives.²²⁷ This expenditure complements Australia’s broader ‘Pacific Step-Up’ policy, which has seen an increase in Australian defence commitments in the Pacific as well as the creation of the Australian Infrastructure Financing Facility for the Pacific (AIFFP).

Some of the actions outlined in this report appear to directly undermine the strategic goals that the Australian government is spending money to promote. The Australian government provides assistance through the aid program that it claims “strengthens

core functions of government including public sector management, human resources and recruitment, electoral systems, legislative drafting and land management and administration”.²²⁸ At the same time, Australian-linked companies appear to have advised the ABG to create monopolies over resources, proactively use secrecy jurisdictions, and appoint “shadow directors” to majority state-owned companies.

On top of this, while the Australian government funds initiatives to “facilitate the reconciliation of crisis-era dispute and conflicts”,²²⁹ ASX-listed corporations are funding rival groups of landowners in support of mineral exploration and publicising their competing claims over the same resource areas. This risks heightening existing fissures between rival pro-mining factions, and fissures between pro-mining groups and those who wish to forego large scale mining for the short to medium term. If it is in Australia’s national interest to support a strong, stable and prosperous Bougainville, then it is in Australia’s interest to ensure Australian corporates take care not to undermine good governance and peacebuilding initiatives.

Additionally, it is important to recognise that Australia has played a significant role in Bougainville’s history. Previous Australian governments were critical to setting up the initial mining framework that generated significant local conflict. In addition, the Australian government contributed directly to the crisis itself through the provision of armaments and officers to the Papua New Guinea Defence Force. These contentious legacies place a special onus on the current Australian government to play a responsible and supportive role in the region.

Inadequate checks and balances

Despite this, there are limited mechanisms in Australian law to hold companies accountable for what they do overseas. Australia has endorsed the UN Guiding Principles on Business and Human Rights, but has not adopted a National Action Plan to implement these principles.²³⁰ The closest body with a responsibility to monitor business and human rights issues in Australia is the OECD Australian National Contact Point (ANCP), responsible for promoting compliance with the OECD Guidelines for Multinational Enterprises. The ANCP, based in Treasury, has the ability to receive complaints against multinational enterprises based in Australia, engage in conciliation and make recommendations.²³¹ However, its work is focused on conciliating complaints about breaches of the OECD Guidelines, not on wider

accountability and good governance issues such as those discussed in this report.

There are also no formal mechanisms that communities or governments in countries like Bougainville can turn to for advice or assistance in assessing whether a corporation proposing developments has the necessary qualifications and experience.

The *Corporations Act 2001* (Cth) also has little to say on the ethical responsibilities of company directors for the welfare of communities in areas where they operate. Directors are required to exercise their powers “with care and due diligence”, and “in good faith in the best interests of the corporation”.²³² The focus of these duties is on the director’s duty to the company and its shareholders, not to the community at large. There may be arguments that causing reputational damage would breach the requirement to act with care and due diligence, or that acting in a socially responsible way is in the enlightened self-interest of a company.²³³ However, there is a lack of clarity around when directors are able to consider broader environmental and social impacts when considering the best interests of the company.²³⁴ This is in contrast to the UK, where directors are required to consider the impacts of a company’s actions on communities and the environment.²³⁵

Corporations law also requires disclosure of environmental, social and ethical considerations in Product Disclosure Statements and the ASX Corporate Governance Principles require listed companies to disclose their exposure to environmental, social and governance risks.²³⁶ The Australian Securities and Investments Commission (ASIC) has the power to take enforcement action against company officeholders who breach the Corporations Act. Despite this, the current corporate regulatory regime is not well set up to encourage companies to prioritise human rights norms in their operations overseas and there are few examples of successful actions to remedy breaches in this area.²³⁷

One option to encourage companies to act in socially and environmentally responsible ways overseas could be to implement a human rights due diligence mechanism. For a business, human rights due diligence means assessing, identifying and addressing the actual or potential human rights impacts from their operations. France’s *Duty of Vigilance Act*, for example, requires companies to develop a plan to address possible human rights and environmental violations, and implement and monitor this plan. It includes enforceable penalties for companies that do not comply.²³⁸ The European Union’s proposed Directive on Corporate Sustainability Due Diligence also requires large enterprises based in the EU to

Cocoa plantation in Northern Bougainville.



undertake mandatory human rights and environmental due diligence. If adopted, it could have implications for Australian businesses operating in or with business relationships in the EU.²³⁹

While the French law only applies to large companies (over 5,000 employees in France or 10,000 worldwide), as this report shows, smaller companies can just as easily have operations that impact on the rights of communities overseas – particularly the right to free, prior and informed consent. This is particularly the case in highly sensitive sectors (like the minerals sector) or regions (for example, conflict and post conflict regions). A mandatory human rights due diligence regime in Australia that applied to these sectors or regions could provide a mechanism to hold companies accountable for anticipating and preventing the potential human rights impacts of their operations.

Poor transparency

A lack of transparency also impacts on communities' ability to find out information about Australian companies and individuals that they are negotiating with. Finding out information about Australian companies requires paying for access via the Australian Securities and Investments Commission's online portal, *ASIC Connect*. The cost of these searches (\$17 AUD for each individual current and historical company extract), as well as the need to purchase online with a credit card, are a barrier to access for remote communities.

Even when a search can be conducted, where a company is registered in an offshore secrecy jurisdiction, information on shareholdings and ultimate company ownership is severely limited. In 2016, the UK established a register of persons with beneficial interests in UK companies based on the concept of Persons with Significant Control.²⁴⁰ A similar beneficial ownership register in Australia would assist in allowing communities (and governments) negotiating with Australian companies to make informed decisions and do due diligence on their development partners.

As it stands, Australia's regulatory regime offers few avenues to hold companies to account for their behaviour overseas. Those mechanisms that exist are poorly resourced and difficult to access for affected communities. Without stronger checks and balances on businesses operating overseas, Australia will continue to see its strategic interests undermined by its own corporations.

5.1 RECOMMENDATIONS FOR AUSTRALIA

1. Australia should enact mandatory corporate human rights due diligence legislation. This legislation should require companies to identify, prevent, mitigate and account for how they address human rights risks. The legislation should also establish a duty on businesses to prevent adverse human rights and environmental impacts in their operations and supply chains and should include enforceable penalties for those that do not do so. Further, the legislation should make available to people whose human rights are harmed by Australian companies a direct cause of action; thus providing greater prospects for affected people to access some form of remedy. It should cover companies working in high-risk areas, such as conflict and post-conflict countries and/or high-risk sectors, such as mineral extraction, regardless of their size.
2. Corporate regulations, including the *Corporations Act 2001*, should impose clear responsibilities on companies, and their directors, to avoid causing economic, social, human rights and environmental harm in the areas in which they work. This should be accompanied by meaningful sanctions and enforcement action.
3. Australia needs better corporate transparency, including open access to corporate information held by ASIC. The Australian government should introduce a publicly accessible beneficial ownership register to prevent corporations from hiding their ownership in secrecy jurisdictions.

6 IMPLICATIONS FOR BOUGAINVILLE

The Autonomous Region of Bougainville faces a number of choices in its move to independence. With the ABG's recent announcement of an agreement to reopen the mine, the ABG and Panguna landowners will be considering how to ensure that any mining is done with the free, prior and informed consent of landowners, in a way that is genuinely locally owned, benefits the people of Panguna and does not see a repeat of the environmental degradation of the past.

The recent ABG statement highlights that their plans are to reopen the Panguna mine under a local entity jointly owned by the customary resource land owners and ABG on behalf of the people of Bougainville. However, there are likely to be discussions around the potential to include partners or investors – either from within or outside Bougainville – in the development of the mine. Beyond Panguna, there are other developer companies with potential extractive projects that could be undertaken. Lessons from history suggest that, while the ABG and the landowners of potential mine sites will have many potential partners to consider, it is critical to undertake detailed due diligence about these partners – including their past performance and whether they have demonstrated financial and technical capacity to deliver the results promised. It is also critical to ensure that the legal and contractual mechanisms to protect the environment and rights of landowners are in place from the beginning.



JAMES THANIS
FORMER ABG
PRESIDENT

Since Panguna became the problem, we must not do things in a way that will repeat the problems.²⁴¹

Several of the examples highlighted in this report have also shown the importance of transparency in mining negotiations. The leaked confidential presentations discussed above have shown that the advice provided by companies behind closed doors is not necessarily in the broader interests of Bougainville and its people. Transparency mechanisms – for example, a requirement that companies report on lobbying activities, or a government lobbying register – could help to ensure that the ABG has access to a range of perspectives and can cross-check advice that it receives.

This report also highlights the importance of a robust commitment to the principle of free, prior and informed consent. Any successful mining venture will require

widespread community support that is genuinely and freely given, based on an informed understanding of the costs and benefits at the community level. This would need to include communities at the mine site, as well as those likely to be affected by the mine, such as the communities living in the mine tailings areas. Without this, there is a risk of repeating mistakes of the past.

Finally, the social and environmental impacts of mining in Panguna are important to consider. Previous research published by Jubilee Australia has analysed the ABG's revenue needs, potential income from mining at Panguna and the potential costs of reopening the mine.²⁴² The research found a number of considerations that undermine the viability of mining at Panguna, including uncertainty over yield levels, fluctuating copper prices, costs of managing the potential for environmental damage, landowner resistance and taxes.²⁴³ Crucially, managing the waste rock and tailings from a mine at Panguna, without repeating the environmental destruction of the past, would require a complex integrated tailings management system. Building a highly engineered tailings management system at Panguna, which is in an area of high rainfall and high seismic activity, while not impossible, would be very difficult and very expensive.²⁴⁴ For this reason, it remains unclear whether reopening Panguna would provide the revenue injection that the ABG needs to sustain independence. It is also worth debating whether any gains the people of Bougainville would reap from future mining revenues would outweigh the economic, cultural and spiritual benefits they derive from the land.

6.1 RECOMMENDATIONS FOR BOUGAINVILLE

1. The ABG should undertake detailed due diligence on any corporate partners seeking mining and exploration licences, including to identify whether there is evidence of previous regulatory breaches by the company or its officers, as well as to understand the shareholding structure of the company.
2. The ABG should support landowner companies (including those in mine and tailings areas) to obtain independent advice to ensure that the rights of landowners and protection of the environment are prioritised in any future mining joint ventures.
3. Any plans for reopening of the Panguna mine should be based on detailed, independent analysis of the potential costs and environmental impacts of managing waste rock and tailings from the mine, and any operator should be required to demonstrate the capacity to manage ongoing and future impacts.

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