




# CPA BIMR ELECTION OBSERVER MISSION JERSEY GENERAL ELECTION - MAY 2018

## FINAL REPORT



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***“The 2018 Jersey election was well executed, competitive and enabled the electorate to cast their votes in secret and express their will in a transparent, peaceful and orderly manner. We commend the election officials who were professional in carrying out their functions meticulously and impartially. In particular the efforts by the States Greffe to educate and engage all the segments of the population in the electoral process. However, their work was hindered by an electoral system which remains overly complicated and cumbersome. Further areas of concern relate to the number of uncontested elections, the disparity in the equality of the vote across districts and parishes and the low voter turnout which arguably undermines the principle that the elections in Jersey are fully genuine. Improvements are needed to tackle the deficiencies in the regulatory framework, particularly in relation to campaign financing, political parties and the process for candidate nomination.”***

Hon. Phillip Paulwell CD MP, Jamaica  
Head of Mission, CPA BIMR EOM, Jersey 2018

## **BACKGROUND**

The Commonwealth Parliamentary Association British Islands and Mediterranean Region (CPA BIMR), Election Observation Mission (EOM) was present in Jersey from 5 May till 18 May 2018, following an invitation from the States and Government of Jersey. In advance of this date, CPA BIMR conducted two scoping visits in 2017 and observed nomination days on the 10 and 11 April. **The EOM is independent in its composition, findings and conclusions, adhering to the Declaration of Principles for International Election Observation, signed at the United Nations in 2005.**

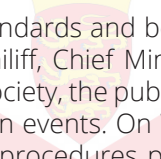
The eight-member Mission was composed of:

- Head of Mission - Hon. Phillip Paulwell CD MP (Jamaica)
- Deputy Head of Mission – Hon. Dr Zanetor Agyeman-Rawlings MP (Ghana)
- Short Term Observer – Jeremy Balfour MSP (Scotland)
- Short Term Observer – Tenia Woolridge (Bermuda)
- Senior Election Coordinator – Matthew Salik (CPA UK – United Kingdom)
- Election Coordinator – Fleur ten Hacken (CPA UK – The Netherlands)
- Election Analyst – Harald Jepsen (Denmark)
- Election Analyst – Anne Grandvoinet Serafini (France)

*2017/18 - Advance Team*

- Election Coordinator - Mariam El-Azm (CPA UK - United Kingdom)
- Nomination Day Observer - Susie Latta (CPA UK - United Kingdom)

**This Mission is the first to occur in Jersey following an amendment to the Public Elections (Jersey) Law 2002 in January 2017 which permits the access of observers.** This change in the law is part of a continuous review and implementation of electoral reform. Most notably in 2012, an Electoral Commission was temporarily established to consider reform on a range of issues. In 2013, the different options were put to a referendum. By a 26% turnout, the population opted for establishing six electoral districts and maintaining the *Connétables* as elected members of the States. **The result of the consultative referendum was put to a vote in the legislature, but failed to receive sufficient support from States members.**



The EOM assessed the electoral process in accordance with international standards and best practices for elections and domestic legislation. Prior to election day, the Mission met with the Bailiff, Chief Minister, States Greffier, the Judicial Greffier, election and parish officials, candidates, political parties, civil society, the public, media representatives, the States of Jersey and Honorary Police and attended a number of campaign events. On Wednesday 16 May, EOM members were deployed throughout Jersey for observation of election day procedures paired up in teams of two observers. The EOM observed the opening of 4 polling stations and voting throughout the day in all of the Island's 18 polling stations at times returning to the same polling station for repeated observations. The EOM followed the closing procedures in 4 polling stations and observed the counting of 6 ballot boxes for Deputy, one for *Connétable* and a large number of ballot boxes for Senator in the counting centre at the Town Hall in St Helier.

## LEGAL FRAMEWORK

The legal framework for the elections include formal laws such as the Public Elections (Jersey) Law 2002 and regulations such as the Department for Infrastructure Guidelines for Election Advertising on Areas under Administration of the Department.<sup>1</sup> Jersey is party to the International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights (ECHR) and the United Nations Convention against Corruption (UNCAC), which all set a number of important standards for elections. **Overall, the electoral legal framework is conducive for holding democratic elections in line with international standards. However, constituency boundaries for the election of *Connétables* are not drawn in line with international standards** (see boundary delimitation section). **A further number of election topics are under-regulated such as media coverage of the election campaign, campaign finance and political parties.**

The legislature in Jersey, the States Assembly, has 49 elected members of which 8 are Senators, 12 are *Connétables* and 29 are Deputies. All are elected for a four-year term in office. Fourteen members of the States were elected unopposed. Though this is completely lawful in all democratic countries, these are cited as examples of the lack of interest and competitiveness in these areas. **The provision allowing candidates to stand and be elected unopposed has reduced the competitiveness of the election** (only one constituency voted in all 3 ballots; 14 constituencies voted in 2 ballots, and in 3 constituencies, voters could vote only in the senatorial election).<sup>2</sup>

In the 16 May 2018 public election, Jersey chose the remaining 8 Senators, 1 *Connétable* and 26 Deputies. The States, although in purdah, does not prorogue under the law and as such members of the outgoing legislature stay in office until the new elected members are sworn in. **This may give candidates seeking re-election, including members of government and States committees an unfair advantage over other candidates.** In terms of the *Connétables*, who continue in their primary function as community head (father/mother of a Parish), **this provision may potentially cause a conflict of interest when seeking reelection.**<sup>3</sup>

### RECOMMENDATION 1.

**A revision of the legal framework for elections including a revision of the electoral system that take into account the findings of the 2013 Electoral Commission and the outcome of the Consultative Referendum is undertaken based on an inclusive consultative process and Jersey's obligations under international law related to elections.**

### RECOMMENDATION 2.

**As the election for all members now occurs at the same time, the States Assembly should consider formally proroguing in advance of the election to ensure greater equality and time for all candidates to campaign as private individuals, and to provide clarity to the public, media and candidates as to the long and short campaign period (see campaign and media sections).**

## BOUNDARY DELIMITATION

The Island is divided into three forms of constituencies for public elections;

- Senators are elected in one island-wide constituency;
- *Connétables* are elected in the 12 parishes; and
- Deputies are elected in 17 electoral constituencies.

Electoral boundaries are an integral part of the overall electoral system. The choice of the electoral system is up to the population of Jersey to decide in so far it does not conflict with the obligations under international conventions and human rights instruments to which Jersey is party. The main principles to be observed by any electoral system

1. States of Jersey Law 2005, the *Connétables* (Jersey) Law 2008, the Political Parties (Registration) (Jersey) Law 2008, the Donation and Expenditures (Jersey) Law 2014, as amended and the Public Elections (Jersey) Regulations 2002.  
 2. See, [www.vote.je](http://www.vote.je)  
 3. Certain tasks such as the safekeeping of ballots – usually stored in the safe of the *Connétable* in the parish – are examples of a potential conflict of interest, which, however, as a rule is mitigated by asking the *Connétable* to pass the keys to the safe to the election administrator in the parish. The *Connétable* is also responsible for the overall administration of the parish and officials working on the election.



are spelled out in paragraph 25 of the International Covenant on Civil and Political Rights (ICCPR), namely universal and equal suffrage.<sup>4</sup> When it comes to the delimitation of electoral boundaries the principle of equal suffrage is key. A number of international treaty bodies have provided authoritative guidance to state parties on how to ensure equal suffrage in their electoral system, including the UN Human Rights Committee and the European Commission for Democracy through Law (Venice Commission) of the Council of Europe.<sup>5</sup>

The constituency for the election of Senators is drawn in respect of the principle of equal suffrage. The vote of any one elector throughout the Island carries equal weight.

The constituencies for *Connétables* are the parishes, which have boundaries going back to at least the thirteenth century. Due to the demographic changes over the years they now display huge differences in population size, from 1,752 persons in St Mary to 33,522 in St Helier, according to the last census.

**The EOM finds that the method for seat distribution in the States Assembly is not consistent with the principle of the equality of the vote due to significant differences in vote weight from one parish to another for the election of *Connétables*.<sup>6</sup> This is at odds with the obligations of the States of Jersey under the International Covenant on Civil and Political Rights (ICCPR).<sup>7</sup> This deficiency in the current electoral system was also noted by the Electoral Commission in its 2012 final report and addressed in its suggestions for electoral reform.<sup>8</sup>**

Typically, calculations for distribution of seats to constituencies are based on population figures. This, however, rests on the assumption that the number of electors is equally distributed across the population, which is not always the case. Jersey is one such exemption from this rule owing, to the combined effect of the principle of active voter registration and the presence of a large transient population mainly in St Helier that does not register to vote. In order to address such potential discrepancies, the Venice Commission recommends to use a combination of population and voter data to ensure the equality of the vote when drawing constituency boundaries and apportioning seats to constituencies.<sup>9</sup> Since delimitation may cause controversy, the Venice Commission recommends that an independent commission with experts and balanced political representation be set up to agree on and apply the principles.<sup>10</sup>

Taking the number of electors (registered voters), as a base for the calculation will narrow the gap between St Mary (1,349 voters) and St Helier (17,264 voters), but this will be insufficient to ensure equal voting power for every voter in the election of *Connétables*.

When it comes to the role of the *Connétables* in the system of governance in Jersey, they represent the last remnant of the three historical “Etats” in the States Assembly. It is up to the people of Jersey if they want to maintain *Connétables* as members of the Island’s legislature, **but the choice to do so challenges fundamental principles for democratic participation in a modern society, exacerbated by the fact that they frequently stand unopposed** (see candidate registration section below).

The electoral constituencies for deputies are set out in Schedule 1 to the State of Jersey Law 2005. Since the principle for the distribution of seats to the constituencies is not spelled out in the law or the schedule to the law, some analysis is needed to detect the underlying principle(s).

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4. Paragraph 25 of the [International Covenant on Civil and Political Rights \(ICCPR\)](#) ratified by the States of Jersey in 1976 provides for “the right of citizens to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage...”
  5. Paragraph 21 of [General Comment No. 25](#) to Article 25 of the 1960 CCPR by the UN Human Rights Committee provides that “the principle of one person, one vote, must apply, and within the framework of each State’s electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of votes or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.” According to section I.2.2.2 of the [Council of Europe’s Venice Commission Code of Good Practice in electoral matters](#) (Code of Good Practice), seats must be evenly distributed among the constituencies and the permissible deviation from the norm should not be more than 10 per cent, and should not exceed 15 per cent except in special circumstances.
  6. *Connétables* are concurrently elected as father/mother of their parish; in this respect the principle of the equality of the vote is observed since the vote of every elector carries equal weight within the boundaries of the parish.
  7. Commonwealth (Latimer House) principles, p. 16: “Commonwealth parliaments should take speedy and effective steps to implement their countries’ human rights obligations by enacting appropriate human rights legislation.”
  8. See Electoral Commission Final Report as well as Expert Reports.
  9. Section I.2.2.2 of the [Code of Good Practice](#) outlines that “(e)quality in voting power requires constituency boundaries to be drawn in such a way that seats (...) are distributed equally among the constituencies, in accordance with a specific apportionment criterion, e.g. the number of residents in the constituency, the number of resident nationals (including minors), the number of registered electors, or possibly the number of people actually voting. An appropriate combination of these criteria is conceivable.”
  10. The [Code of Good Practice](#) states that “the best solution would be to submit the problem in the first instance to a commission, comprising a majority of independent members and, preferably, a geographer, a sociologist, a balanced representation of the parties and, where appropriate, representatives of national minorities.”

Figure 1 shows the distribution of the 29 deputy seats per parish based on the following:

- the number of seats provided in Schedule 1 to the State of Jersey Law 2005 (column 1),
- the CPA EOM calculation of the ideal distributions based on the 2011 population census data (column 2);
- The CPA EOM calculation of the ideal distribution based on the figures of registered voters (electors) on 16 May 2018 election day (column 3);
- In column 2a and 3a are given the rounded figures from columns 2 and 3, for clarity.

**Fig1. Distribution of deputy seats per parish**

Parish	(1) Schedule 1	(2) Census	(2a)	(3) E-Day	(3a)
St Brelade	3	3.13	3	3.59	3
St Clement	2	2.73	3	2.82	3
St Grouville	1	1.44	1	1.70	2
St Helier	10	9.94	10	8.07	8
St John	1	0.86	1	1.07	1
St Lawrence	2	1.61	2	1.83	2
St Martin	1	1.12	1	1.30	1
St Mary	1	0.52	1	0.63	1
St Ouen	1	1.21	1	1.37	1
St Peter	1	1.48	1	1.64	2
St Saviour	5	4.02	4	3.96	4
Trinity	1	0.94	1	1.02	1
<b>Total</b>	<b>29</b>	<b>29.00</b>	<b>29</b>	<b>29</b>	<b>29</b>

The current distribution of seats to election constituencies as outlined in Schedule 1 appears to be based on population data: the number of deputies allotted to each parish largely correspond to the parish's share of the total population according to the [2011](#) data (column 2 and 2a). The only exceptions are St Clement and St Saviour, which have one deputy less and one deputy more, respectively, than suggested by their population share – a tendency that is also confirmed if the number of registered voters (column 3 and 3a) is used as basis for the calculation. The difference between a population and a voter-based distribution is most significant for St Helier due to its lower share of registered voters (52%) compared to the rest of the Island, and in particular in comparison to the rural parishes. If the number of electors (voters) is used for calculating the seat distribution, the parish of St Helier would only qualify for eight deputy seats, as indicated in column 3, against their current ten deputy seats.

Thus, **Schedule 1 does not fully comply with the principle of the equality of the vote, mainly due to the disparity in the number of registered voters between rural and urban parishes** (see also Voter Registration section). International good practice is to allow for up to 10% deviation from the average number of electors when distributing seats to electoral constituencies.<sup>11</sup>

It is a good international practice that the distribution of seats to constituencies be undertaken in a transparent and consistent procedure established by law and that boundaries of election constituencies are regularly reviewed to reflect demographic changes.<sup>12</sup> This is currently not the case with regard to deputies' constituencies. The States of Jersey Law 2005 provides that the States may amend Schedule 1 and thereby alter, combine, split and rename the constituencies and amend the number of deputies in relation to a constituency. **However, neither the principles governing their delimitation nor the regularity of the boundary review are spelled out in law. This limits the transparency of boundary delimitation or its accuracy over time.**

### **RECOMMENDATION 3.**

**The State of Jersey Law 2005 should stipulate that electoral constituencies be of equal or comparable size in order to guarantee one of the fundamental principles of electoral rights, the equality of the vote. A mechanism that allows for a regular review of the boundaries to reflect demographic changes in the voter population should be considered, preferably in the form of a boundary commission with a composition and mandate that is defined in the State of Jersey Law 2005 in line with international good practice.**

11. See section I.2.2.iv of the [Code of Good Practice](#).

12. The Code of Good Practice recommends a boundary review is undertaken with a frequency of no more than ten years intervals.



## ELECTION ADMINISTRATION

The election administration of Jersey is divided between multiple stakeholders. Once the Royal Court has ordered for an election, the election administration primarily sits with the Judicial Greffier as the Clerk of the Court. The Greffier and twelve *Jurats*, who serve as non-professional judges of fact, act as *Autorisés* or Returning Officers. Returning officers have a varying number of *Adjoints* or assistant Returning Officers at their disposal who staff polling stations on election day. The Judicial Greffier provides guidelines (manuals and memo notes) and training for the *Jurats*, and on election day, acts as a returning officer for the Senators' election. The Greffe also oversees the administration of advance polling.

The Greffier of the States is the Clerk of the States Assembly. The States Greffe produced a comprehensive guide to voters containing the manifestos of all candidates as well as voter information targeting different audiences, including minorities (see section below). This information was also available online, on the [vote.je](http://vote.je) website, which is maintained and updated by the States Greffe. They also responded to calls and enquiries from voters and candidates about the elections.

At parish level, the *Connétable* acts as election administrator (a function that is carried out by the *Procureur du Bien Public* or parish trustee in the case of the incumbent *Connétable* seeks re-election). The election administrator presides at candidate nomination meetings and assists in organising and chairing the hustings held in the parish. Assisted by the Parish Secretary, the election administrator is also in charge of the voter register.

The system in Jersey is unique as it relies to a large extent on the work of volunteers – *Autorisés* and *Adjoints* – to carry out most tasks on election day. This is also the case with the Honorary Police that assumes an active role by providing security at polling stations on election day. **The commitment and willingness to support the electoral process in this manner is highly commendable.**

Despite concerns that the administration of the election is too divided, **the Mission noted an effective and proactive level of communication and coordination between the varying election actors.** Training provided was comprehensive and offered an opportunity for *Jurats* to clarify matters not covered by the guidelines, and the Law Officers' Department gave advice on matters of law. The *Jurats*, in turn, briefed and trained the *Adjoints*. **Overall the election administration performed its tasks in a professional, efficient and transparent manner. Stakeholders generally expressed a high degree of trust in the election administration.** However, it is international good practice that the administration of elections is entrusted in an impartial standing body that is fully independent of the three branches of power.<sup>13</sup> Such body could provide oversight with the proper implementation of the electoral legislation and act to further professionalize and train election staff between elections as well as a number of other tasks. The body should be vested with regulatory power and could provide oversight over proper implementation of media, campaign and campaign finance provisions within a clearly defined mandate prescribed by law and with one level of appeal of its decisions.

### RECOMMENDATION 4.

**Consideration should be given to the creation of a permanent election administration body independent of the three branches of State to provide continuous oversight and review of the electoral legal framework, including oversight of candidate and voter registration, implementation of campaign, campaign finance and media provisions, and electoral dispute resolution.**

## VOTER REGISTRATION

Voter registration in Jersey is active; a person needs to apply for inclusion on the voter register in order to exercise the right to vote. The right to vote is granted to persons who are 16 years old, have been an ordinarily resident for at least 2 years prior to election day or have been an ordinarily resident for the last 6 months plus any other period(s) which total 5 years, regardless of their nationality. Prisoners serving a term of less than four years are eligible to register and vote by post or may request a visit by the returning officer on election day. Mental disability is not reason for denying the right to vote.

Persons could register on the voter list until 9 April; latecomers could register on supplementary lists until the final

13. Section 3.1. of the [Code of Good Practice](#).



cut-off date of 9 May. Voters registered on supplementary lists were entitled to vote on election day but could not take part in advance voting. In total, some 62,065 voters or 63% of the population on the Island (or some 76% of the eligible population) was registered to vote in the election.<sup>14</sup> The law envisages a procedure to allow persons who had applied to the authorities in a timely manner the right to vote to remain if they for reason of clerical error accidentally had been removed from the register.<sup>15</sup> Some 75 voters were added to the voter list in polling stations on election day under this extraordinary procedure and 13 persons removed from the list.

Both the possibility for voters to register on supplementary voter lists after the initial cut-off date and the procedure that allows electors to have erroneous entries corrected on election day are in line with international best practice and appear sufficiently safeguarded against potential abuse.<sup>17</sup>

The voter registers are maintained by each of the 12 parishes and are essentially paper based. Voters could file an application electronically for the first time in this election, but they could not check their registration online. **Significant efforts were made by the States Greffe to reach out to non-registered voters reminding them about their right to register to vote and the various possibilities at hand for them to do so, including online registration.** More than two-thirds of the online applicants were in fact already on the voter list. Since registers are not linked or digitalised, cross-checks for possible duplicates had to be done manually. **Thus, online registration created an additional burden for the parish administrations.**

It was a surprise for members of the EOM to learn from parish clerks that the voter eligibility criteria – residency requirements – are not systematically checked and verified for each individual person who registers to vote. The registrars gave reference to the registration form where voters by their signature declare they meet the eligibility criteria as well as to the fine imposed for giving false declarations under the election law as sufficient deterrence against abuse.<sup>18</sup> **This essentially means that voter eligibility criteria are not systematically checked by the authorities; they rely on persons' self-declaration of eligibility. This could leave opportunities for abuse or errors.**

It should be mentioned that voter registration (and voting systems) was initially among the topics which the 2011 Electoral Commission was tasked to look into. However, in the autumn of 2011 the newly elected States Chambers amended the Commission's mandate; voter registration (and voting systems) were excluded from list of topics to be considered by the Electoral Commission.<sup>19</sup> **Thus, the voter registration system has not been subject of recent review.**

### RECOMMENDATION 5.

**The States of Jersey should undertake a review of its voter registration system and among other explore the feasibility of a transfer to a digitalized system – if possible linked to a public register of personal records – allowing Island-wide cross-checks for multiple registration and to perform controls of voters' eligibility criteria (residency requirements), and to allow voters in a sufficiently secure manner to check online if they are registered to vote.**

Candidates were able to obtain a copy of the relevant voter register provided they registered with the Data Protection Commissioner against a £50 fee (see campaign section). In many cases, candidates were actively encouraging non-registered voters to register and some targeted minority community members, especially in St Helier. However, candidates highlighted the inconsistency of formatting and lack of clarity across the different registers as well as difficulty in access to the registers in advance of their nomination. **Unfortunately, only approximately half of the population in St Helier are registered voters as compared to the Island's rural parishes, where up to 80% of the population are registered to vote.** St Helier – and to a certain extent also St Clement – has a high proportion of temporary residents living in rented and multi-occupancy housing who do not register vote. **The States Greffe made considerable effort to reach out to Portuguese and Polish communities and encouraged them to register and take part in the elections, which is noteworthy.**

14. According to the 2011 census, the population was 97,857 persons, of which 81,644 or 83% were 16 years or older. In the latest official estimates from 2016, the population of Jersey is approximately 104,000 persons.

15. The Judicial Greffe's manual listed examples of clerical errors as guidance for the returning officers when deciding whether to allow a person not on the electoral register the right to vote on election day. In each positive case the voter would sign a special form developed for this purpose.

16. Calculation based on the official figures of registered voters as reported on 9 May (62,065) and as reported on [www.vote.je](http://www.vote.je) as part of the result of the senatorial elections (62,123) after election day. The difference equals 0,1 per cent of all voters and testifies to a low number of inaccuracies in the electoral register due to clerical error (on average three voters per polling station).

17. Section 7.1. of the [Code of Good Practice](#).

18. See [voter registration form](#). Article 66.1 (A) of the Public Elections (Jersey) Law 2002 stipulates that knowingly giving false declarations is an offence for which a person is liable to a fine not exceeding £10,000.

19. [Electoral Commission Report](#), page 11.



## RECOMMENDATION 6.

**Efforts to encourage the Island's eligible population to register to vote and to take part in elections should continue, including by outreach to ethnic minority communities in their preferred languages. If a review of the voter registration system is undertaken, it should assess if active voter registration and the complex voting system (see under Election Day) act as barriers to greater political participation and representation.**

## CANDIDATE REGISTRATION

The right to stand for election as Senator and Deputy is set out in Article 7 of the States of Jersey Law 2005. It provides that a candidate must be 18 years old, a British citizen and resident in Jersey for a period of at least 2 years up to and including the day of the election or resident for a period of 6 months up to and including the day of election as well as additional periods that total at least 5 years.

On 30 March an amendment of the *Connétables* (Jersey) Law 2008 came into force to align qualification and disqualification criteria for *Connétables* with the requirement for Senators and Deputies.<sup>20</sup> New criteria for candidacy introduced less than two months before election day challenge the principle of stability of law.<sup>21</sup>

Among the reasons listed in the law to disqualify a person from being a Senator, a Deputy or a *Connétable* is the person having become bankrupt or having made a debt settlement with his or her creditors.<sup>22</sup> **Such restrictions do not appear to be objective and reasonable in the sense of the ICCPR.**<sup>23</sup>

## RECOMMENDATIONS 7.

**The disqualification criteria for candidacy should be reviewed and brought in line with Comment No. 25 to Article 25 of the ICCPR by the UN Human Rights Committee.**

Parish clerks informed the EOM that candidates' qualification and disqualification criteria were not systematically checked. With regard to that criteria, it seems the authorities rely solely on the accuracy of the self-declaration form signed by the candidate and the dissuasive fine of up to £10,000 for knowingly making a false declaration (see also Voter Registration section).

A total of 77 candidates were officially nominated for the 35 vacant seats, offering a wide choice of political alternatives for voters. However, a substantial number of unopposed candidates (14) were declared elected and one candidate withdrew before election day. It meant that some 28% of the seats in the States Assembly were uncontested more so at *Connétables'* level since 11 out of 12 were elected unopposed. The Mission was repeatedly informed by various stakeholders that the informal qualifications for a *Connétable's* candidacy were dependent on the historical voluntary support and commitment to the parish in which they live, which reduces the pool of those likely to stand and creates a disincentive to contest elections at the *Connétable* level. Furthermore, as the incumbent *Connétable* is partly responsible for voter and candidate outreach in advance of the election period, there is the potential conflict of interest to encourage a wider pool of candidates for *Connétables*.

## RECOMMENDATIONS 8.

**Efforts should be undertaken to eliminate the conflict of interest associated with the functions of the *Connétables* as election administrator for their parish which gives incumbent *Connétables* an advantage over their potential opponents and may act as a disincentive for other candidates to stand.**

The Political Parties (Registration) (Jersey) Law 2008 sets out the registration requirements and the application procedure for political parties and outlines their obligations. The law among others requires political parties to submit an annual statement of accounts to the Judicial Greffier. However, there is no provision requiring public disclosure of such statements. This reduced the transparency of party finances. In addition, the lack of a clear definition of their legal

20. See [Connétables \(Amendment No. 2\) \(Jersey\) Law 2018](#).

21. Section II.2 of the Code of Good Practice.

22. Article 8 (3) and (4) of the State of Jersey Law 2005 and Article 4C (3) (b) of the *Connétables* (Jersey) Law 2008. The restrictions on candidacy for these reasons are limited to five years.

23. Paragraph 15 of [General Comment No. 25](#) stipulates that "the effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates. Any restrictions on the right to stand for election (...) must be justifiable on objective and reasonable criteria."

status hampers the operations of political parties. One political party took part in the 16 May elections and fielded a total of 18 candidates for Senator and Deputy; however, in the absence of proper legal regulations the party was not able to open a bank account in its own name this hindering financial administration, accountability and transparency.

### RECOMMENDATION 9.

#### **The legal status of a political party should be clearly defined in law.**

All candidates were officially proposed at nomination meetings on the 10 April for Senators and on the 11 April for *Connétables* and Deputies. No electoral deposit is required; candidates only had to submit a nomination form with the signatures of one proposer and nine seconders, as well as a Declaration of Convictions. The nomination form envisages that the proposer and the seconders put their signature on the form after the section indicating the candidate's potential party affiliation has been completed. **However, the form is designed in such a way so as to make it difficult to determine that it has been completed in the prescribed order.** For example, the proposer and seconders do not have to date their signature, whereas the officers that sign on behalf of a political party do.

In two cases, parish clerks noted a possible irregularity in the way the candidate nomination form was completed – in both cases concerning a candidate endorsed by the Reform Jersey Party. The validity of the nomination form was in both instances questioned after the two candidates in question were duly proposed and seconded as candidates at nomination meetings in their respective constituencies, St Brelade and St Lawrence. Both cases resulted in court cases before the Royal Court (see also Complaints and Appeals section).<sup>24</sup> In its 14 May judgement, the Royal Court (Samedi division) recommended “the nomination form be amended to make it clear that the two officeholders of the political party also have to sign the Political Party Declaration before the document is subscribed by the proposer and the seconders and that the signatures of the proposer and seconders be dated.”

### RECOMMENDATION 10.

#### **The procedure for candidate nomination should be reviewed with a view on introducing an adequate timeline for verification of qualification and disqualification requirements of the candidate, the proposer and the seconders, for document check and for correction of possible errors by the candidate ahead of the nomination meetings. The design of the nomination form could benefit from an overhaul in line with the recommendations of the Royal Court.**

## CAMPAIGN

**There is a lack of campaign regulation, with the exception of the Department of Infrastructure guidelines regulating the visual campaign in public areas under its authority, which was at times ignored by candidates.** Campaign posters were mostly visible at major crossroads and main streets throughout the Island. Candidates and their supporters should be praised for actively canvassing their districts, primarily through leafleting. **Candidates could obtain electoral registers including the supplementary list in their parish, but some complained about the format being difficult to use.**

More than 30 hustings were organised throughout the Island. Their adhoc format was agreed among candidates after their nomination meeting and varied greatly depending on the number of candidates for each contested seat. Candidates were charged with organisational and promotional costs when applicable. Some interlocutors questioned hustings' effectiveness and would welcome a process to avoid repeated questions. Two specific hustings took place focusing on rural and youth related issues gathering numerous interested audience.

**In a positive move, all hustings were video-recorded and made available online on vote.je.** The manifestos of all candidates together with their photos were published by the States Greffe in an election booklet distributed to all households and additionally made available online as an indirect contribution by the States to the campaigns of contestants. The information was updated following the withdrawal of one candidate and the election of another. However, despite these proactive steps, **many voters expressed a lack of understanding of what candidates stood for.**

**On the whole, the campaign was a positive one, centred on a number of local and Island-wide issues.** However, there were cases of defacing of campaign posters with swastikas and alleged use of inflammatory speech in a leaflet attacking a candidate. Some of these cases were reported to the States of Jersey Police and are under investigation.

24. [\[2018\] JRC083 Attorney General's Representation re Public Elections Law – Carré 08-May-2018](#) and [\[2018\] JRC085 Attorney General's Representation re Public Elections Law – Westwater 14-May-2018.](#)



### RECOMMENDATION 11.

**The introduction of a code of conduct for the campaign signed by all nominated candidates could be considered to discourage abuses or attacks during the campaign.**

### RECOMMENDATION 12.

**It could be considered to introduce an official start of the campaign after nomination meeting to give equal opportunity to politically eligible States employees who have to step down and a moratorium on campaign activities on election day in order to give voters one day to reflect on campaign messages and make up their mind.**

The Public Elections Expenditure and Donations (Jersey) Law 2014 regulates campaign finances. It stipulates, among other, expenses (direct and notional), campaign ceilings and donations that can be received by candidates (money, loans, goods and services). Anonymous donations are forbidden. Candidates and third parties have to report their campaign donations and expenses to the Judicial Greffier within 15 working days after election day, **but the Law is notably silent when it comes to the rights and obligations of political parties. Parties are not required to provide any specific financial report in an election year apart from their regular annual statement of accounts.** Some candidates running for Senator and some running for Deputy in urban centres considered the campaign ceilings set too low. The Judicial Greffier issued guidance for candidates detailing in particular how to report their expenses and donations. **However, there is no provision for the Greffier to undertake a systematic scrutiny of candidates' financial declarations. It is also his responsibility to make the submitted declarations public.**

As set out in the standing order of Jersey part 8, registration of interest and code of conduct, n°153: all elected members must provide the Greffier with their declaration of interests within 30 days after taking their oath of office, detailing their employment, shareholding, sponsorship, gift hospitality and benefits, overseas visits, land and miscellaneous using a standard format. They are responsible for notifying the Greffier in case of changes or addition. The declarations of interest of the outgoing States Assembly members are available online, which enhances transparency of political office. **Complaints can be made to the Privileges and Procedures Committee of the States Assembly, however there is no provision for systematic investigation.**

### RECOMMENDATION 13.

**Consideration should be given to provide for and undertake a systematic scrutiny of all financial declarations submitted by candidates and political parties and make public the result of such scrutiny, in order to enhance transparency of campaign finances as stated in Article 7.3 of the UN Convention against Corruption.<sup>25</sup>**

## MEDIA

The conduct of the media during an election is not subject of regulation by the States of Jersey. Media is essentially self-regulated and there is no oversight body to monitor media compliance. Thus, it is up to the individual media to provide candidates equal access and balanced coverage. As such, a number of local media outlets took varying approaches to their coverage.

Overall the Jersey media landscape is limited but pluralistic and includes newspapers both online and printed, television channels and radio stations. Only few candidates chose to use paid advertisement. The media supported the States in communicating key election messages, posting candidate videos and conducting questionnaires. The Bailiwick Express conducted an exit-poll with students from Highland College to encourage youth engagement. There was an increased use of social media, especially Facebook, Twitter, Instagram and blogs. **However, a number of candidates expressed concern about the imbalanced nature of the printed press, the absence of a campaign silence period and the abusive nature of social media that can put off potential candidates.**

25. "Each State Party shall also consider taking appropriate legislative and administrative measures (...) to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties." [UN Convention against Corruption](#), Article 7.3.

## RECOMMENDATIONS 14.

**Consideration should be given to introduce media regulations to ensure equal access and balanced coverage during the campaign.**

### ADVANCE POLLING

**The election administration should be commended in their approach to offer an array of opportunities for the electorate to cast their vote.** Voters on the electoral register could opt to vote by postal ballot or take part in the pre-polling in the last two weeks prior to election day. A number of voters applied for a postal ballot. Application forms were available online. Candidates could bring applications to potential voters, but they are liable to a fine if they assist or fill in the form on behalf of the voter. A total of 321 voters returned a postal ballot before noon on election day. This is 1.19% of the overall voter turnout.

Pre-polling was open from 30 April to 14 May on weekdays in St Helier, and on Saturday 5 May in Trinity and Saturday 12 May in St Brelade. Based on EOM calculations, 3,099 registered voters used the opportunity to cast their ballot in advance. This equal 11.50% of the overall turnout. Voters did not have to justify their participation in the advance voting. Candidates were not allowed to observe pre-polling, but some chose to campaign outside.

The Mission observed voting in all three pre-poll locations. **The process was well-administered and smooth, apart from occasional problems with accessing the electronic voter register which at times led to delays, as well as the limited space in the St Paul's Centre in St Helier.** In St Brelade, when queues formed, the queue controller who was also supposed to look after the ballot booths and the ballot box struggled to cope with several simultaneous tasks. During this time, instances of group (family) voting occurred and were not always prevented by the staff. The envelopes with the advance votes were kept safe until election day, when they were cast by the returning officer in the respective polling stations. Overall some 12.69% or one in eight voters choose to vote in advance of election day by means of pre-polling or postal voting.

Although the law describes pre-poll voting as an administrative procedure whereby the voter receives a ballot and an envelope, marks the ballot, puts it in the envelope and hands it over to the administrator, in practice the entire set-up has developed into a setting with a booth for secret voting and a ballot box in which the voter cast their ballot envelope. Thus, from the perspective of the voter the procedure is not significantly different from regular voting in a polling station on election day. Also candidates have come to see pre-polling as an opportunity to undertake electioneering. However, contrary to their entitlements on election day, candidates and their agents are not allowed to observe the process of pre-poll voting inside the pre-poll centre.

## RECOMMENDATION 15.

**It is recommended that candidates and parties are granted the right to observe pre-poll voting procedures inside pre-poll centres. It is further recommended to ensure that locations selected for pre-polling centres have sufficient space to allow for a transparent process and that enough staff are on duty and allocated to carry out the different tasks during the pre-poll vote.**

In addition to pre-poll and postal voting, *Autorisés* and *Adjoints* frequently carried out home visits to bedridden voters or to voters in the Island's prison. **This put an additional burden on the election officials prior to and on election day.**

### ELECTION DAY

**On election day, voting in Jersey commenced in a calm and orderly manner, and procedures were diligently followed in all of the Island's 18 polling stations. Election officials and the Honorary Police worked in a highly professional and efficient manner to ensure a smooth process throughout election day.** As a token of their trust in the electoral administration, candidates as a rule did not utilise the opportunity to observe voting inside the polling stations, but preferred to be outside greeting voters who came to vote. **However, at times the large numbers of candidates, agents (tellers) and to some extent the Honorary Police stationed outside was considered to be intimidating to voters.** Many voters highlighted that they preferred pre-polling as they could avoid being approached by candidates and agents.



## RECOMMENDATION 16.

**Although the outdoor vicinity of the polling station is a largely unregulated area additional efforts could be made to ensure that voters are provided access to the polling station unhindered and free from intimidation by regulating (limiting) the number of tellers who can be present there at one time. (see also Recommendation 12).**

**The complex voting system, with its varying number of options on different ballots, at times, created voter confusion.** Voter turnout was low, with notable lower figures in St Helier and two other urban centres. Queues were noted in a few locations, especially in St Brelade which struggled to cope in the late afternoon. All polling stations observed opened for voting on time.

**All polling stations observed were accessible to voters with disabilities and were equipped with voting booths suitable for wheelchair users.** Voters requiring assistance were provided support either by the returning officer or a person of choice, as per the prescribed manner. The few attempts of group voting observed were prevented by the poll staff. The voting process was transparent, **although in two polling stations procedures took place in separate rooms thereby reducing transparency.** Other irregularities included results of the postal and pre-poll votes being established separately before the end of voting which is a potential violation of the secrecy of the vote (observed in one instance). All polling stations observed closed on time and voters waiting in line at 8.10pm were able to cast their votes. **Overall, EOM observers rated the voting process in very positive terms.**

## COUNTING AND RESULTS

The Mission observed the counting of the Deputies' ballots in four polling station and later followed the counting and tabulation of the results of the senatorial vote at the counting centre in St Helier Town Hall. **Overall, the Mission rated the counting and tabulating procedures positively. The vote counts observed were efficient, transparent and well-administered and open to candidates, observers and media.** The determination of invalid ballots was done in a reasonable and consistent manner, respecting the will of the voter. In a few instances observed, the returning officer had some difficulties in balancing the Reconciliation and Return Form (RRF) or calculating the voter turnout. There was some variation noted by EOM observers in how detailed figures the returning officers was providing when declaring the results in the four counts observed.

The results were announced by the Royal Court on 17 May and posted on the vote.je website as announced. The posted results display the votes for the winning candidates as well as disaggregated number for registered voters, valid votes cast, "spoilt papers" and "disputed ballot papers" and voter turnout. The overall turnout in the senatorial election was announced as 26,947 voters out of 62,123 on the electoral registers or 43.88%.

Candidates had 24 hours from the announcement of the results to request a recount, but none of the entitled candidates chose to do so.<sup>26</sup> The relatively short window for contesting the election result emphasizes the importance of publishing the results in a comprehensive format that allow candidates and the public to undertake a thorough analysis.<sup>27</sup>

The EOM analysis of the election results uploaded on the vote.je website reveal significant differences in the approach by returning officers in the manner they calculate the voter turnout. **Only in half of the 14 contests for Deputy was voter turnout correctly calculated as the sum of valid, invalid votes and disputed votes divided by the number of registered voters in the constituency.** In the published results of the remaining seven deputy contests, the number of invalid votes ("spoilt papers") had been left out of the turnout equation.<sup>28</sup> This is further evidence of the confusion noted by observers among some returning officers on how to complete and reconcile the figures in the RRF. Due in part to a lack of clarity in the law and instructions to returning officers, a factor contributing to the confusion in the RRF may be the failure to properly distinguish between a **spoilt ballot paper and a spoilt (invalid) vote.**<sup>29</sup> The first term refers to the procedure described in Article 36 of the Public Elections (Jersey) Law 2002 that allow a voter who accidentally spoils his or her ballot when marking it to return it and receive a replacement ballot. Spoilt ballot

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26. Unsuccessful candidates could request a recount if the difference between their votes and that of a successful candidate was 1% or less of the total number of valid votes.
  27. The Code of Good Practices in Electoral Matters in Article 95 emphasizes the need for long enough time limits to make an appeal possible and to guarantee the exercise of the right to defense.
  28. The constituencies with incorrectly calculated turnouts in the deputy race were St Helier #1 and #3, St Lawrence, St Ouen, St Peter, and St Saviour #1 and #2. In St Ouen, the number of valid votes found in the ballot box as recorded in the results did not include the number of pre-poll votes which indicates that they were counted and recorded separately. This is contrary to legal provisions.
  29. A vote is usually defined as a ballot paper that has been cast by the voter.

papers must be packed and sealed before the opening of ballot boxes and are by nature excluded from the turnout calculation. The second term – the “spoilt vote” in the terminology of the said law – refers to a cast vote that during the examination of the content of the ballot box is determined to be invalid for reasons listed in Article 51. Such invalid votes are included in the turnout calculation.

However, the Public Elections (Jersey) Law 2002 is not consistent in its use of this distinction. On several occasions the law refers to invalid votes as “spoilt ballot papers” (see Article 52(5), with respect to the counting of votes for Senator, and Article 52A(3a), with respect to the counting of votes for *Connétable* and Deputy). The inconsistency has been included in the RRF and to the published results (invalid votes are referred to as “spoilt papers” in the result statistics published on [www.vote.je](http://www.vote.je)). **The inconsistency in electoral legal terminology may have added to the confusion noted among *Autorisés* when reconciling results figures in the RRF and calculating voter turnout on election night.**

### RECOMMENDATION 17.

**It is recommended to streamline the instructions and training provided to returning officers on how to properly complete and reconcile figures in the Reconciliation and Return Form and how to calculate voter turnout. It is further recommended to amend the Public Elections (Jersey) Law 2002 in order to eliminate terminological inconsistencies and streamline references to spoilt ballots and invalid votes in the provisions of the law.**

## COMPLAINTS AND APPEALS

The Royal Court is the main body handling electoral complaints and appeals. Any person may dispute the elections within a 12 month deadline. The Court may decide to re-examine ballot papers and is empowered to discount votes deemed valid by a Returning Officer. As a result, it may announce a vacancy or deem the entire election invalid. Decisions of the Royal Court are final.

A wide range of election offences is listed in the Public Elections (Jersey) Law 2002 and fines range from £200 to £10,000. A person found guilty in knowingly making false declarations or attempting to register or vote more than once may additionally be disqualified from participation in public elections for up to four years. Voters may appeal a decision to exclude or not include them from the electoral register within 28 days after the election. On election day, anyone may object to the vote of another person – i.e. if they suspect impersonation – but the voter is still allowed to vote by casting a tendered ballot. **Overall, the provisions for handling complaints and appeals provided voters and candidates with an effective remedy for redress.**

The Royal Court (Samedi division) considered two cases, both related to irregularities with nomination forms discovered after the candidates had been nominated. In both instances, the Attorney General questioned if the nomination form had been completed in the envisaged order in keeping with the requirements set out in Article 20 (4B) of the Public Elections (Jersey) Law 2002. In both cases, the court called a hearing and summoned the candidates, the proposers and seconders, the presiding officers at the nomination meeting and the parish clerks to give evidence. At stake was also the competitiveness of the election in both constituencies. If the Court would decide against allowing the candidates to stand it may have resulted in non-contested elections for *Connétable* in St Brelade and for Deputy in St Lawrence, respectively – an argument which the Court gave significant weight in its considerations in both judgements.

In the first case heard by the court, the *Connétable* candidate Ms Carré withdrew a few days before the scheduled court hearing on 19 April resulting in the withdrawal with leave of the first application of the Attorney General. In the second application, the Court declared the remaining candidate elected. In the second case, in its judgement, the Royal Court concluded the breaches of article 20(4B) were not substantive and therefore the candidature of Ms Westwater for deputy was valid. The Court recommended that the nomination form be amended (see candidate registration section).



## DIVERSITY AND INCLUSION

Jersey is committed as signatory to several UN Conventions to tackle discrimination. However, there is no special measure to encourage political representation of women, youth, minorities or people with disabilities. **Nevertheless, a commendable effort was made by the States Greffe who worked with different stakeholders to broadly disseminate information about voting and to promote a wider choice of candidates.** Information for voters was translated into French, Polish and Portuguese to reach out to more voters. Some candidates also took this approach. Reform Jersey managed to nominate a wide range of candidates of different backgrounds.

There were 29 women standing in the election resulting in 13 elected including nine re-elected. Even though the overall percentage of women represented in the States Assembly did not increase drastically (up 2%), it is to be noted that for the first time two women topped the Senatorial election and three were elected as Senator. Only three women are part of the new Council of Ministers like in the previous one. Women were active in the polling stations and at counting centres observed by the EOM representing 49% of the polling staff.

One candidate standing as a senator, Ant Lewis, with disabilities due to aphasia, actively campaigned, including at hustings, with fellow candidates supporting his different approach to communicating to the audience. The last Senator husting was sign language interpreted. **Interlocutors expressed no barriers to those from the LGBT+ community standing or participating in the election.** The States Greffe conducted an outreach and education campaign to foster voter education among young people and a play entitled "One Day" was created to encourage young people to register and vote. It toured in schools and colleges and first-time voters confirmed they liked it and found it a positive initiative. A specific youth Senator husting was also organised. However despite these positive actions, the Mission noted very few young people stood at the election as candidates.

### RECOMMENDATION 18.

**Although there is progress, continuous efforts should be undertaken by all the stakeholders to ensure active participation of all segments of the population both as voters and as candidates.**

## ACKNOWLEDGEMENTS

The Mission would like to express its gratitude to the authorities, election stakeholders and the people of Jersey. During our stay we were warmly received and everybody was extremely helpful to us. We hope and trust that this Mission's conclusions will help strengthen democracy in Jersey. We wish the people of Jersey well for the future.

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## CONSOLIDATED LIST OF RECOMMENDATIONS

### RECOMMENDATION 1.

A revision of the legal framework for elections including a revision of the electoral system that take into account the findings of the 2013 Electoral Commission and the outcome of the Consultative Referendum is undertaken based on an inclusive consultative process and Jersey's obligations under international law related to elections.

### RECOMMENDATION 2.

As the election for all members now occurs at the same time, the States Assembly should consider formally proroguing in advance of the election to ensure greater equality and time for all candidates to campaign as private individuals, and to provide clarity to the public, media and candidates as to the long and short campaign period (see campaign and media sections).

### RECOMMENDATION 3.

The State of Jersey Law 2005 should stipulate that electoral constituencies be of equal or comparable size in order to guarantee one of the fundamental principles of electoral rights, the equality of the vote. A mechanism that allows for a regular review of the boundaries to reflect demographic changes in the voter population should be considered, preferably in the form of a boundary commission with a composition and mandate that is defined in the State of Jersey Law 2005 in line with international good practice.

### RECOMMENDATION 4.

Consideration should be given to the creation of a permanent election administration body independent of the three branches of State to provide continuous oversight and review of the electoral legal framework, including oversight of candidate and voter registration, implementation of campaign, campaign finance and media provisions, and electoral dispute resolution.

### RECOMMENDATION 5.

The States of Jersey should undertake a review of its voter registration system and among other explore the feasibility of a transfer to a digitalized system – if possible linked to a public register of personal records – allowing Island-wide cross-checks for multiple registration and to perform controls of voters' eligibility criteria (residency requirements), and to allow voters in a sufficiently secure manner to check online if they are registered to vote.

### RECOMMENDATION 6.

Efforts to encourage the Island's eligible population to register to vote and to take part in elections should continue, including by outreach to ethnic minority communities in their preferred languages. If a review of the voter registration system is undertaken, it should assess if active voter registration and the complex voting system (see under Election Day) act as barriers to greater political participation and representation.

### RECOMMENDATIONS 7.

The disqualification criteria for candidacy should be reviewed and brought in line with Comment No. 25 to Article 25 of the ICCPR by the UN Human Rights Committee.

### RECOMMENDATIONS 8.

Efforts should be undertaken to eliminate the conflict of interest associated with the functions of the Connétables as election administrator for their parish which gives incumbent Connétables an advantage over their potential opponents and may act as a disincentive for other candidates to stand.

### RECOMMENDATION 9.

The legal status of a political party should be clearly defined in law.

### RECOMMENDATION 10.

The procedure for candidate nomination should be reviewed with a view on introducing an adequate timeline for verification of qualification and disqualification requirements of the candidate, the proposer and the seconders, for document check and for correction of possible errors by the candidate ahead of the nomination meetings. The design of the nomination form could benefit from an overhaul in line with the recommendations of the Royal Court.



#### **RECOMMENDATION 11.**

The introduction of a code of conduct for the campaign signed by all nominated candidates could be considered to discourage abuses or attacks during the campaign.

#### **RECOMMENDATION 12.**

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#### **RECOMMENDATION 18.**

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## **CONTACT DETAILS**

For any further information please contact the Senior Election Coordinator, Matthew Salik

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