



CPA BIMR ELECTION OBSERVER MISSION

VIRGIN ISLANDS (UK) GENERAL ELECTION
FEBRUARY 2019

FINAL REPORT

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“The Virgin Islands 2019 election was vibrant and competitive, and the results reflected the will of the voters. The Election Observation Mission commends the Virgin Islands for taking positive steps to improve voting processes and to encourage a more positive campaign environment. Special commendation should go to the election officials who, in a short period of time, administered the election effectively. However, there is distrust in the electoral system, and the Mission continues to express concern that the regulatory framework, particularly in relation to campaign financing, lacks transparency and undermines the equality and openness of the election process. The Mission also expresses concerns about the qualification to vote and stand as a candidate and verification practices which challenge the principle of universal suffrage.”

Hon. Palmavon Webster MHA, Head of Mission - Commonwealth Parliamentary Association British Islands and Mediterranean Region, Virgin Islands 2019

INTRODUCTION

The Commonwealth Parliamentary Association British Islands and Mediterranean Region (CPA BIMR) Election Observation Mission (EOM) was present in the Virgin Islands from 15 February 2019 until 27 February 2019. Organisation and planning for the EOM commenced in mid-January following an official invitation from the Governor of the Virgin Islands (United Kingdom), H.E. Augustus (Gus) Jaspert with the support of the then Government and Opposition. The six-member Mission was led by Hon. Palmavon Webster MHA from Anguilla and included parliamentarians from Scotland, Jamie Greene MSP, and from Malta, Glenn Bedingfield MP. The Mission was further composed of two Election Analysts, Merce Castells from Spain and Matthew Salik from the United Kingdom. The Mission was supported by the Election Coordinator, Felicity Herrmann, from Germany.

The EOM assessed the electoral process in accordance with international standards of elections and domestic legislation. The EOM also referred to the recommendations of the two previous missions to the Virgin Islands of 2011 and 2015. In carrying out its work, the Mission met with election officials, political parties and candidates, media, civil society representatives, voters, the Governor, Premier, former Leader of the Opposition, Deputy Governor, Police Commissioner, Complaints Commissioner, Solicitor General, Gender Affairs Coordinator and other election stakeholders. Members of the Mission observed campaign rallies, manifesto launches and motorcades on Tortola. The Mission observed all nine polling stations at advance polling, Thursday 21 February. On Election Day, Monday 25 February, the Mission made repeated visits to 16 polling stations across all districts and observed district and at-large counting and the results tabulation process. **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.** Whilst its duty is to observe, it is not intended to intervene in the election process.

Following its departure from the Virgin Islands, the Mission continued to observe post-election developments and this comprehensive final report outlines its concluding findings and accompanying recommendations for all stakeholders in the Virgin Islands to take forward. Although this report was initially due to be published in April, the date for release was delayed ensuring all related appeals and court cases were concluded. This report is structured in the same format as the preliminary report, however it includes a breakdown of recommendations and actions.

BACKGROUND

The Virgin Islands comprise over 60 islands, islets and cays situated in the north-eastern arc of the Caribbean archipelago covering a geographical area of 152sqkm. The Territory is located about 97km east of Puerto Rico. The main islands of Tortola, Virgin Gorda, Anegada and Jost Van Dyke are home to most of the Territory’s people. The capital, Road Town, is located on the main island of Tortola.

The population is predominantly of African descent. The remainder are of European, American and Asian extraction. Approximately half the population are immigrants from other Caribbean islands. The majority of the population is Christian. English is the main language and Spanish is the second most widely used language. Virgin Islands diaspora members are predominately located in the US Virgin Islands with smaller numbers based in the US, the UK and the wider Caribbean.

The Virgin Islands are a British Overseas Territory and internally self-governing with executive powers invested in the British Crown through an appointed Governor. The Virgin Islands unicameral parliament (House of Assembly) consists of 15 members serving four-year terms. They include two non-voting members, the Speaker selected by the House of Assembly and the Attorney General appointed ex-officio, and 13 members elected by direct popular vote in a first-past-the-post system. Of these, nine are elected from single seat districts, and four on a Territory-wide basis. Thus, in addition to a constituency vote, each voter has four at-large votes. The four at-large candidates with the highest number of votes win a seat. Districts serve electoral purposes only and do not correspond to administrative territorial units.

Elections are held at least every four years and the last election took place in 2015. In 2007 the elections were contested by the Virgin Islands Party (VIP), the National Democratic Party (NDP) and 10 independent candidates. The VIP led by Ralph O'Neal won 10 of the 13 seats, beating Orlando Smith's NDP which had been in power since 2003. The NDP won two seats and the remaining seat went to an independent candidate. The 2011 elections were a reversal for the VIP with Orlando Smith and his NDP winning nine seats, and the VIP holding on to four. At the 2015 election the NDP were returned to office with an increased majority of 11 seats (seven districts and four all-island seats) and the VIP taking two seats.

In October 2016, Premier Orlando Smith MHA announced plans to draft a new constitution and to seek greater self-determination for the Territory. In December 2016 Andrew Fahie MHA succeeded Julian Fraser MHA as Chairman of the VIP. Fahie became Leader of the Opposition in February 2017. Governor Augustus Jaspert took office as the Territory's new Governor in August 2017. Myron Walwyn MHA succeeded Orlando Smith, who chose not to contest the 2019 election, as NDP leader in June 2018. Following Myron Walwyn's appointment as party Chairman, several members of the NDP party broke away; Ronnie Skelton, Melvin M. Turnbull and Archibald C. Christian subsequently created the Progressive Virgin Islands Movement (PVIM). As head of the largest opposition party, Ronnie Skelton became Leader of the Opposition. When Hon. Delores Christopher MHA (Deputy Speaker) passed away in October 2018, her district (District 5) was left without an elected representative. **The required byelection was postponed in order to hold the general election in February 2019. A general election would normally have taken place by September 2019.**

Voters in BVI must be 18 years of age or over and have "Belonger" status (a category enjoyed by an estimated 33.6% of the population). There were 10,150 registered voters when the 2007 elections took place with a turnout of 62.3%. In the 2011, elections the number of registered voters was increased to 12,656. In the 2011 election, the voter turnout increased to 70.8%. In 2015, registered voters stood at 13,585.

It is important to highlight the extensive damage to the Virgin Islands caused by Hurricane Irma on 6 September 2017, later exacerbated by Hurricanes Jose and Maria. The hurricane caused widespread damage to infrastructure and left a large proportion of homes and buildings severely damaged. Reconstruction has progressed well, and the Recovery and Development Agency Act 2018 paved the way for financing long-term recovery. **The damage inflicted on the Virgin Islands had a considerable impact on the electoral management: the movement of residents for rehousing, the damage to administrative buildings and infrastructure as well as the prioritisation of resources and legislative debating time for recovery purposes presented additional challenges which inevitably impacted the planning and delivery of the election.** Nevertheless, praise must be given to all key stakeholders who worked tirelessly to ensure that mitigation strategies were in place for the 2019 election to be delivered with minimal disruption.

LEGAL FRAMEWORK

As part of its remit, the Mission considered what international and regional commitments, standards and obligations the Virgin Islands are required to uphold. As of 2019, the International Covenant on Civil and Political Rights (ICCPR) as well as a number of other human rights conventions related to the conduct of elections have been extended to the Virgin Islands¹. **In assessing its overall election-related legal framework, the Mission is of the opinion that the Virgin Islands Constitution and laws provided a solid basis for the conduct of the 2019 election.**

1. These include the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights, and the Convention Against Corruption.

The legal framework comprises the Virgin Islands Constitution Order 2007 and the Elections Act 1994 (last amended in 2019) and is supplemented by regulations and guidelines issued by the Supervisor of Elections. The Constitution guarantees fundamental rights and freedoms of movement, assembly and association, and expression and outlines the basic features of the electoral system. The Elections Act covers key aspects of the electoral process that include the registration of voters and candidates, the election administration, and the electoral system and calendar. It has been subject to amendments in seven instances (Amendment Act 1994, 1998, 2003, 2006, 2007, 2011 and 2019).

According to international good practice the electoral framework should not be changed within one year prior to an election.² **Whilst recent amendments enjoyed cross-party support, they were rushed through the House without thorough public consultation and were not the result of an inclusive process. The very short deadlines for electoral preparations presented a challenge to the work of the election administration.** It could be concluded that the previous Government and Assembly's inability to legislate in a timely fashion led to many of the implementation issues of this election as outlined below.

As highlighted in the 2015 EOM report, the election framework remains fragmented with multiple separate amendment acts not providing enough clarity for voters and party stakeholders to understand and interpret the most current law. Concerningly, some interlocutors were unable to access even the separate amendment acts. Although consolidated guidance is provided by the Attorney General's Office via the Supervisor of Elections, steps should be taken to comprehensively update the 1994 Elections Act. **The absence of a consolidated legal text raises concerns over accessibility and legislative clarity.**

Positive efforts were made to address some of the recommendations offered by the previous Mission in 2015. These included electronic counting and electronic identification of voters at polling stations, the introduction of a code of conduct by candidates, political parties and campaigners, the use of a single ballot, and the facilitation of advance voting for travellers. Other amendments reduced the number of candidates and agents in polling stations and increased the candidate registration fee to USD 1,000. However, a number of crucial recommendations remain unaddressed. **There are no party or campaign finance laws, the channels to seek redress pre-election day are not clearly outlined, conditions to suffrage rights are overly restrictive, and there are no legal provisions for domestic and international observers.**

RECOMMENDATION 1.

To mitigate future issues in implementing election laws in a timely fashion, this report and its accompanying recommendations should be reviewed, consulted upon and, where necessary, legislated for to ensure reforms are taken forward and implemented at least one year prior to the next election.

RECOMMENDATION 2.

Although the previous Assembly rejected this proposal, the Government should again consider introducing legislation on fixed-term Parliaments, which would fix the timing of elections (i.e. every four or five years). This would ensure that election officials have sufficient time to adequately prepare. More importantly this would give election administrators adequate time to inform and educate the electorate on possible changes to voting procedures.³

RECOMMENDATION 3.

The Virgin Islands Elections Act should be comprehensively reviewed and updated. Furthermore, a consolidated text of the Elections Act with all amendments since 1994 should be developed and published to make it accessible to all participants in the process.

2. Council of Europe's European Commission for Democracy through Law (Venice Commission) Code of Good Practice in Electoral Matters, II.2.b, available at [http://www.venice.coe.int/webforms/documents/CDL-EL\(2002\)005-e.aspx](http://www.venice.coe.int/webforms/documents/CDL-EL(2002)005-e.aspx)

3. 2015, EOM Report, "To avoid any unfair advantage or undue influence in the timing of an election, consideration should be given to introducing legislation on Fixed-term Parliaments, which would fix the timing of elections (i.e. every four or five years). This would in turn allow all parties and candidates, as well as those involved in the administration of an election, the appropriate time and awareness to prepare accordingly. This would also ensure that the electorate could plan any business or leisure trips out of the country at a time that would not conflict with an election date."

ELECTION ADMINISTRATION

According to the Constitution and laws of the Virgin Islands, the Governor has ultimate oversight for the conduct of the elections, although this is predominately done in Council.⁴ To avoid the negative public perception that the Governor, as a UK Government representative, may be interfering in the democratic process, the Governor's Office remains, perhaps justifiably, reluctant to take an overtly active role where political issues or concerns arise, deferring instead to the Deputy Governor, Attorney General and Supervisor of Elections. However, many people the Mission met expressed their frustration with this approach, advocating instead for the Governor to be proactive in rectifying broader electoral issues and last-minute complaints. This oversight gap, combined with an unsubstantiated perception by some that senior election officials could be politically partisan, provides justification for some form of robust, independent and impartial electoral oversight mechanism. **As proposed in the 2015 EOM report⁵, the creation of an Election Commission to oversee and arbitrate over all electoral matters would provide such a solution.** In addition to providing oversight, a well-equipped and staffed Election Commission could take responsibility for publishing annual voter lists, reviewing district boundaries, recording and responding to complaints, and leading on reforms. It is unfortunate that, although approved by the previous Assembly, no Election Commission was established in time for the 2019 election.

The Supervisor of Elections, appointed by the Governor, has overall responsibility for managing the general direction and supervision of the administration and conduct of the election. The current Supervisor has extensive experience and expertise, and therefore enjoys considerable trust and autonomy from the authorities in the running, planning and delivery of elections. The Mission commends the Supervisor for her diligence and professionalism, and her Office for delivering an election at very short notice and implementing legislative amendments to the election law that were enacted less than a month prior to the election.

The Office of the Supervisor of Elections comprised mainly new staff and should be praised for its professionalism and capabilities in its voter registration drive, competently rolling out new voter technology, and issuing many voter identification cards. The work of the Office in proactively attempting to educate the public on the new processes should also be highlighted, however with limited resources and time, stakeholders expressed mixed levels of understanding of the new laws and processes and trust in its accuracy and reliability, highlighting again the need for more time and planning between the announcement and delivery of the election, as well as an ongoing and comprehensive public education strategy.

Observers had the opportunity to view the newly acquired Elections Office where briefings and training took place and polling equipment was stored ahead of the election. The Mission commends the Virgin Islands authorities for implementing this previous recommendation and hopes that it will be fully utilised in advance of future elections.

RECOMMENDATION 4.

To improve democratic accountability and oversight of the Elections Office and ensure that adequate checks and balances are in place in the running of the election, as well as ensure that decisions are made in a transparent way with a clear complaints and appeals process, the Virgin Islands should consider the creation of an Election Commission.

RECOMMENDATION 5.

To ensure increased understanding of the electoral process by the population, an ongoing awareness and public education campaign is recommended, especially directed at students and senior citizens who are often least aware of the process.

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4. According to the 1994 Elections Act, the Governor shall: appoint the returning officer, appoint Supervisor of elections, appoint registers of the vote, presiding officers and polling staff, can determine boundaries, issue writs, etc.
 5. There is a need for the creation of a permanent independent Elections Commission to provide adequate democratic oversight of the Office of the Supervisor of the Elections and thus add a further layer of public accountability. Such a Commission would provide clarity over the complaints process which is currently in the remit of the Complaints Commissioner, the Attorney General, Director of Public Prosecutions, the Governor and the Deputy Governor. Furthermore, such a Commission may reduce questions over partisanship within the Elections Office or appointments processes and give additional political momentum over necessary election reforms within election years, which an Official alone may not achieve.

SUFFRAGE RIGHTS

Under the Constitution, the right to vote is extended to persons who “belong to the Virgin Islands”, have reached the age of 18 on election day, and are either domiciled and resident in the Virgin Islands or domiciled in the Virgin Islands and resident in the US Virgin Islands. The Constitution further specifies criteria for disqualification: Those legally declared insane or of unsound mind, having been convicted of an offence related to elections, under a sentence of death, or serving a sentence of imprisonment for a term exceeding twelve months are disqualified from voting. To stand as a candidate at the 2019 election, a prospective candidate must be a registered voter, resident for five years, and 21 years of age. **Such limitations are overly restrictive and not fully in line with international standards extended to the Virgin Islands.**⁶ As per the last census conducted in 2010, 61% of the population of the Virgin Islands was born outside its territory.⁷

Belonger status is not automatically acquired by birth or through citizenship but by descent, or by having held residence status for a minimum of 21 years and, reportedly, undertaken an additional application process likely to last several more years. **This contravenes the International Covenant on Civil and Political Rights which seeks to ensure all individuals within its territory have the right to vote and stand as a candidate without distinction of any kind, such as national or social origin, property, birth or other status.**⁸ Surprisingly, there are Virgin Islands citizens with resident status who are not granted suffrage rights, while some non-citizens residing abroad have the right to vote and stand in elections. This again undermines the principles of equity, fairness and representation.

The publication of the Mission’s preliminary statement coincided with the publication of the UK Parliament’s Foreign Affairs Committee report on the Overseas Territories.⁹ In its findings – widely criticised in the Virgin Islands – the Committee recommended a review of the belonger status. The subsequent position of the UK Government to “respect that immigration decisions are primarily a matter for OT governments”¹⁰ does not condone the current inequalities or revoke the need to review who can vote or stand in elections. Nevertheless, resistance to expanding the definition of belonger status to a broader demographic should not preclude the consideration of limiting the vote to “those within its territory” and who are resident with a fixed abode, as opposed to non-citizens residing abroad.

Following the election, the Mission noted the positive steps towards reform, including progress made in the consideration of the issue with the Government’s “Clear Path to Regularisation” policy and proposed amendments to the Immigration and Passport Act. **But robust action is needed if suffrage rights are to be improved.**¹¹ Inaction may risk alienating a substantial part of the population, some of whom feel disenfranchised and excluded from the political process in light of restrictive regulations and resistance to reform.¹²

RECOMMENDATION 6.

Whilst the Virgin Islands continue to contravene the ICCPR, greater clarity on who has the right to stand and vote in elections, and how long it takes to achieve these rights, is urgently needed. The qualification for suffrage must be reviewed to ensure the principles of equity, fairness and representation are upheld. Requirements should be amended to not unduly limit the rights of citizens to participate in elections and to seek public office. Limitations based on the length of residency as well as the blanket restriction of those who have ever been convicted of an electoral offence are contrary to international obligations and standards. The blanket withdrawal of suffrage rights of citizens who are legally declared insane or of unsound mind and of those who are serving a prison sentence, irrespective of the gravity of the crime, are disproportionate limitations and should be lifted.

6. Paragraph 15 of the 1996 UNHRC and General Comment No. 25 to Article 25 of the ICCPR. Also, the General Comment of article 25(14) of the UN Human Rights Committee states: “...If conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence.”

7. Virgin Islands 2010 Population and Housing Census Report, p. 1

8. General Comment 25 the UN Human Rights Committee (the ICCPR treaty monitoring body) notes “No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of... national or social origin... Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with article 25.”

9. HC 1464, 15th Report of the Foreign Affairs Committee 2017-2019, *Global Britain and the British Overseas Territories: Resettling the Relationship*

10. HC 2174, 20th Report of the Foreign Affairs Committee 2017-2019, *Global Britain and the British Overseas Territories: Resettling the Relationship: Government response to the Committees 15th report.*

11. “Belongership debate heats up”, Claire Shefchik, BVI Beacon, May 24, 2019

12. “Bill to expand Belonger status on hold”, Dean Greenaway, The Virgin Islands Daily News, May 29, 2019

VOTER & CANDIDATE REGISTRATION

The Virgin Islands employ an active voter registration system.¹³ The law prescribes that voters be registered to vote in the district of their declared residence. The increase in the number of voters registered especially for Districts 5 and 8 triggered suspicions about voters being registered outside their place of residence to influence the outcome of the election. **Although the Mission found no evidence of gerrymandering, election officials could have taken greater steps to increase transparency through more robust verification of voter registration.** However, such constraints again come back to the issue of limited notice before the election day was formally announced.

At the last Census conducted in 2010 the population of the Virgin Islands was 28,054. Changes in the size of the population since then, due in part to economic migration, mortality rates, the devastation of Hurricane Irma and other factors, impacted the demographics of the Islands. As such, the Mission was constrained in undertaking comparative analysis regarding equal suffrage at the district level. However, voter lists published in February 2019 showed a disparity in the equality of the vote between the largest (District 5 with 1,968 voters) and the smallest district (District 7 with 1,385 voters). As stated by the UN Human Rights Committee, the International Covenant on Civil and Political Rights asserts 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.”¹⁴ According to the Venice Commission’s Code of Good Practice in Electoral Matters, seats must be evenly distributed among the constituencies. The difference in size for Districts 5 and 7, for example, results in an unequal voting power for voters registered in the two districts. This should be rectified before the next election to ensure equal voting power. **Districts of equal size would facilitate this, preventing those registered in districts with fewer voters to have a greater impact on the election than those in larger districts.** An Election Commission as recommended above could be involved in this process.

There is no single consolidated register of Belongers (those eligible to register as voters) available to all candidates. In line with provisions of the Elections Act, a preliminary list of voters was published after 28 January 2019 and made available to all candidates. A total of 15,038 voters were eligible to vote on election day, 1,453 (or 10.69 %) more than in 2015. A total of 41 candidates contested the polls (25 at the district level and 16 at the at-large level). The nomination process, including the registration of interests culminating in Nomination Day on 14 February, was managed well with no complaints received. Candidates represented four political parties: 11 for the National Democratic Party (NDP), 13 for the Virgin Islands Party (VIP), nine for the Progressive Virgin Islands Movement (PVIM), and six for the Progressives United (PU). There were two further independent candidates.

RECOMMENDATION 7.

Consideration could be given to conduct information campaigns on voter registration regularly throughout the year, also specifically addressed to those who turn 18 years of age.

RECOMMENDATION 8.

As the last census was conducted nine years ago, and as the authorities in the Virgin Islands are limited in their capacity to effectively monitor population trends and residency, it is recommended that another census be undertaken, followed by a boundary review to ensure greater equity between district voters.

RECOMMENDATION 9.

To increase trust in the system and a consistent application of the law, it is recommended that the regulations offer clear criteria for the support documents required of voters to change their voting district.

13. In an active voter registration system, voters must take action to register with the relevant authority their intention to participate in elections, either prior to each electoral event, or on an ongoing basis. In order to register in such a system, voters must fill out specific registration forms and submit them to the respective authorities within a given time frame, take affirmative steps to ensure their names will be included on the respective voter list.

14. Paragraph 21 of General Comment No. 25 to Article 25 of the International Covenant on Civil and Political Rights (ICCPR), December 1966

CAMPAIGN FINANCE

As in the report of 2015, the Mission expresses deep concern over election campaign finance. This is an important issue to ensure a fair approach to election campaigning and to limit the risk of corruption. Whereas candidates and parties did not express concern over insufficient resources to convey their messages to the public, voters were not able to identify where funding originated from or how campaign finances were spent. With continuing rumours of vote buying and corruption by many interlocutors, a lack of financial accountability and legislative provision undermines and erodes voter trust in the system. **Without adequate legislation governing campaign finance, the Virgin Islands are not compliant with the UN Convention Against Corruption which was extended to the Virgin Islands in 2006.**¹⁵ This issue is further compounded by the lack of any legal requirement to register or be incorporated as a political party in the Virgin Islands or to provide any public or financial reporting.

RECOMMENDATION 10.

To increase trust in the system, comply with the UNCAC, and remove the risk of corrupt practices, the Virgin Islands authorities must legislate and institute policies for candidate and party campaign financing and the registration of political parties for financial reporting purposes.

CAMPAIGN

The election campaign was conducted in a competitive manner with parties and candidates campaigning in an environment enabling freedoms of expression, movement and assembly. Overall the campaign was active, vibrant and peaceful, evident from the numerous rallies with strong public interest, door-to-door canvassing, billboards, and posters. However, much of the campaigning did not focus extensively on public issues or policies but rather on candidates' personalities and experience. **Due to the short notice of the election, some candidates expressed concern that there was insufficient time to prepare for the campaign.**

Whereas the Mission commends the Virgin Islands for the introduction of a mandatory campaign Code of Conduct, the law fails to specify how abuses of the Code can or should be reported and policed. **The Mission identified frequent personal attacks, accusations of corruption, abusive social media comments and defacing of campaign material throughout the campaign period.** Many stakeholders expressed concerns that this was the most aggressive campaigning they had witnessed. While many were aware of the Code of Conduct, most considered it ineffective with little or no discernible impact on the campaign. Steps were taken by the Deputy Governor's Office to encourage adherence to the Code, but with limited success.

The late or non-publication of political manifestos arguably did not provide enough time for voters to be adequately informed of parties' policies. However, parties and candidates were active on social media with Facebook pages and smartphone apps outlining relevant policy issues ranging from infrastructure and post-hurricane recovery to EU pressure on financial services and the legalisation of gay marriage. Video recordings and online statements and speeches also enabled a broader audience to engage in the campaign process.

RECOMMENDATION 11.

Consideration could be given to explore how the Code of Conduct can be made more robust in fulfilling its intended mandate, for example whether it should be policed and whether penalties for transgressions should be introduced.

MEDIA

Other than the Government Information Service there is no state-run media outlet; all print, broadcast and online media outlets are privately owned. The media landscape is diverse and coverage vibrant. Freedom of expression is constitutionally guaranteed but there are no media guidelines or regulations for the campaign period aimed at ensuring equal conditions, for example by allocating minimum coverage to all election contestants. While media outlets

15. Article 7.3.3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

provided a plurality of viewpoints in a variety of news and opinion pieces, some candidates expressed concerns about their level of media access or media exposure. Candidates asserted that they relied on paid political advertisements; however, the Mission was informed that different candidates were charged different prices, disrupting the level playing field and equal opportunities.

Much political discussion took place on internet fora. Users of social media networks such as Facebook and WhatsApp recirculated a substantial amount of negative and anonymous posts, memes and campaign ads.

RECOMMENDATION 12.

It is recommended that price lists for campaign ads be published prior to the start of the campaign so that all candidates enjoy equal opportunities, and that compliance with campaign finance rules (to be developed) can be adequately overseen.

ADVANCE POLLING

The Virgin Islands provide for an advance polling day which took place on Thursday 21 February 2019. Advance polling enables election-related officials (polling staff and the police), the elderly (those over 70 years old), the incapacitated, those on remand, and voters travelling on election day to vote. **The latter two categories were positive changes introduced as part of the 2019 amendment to the election law.** The Mission supports that, although the law was intended for those at least 70 years old, many seniors below this age bracket arriving at polling stations were still permitted to vote. On the day of advance polling, Observers saw the opening at two stations which commenced on time at 9am with a high turnout in the early hours. The Mission went on to observe voting at all nine polling stations, the closing of two polling stations and the transfer of materials from one station to the secure central location.

Observers ranked the performance in polling stations as good overall. Polling staff were thorough in explaining the new voting processes to voters (and accompanying friends) and were diligent in ensuring the vote was conducted properly. However, there were issues with stations failing to start on time due to the late arrival of required equipment as well as technical faults with the new e-poll books and scanning machines. Observers also noted inconsistencies in approaches and processes taken in various districts around signing exit polls and allowing agents to accompany friends and supported voters into the polling booth. **The Mission expressed concerns that the presence of up to four people inside a polling booth with a voter undermines the secrecy of the vote for those most vulnerable.** The process of swearing oaths and affirmations was also at times cumbersome and slowed the voting process down considerably.

In total, 1,120 ballots were cast for local and at-large polling which constituted 7.44% of 15,038 total registered voters. This was an increase of 234 votes from the 2015 election. Such an increase indicates that, despite the technological teething problems, voters were still able and willing to vote in increased numbers.

Shortly after advance polling, the alleged results of some districts were disseminated on WhatsApp. It was subsequently identified that one published report accurately reflected a district result. **As such the integrity of the electoral process was undermined. If originating from agents and/or candidates, this demonstrates a breaking of their oath** (as set out in the election law and Form 32). At the closing of some stations, candidates and agents observing the process were positioned where they could potentially see the results printed in triplicate by the electronic machine. With the additional failsafe of a memory drive built into the machines, printing the results at the advance poll may not be necessary, especially if this risks revealing advance polling results prematurely.

RECOMMENDATION 13.

The election law and related procedures should be reformed to reduce the number of people accompanying assisted voters into the booths to increase the secrecy of the vote. Furthermore, where oaths are required, a quicker and simplified system should be introduced to speed up the process and make it clearer for the assisted voter to understand the process.

RECOMMENDATION 14.

Consideration should be given to no longer printing advance poll results at the closing of the advance poll and instead rely on the memory drive. Alternatively candidates and agents should be positioned where there is a lower risk of seeing the results.



Voters queue at a polling station in Road Town on advance polling day



The Head of Mission observes the transfer of ballot boxes on Virgin Gorda



Voters queue at Long Look Methodist Church on polling day



Many polling stations experienced long queues and wait times on advance polling and polling day



At most polling stations posters provided information on voting procedures



Candidates, agents, media representatives, polling officials, election observers, and party activists attended the electronic count

ELECTION DAY

On election day, three two-member teams were deployed to observe opening, voting, closing and counting. Observers visited 16 of the 17 polling stations in all nine districts (all but Anegada). Polling was scheduled to take place between 6am and 6pm. Positively, some of the deficiencies detected during advance polling were addressed and agents and polling staff seemed more familiar and confident about the process. For the most part, all processes observed were conducted in accordance with the electoral law, although some improvements to the process could be made. Due to hurricane damage the location of some polling stations changed. **Space limitations affected the layout of some of the polling stations; this led at times to confusion for voters who were unsure where to go and missed some steps in the process, such as signing the exit poll. At peak periods some stations were heavily overcrowded, which compromised the secrecy of the vote.**

More seating should be made available to accommodate long wait times, and voters more evenly distributed between polling stations to reduce long queues. Presiding officers or polling clerks could have been more effective by using the queuing times to brief waiting voters on the new voting processes once more. Some stations made good use of signage and designed a clear route for voters to be processed efficiently, other stations had neither the size nor the staff available to do this.

At opening, presiding officers reported that all necessary materials had arrived at all but one polling station which did not receive its machines on time, opening 30 minutes late (but remaining open for 30 minutes longer). Voter lists appeared to be predominantly accurate as there were few reports of voters being turned away. In general, voters did not encounter difficulties casting their ballots through the new scanner ballot boxes and many commented on the quicker voting process. Queuing in the morning was long in places, but peaceful, and the Mission commends the voters for their patience and cordiality while waiting in queues and the police for keeping calm and order in a courteous manner. **However, there remained inconsistencies in approaches and procedures across the various polling stations observed, including confusion over whether assisted voters were required to take oaths, and presiding officers instructing voters at one polling station to vote “for four at-large candidates” as opposed to “up to four”.** Voter turnout at the 2019 election was 64.64% with a total of 9,720 ballots cast, a decrease on the 2015 turnout.

Presiding officers should be sensitive to the concerns of candidates and agents present at polling stations, for example regarding transparency and the verification of voter identities, but **should not allow indecision or pressure from those present to disrupt or delay the voting process where there is no risk to the integrity of the vote.** At many polling stations visited throughout the day, agents and candidates expressed frustration that they could not identify voters. Many were witnessed pressuring polling staff, or voters themselves, to announce voters’ names. However, the public announcement of names previously used to communicate voters’ names between officials was abolished due to the introduction of ID cards. As such, there is no legal or procedural requirement to announce names, and doing so unnecessarily can be intimidating for voters who may not wish to publicly reveal who they are. Continuing to do so would severely undermine the secrecy of the vote.

RECOMMENDATION 15.

While ballot scanning technology was introduced with commendable effectiveness and efficiency, systems could be improved to make the voting process clearer and smoother for the voter to navigate, and presiding officers should be better trained to implement policies consistently across all polling stations, including good practice in layout, seating and signage.

RECOMMENDATION 16.

Candidates and agents should be allowed to observe the entire process, but rules should be introduced to prevent candidates or agents from interfering in the process by distracting polling officials or intimidating voters.

CLOSING AND COUNTING

Closing proceeded correctly in all three polling stations where automated tabulation and counting was observed, and party agents were satisfied with the integrity of the process despite a lack of information to adequately cross-check the accuracy of the information provided by the e-counting machines (for example, the number of ballots cast, the number used, unused and spoiled ballots etc.). No formal complaint was filed at the polling stations observed.

Electronic tabulating of results and verification started at 8.30pm at the main counting centre in the presence of candidates, agents, observers, media representatives, returning officers, the Deputy Governor and the Supervisor of Elections. The process concluded at approximately 10.30pm when preliminary results were established. Most interlocutors expressed that they were pleased with the procedure and considered the electronic count an improvement. However, the Mission noted a lack of transparency in the process of tabulation for voters, candidates and agents because of the electronic format.

COMPLAINTS AND APPEALS

In terms of pre-election complaints, the law is clear that complaints can be filed with the Supervisor of Elections in the first instance, but avenues to appeal the Supervisor's decisions appear less straightforward with different interlocutors citing the High Court, the Attorney General, the Governor, the Deputy Governor, and the Complaints Commission as the arbiter of appeals. As mentioned above, the creation of an Election Commission could provide a more straightforward and transparent process. **This should include a formal reporting process and the publication of decisions. Resolved complaints and associated decisions could then form the body of precedent to inform future legislative reforms.**

Election-related offences and their corresponding sanctions are outlined in the Elections Act. Few formal complaints were filed during the process; the VIP initially lodged three complaints related to the voter list, however all three were rejected by the Supervisor due to lack of evidence. Following the election, one request for a recount of the District 6 result submitted by a VIP candidate was later withdrawn.

Following the announcement of the official election results the winner of District 4, Mark Vanterpool (NDP), publicly announced that he would not take up his seat. With official notification already sent to the Clerk of the Assembly, he then chose to withdraw his statement and remain a Member of the Assembly. The Governor, on the advice of the Attorney General, decided to permit Mr Vanterpool to be sworn in and take his seat as parliamentarians cannot resign their seat before being sworn in. The Speaker of the House of Assembly, Hon. Julian Willock, disagreed on the premise that the letter sent to the Clerk was admissible. Following the Speaker's insistence, the matter was referred to the court. On 2 May 2019, the High Court ruled in favour of Mark Vanterpool. On 7 May the Speaker filed an appeal before the Court of Appeal against the High Court decision on the invalidity of Mr Vanterpool's resignation. The Court of Appeal decision will be final pursuant to the Constitution. **The above demonstrates a robust complaints and appeals process accessible to electoral stakeholders in both theory and practice.** Legislation provides for the right to redress for all participants in the process. The court is effective in hearing cases in a timely fashion.

RECOMMENDATION 17.

Greater clarity is needed in the overall complaints and appeals process for elections. A more transparent system is required in determining who is responsible for complaints and appeals, and how decisions can be systematically recorded. The introduction of an Election Commission might help to simplify such a system and provide clarity on precedent as well as guidance in cases such as the Vanterpool case.

DIVERSITY AND INCLUSION

The Convention Against the Discrimination of Women has been extended to the Virgin Islands and section 26 of the Constitution affords protection from discrimination on any grounds including sex and sexual orientation.¹⁶

There are no legal or administrative barriers to the participation of women in elections as voters or candidates. The overwhelming majority of the election administration at all levels consisted of women, including the senior election management team led by the Supervisor and staff at polling stations, such as Returning Officers, Presiding Officers and Poll Clerks.

However, women remain underrepresented in political life. All five cabinet members, the Premier and the four ministers, are men, and two of the 13 members elected to the outgoing House were women (or 15%). None of the parties contesting elections was headed by a woman and of the 41 candidates standing, 12 were women (less than 27%); 5 of the 25 candidates running at district level and 6 of the 16 at-large candidates. Candidates did not specifically target women voters nor run on gender or women issues. Three of the 13 elected candidates were women (or 23%) and three younger candidates were elected, while six incumbents won a seat.

A few younger candidates competed but greater effort could be made to engage or politically educate younger voters during the campaign. Also, reportedly, despite some information campaigns at high schools, many young Virgin Islanders choose not to register for elections.

In terms of diversity, the Mission notes that there was a lack of racial and religious diversity amongst the candidates. There were also no declared disabled or physically impaired candidates and no declared lgbt+ candidates. Although the absence of such diversity did not seem of concern to most of the people the Mission met with, steps could be taken by parties and election officials to ensure that the electoral system in the Virgin Islands is more inclusive of minority groups.

On a positive note, the Mission has seen an increase in the number of active civil society groups. In terms of inclusivity in the electoral process, many such groups are becoming more involved in campaigning on issues and raising public awareness which did have a positive impact on the election.

ACKNOWLEDGEMENTS

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

CONTACT

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This report will be made available to read and download at www.uk-cpa.org.



16. Article 7.1 States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:
(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies.

RECOMMENDATIONS

1

To mitigate future issues in implementing election laws in a timely fashion, this report and its accompanying recommendations should be reviewed, consulted upon and, where necessary, legislated for to ensure reforms are taken forward and implemented at least one year prior to the next election.

2

Although the previous Assembly rejected this proposal, the Government should again consider introducing legislation on fixed-term Parliaments, which would fix the timing of elections (i.e. every four or five years). This would ensure that election officials have sufficient time to adequately prepare. More importantly this would give election administrators adequate time to inform and educate the electorate on possible changes to voting procedures.

3

The Virgin Islands Elections Act should be comprehensively reviewed and updated. Furthermore, a consolidated text of the Elections Act with all amendments since 1994 should be developed and published to make it accessible to all participants in the process.

4

To improve democratic accountability and oversight of the Elections Office and ensure that adequate checks and balances are in place in the running of the election, as well as ensure that decisions are made in a transparent way with a clear complaints and appeals process, the Virgin Islands should consider the creation of an Election Commission.

5

To ensure increased understanding of the electoral process by the population, an ongoing awareness and public education campaign is recommended, especially directed at students and senior citizens who are often least aware of the process.

6

Whilst the Virgin Islands continue to contravene the ICCPR, greater clarity on who has the right to stand and vote in elections, and how long it takes to achieve these rights, is urgently needed. The qualification for suffrage must be reviewed to ensure the principles of equity, fairness and representation are upheld. Requirements should be amended to not unduly limit the rights of citizens to participate in elections and to seek public office. Limitations based on the length of residency as well as the blanket restriction of those who have ever been convicted of an electoral offence are contrary to international obligations and standards. The blanket withdrawal of suffrage rights of citizens who are legally declared insane or of unsound mind and of those who are serving a prison sentence, irrespective of the gravity of the crime, are disproportionate limitations and should be lifted.

7

Consideration could be given to conduct information campaigns on voter registration regularly throughout the year, also specifically addressed to those who turn 18 years of age.

8

As the last census was conducted nine years ago, and as the authorities in the Virgin Islands are limited in their capacity to effectively monitor population trends and residency, it is recommended that another census be undertaken, followed by a boundary review to ensure greater equity between district voters.

9

To increase trust in the system and a consistent application of the law, it is recommended that the regulations offer clear criteria for the support documents required of voters to change their voting district.

10

To increase trust in the system, comply with the UNCAC, and remove the risk of corrupt practices, the Virgin Islands authorities must legislate and institute policies for candidate and party campaign financing and the registration of political parties for financial reporting purposes.

11

Consideration could be given to explore how the Code of Conduct can be made more robust in fulfilling its intended mandate, for example whether it should be policed and whether penalties for transgressions should be introduced.

12

It is recommended that price lists for campaign ads be published prior to the start of the campaign so that all candidates enjoy equal opportunities, and that compliance with campaign finance rules (to be developed) can be adequately overseen.

13

The election law and related procedures should be reformed to reduce the number of people accompanying assisted voters into the booths to increase the secrecy of the vote. Furthermore, where oaths are required, a quicker and simplified system should be introduced to speed up the process and make it clearer for the assisted voter to understand the process.

14

Consideration should be given to no longer print advance poll results at the closing of the advance poll and instead rely on the memory drive. Alternatively candidates and agents should be positioned where there is a lower risk of seeing the results.

15

While ballot scanning technology was introduced with commendable effectiveness and efficiency, systems could be improved to make the voting process clearer and smoother for the voter to navigate, and presiding officers should be better trained to implement policies consistently across all polling stations, including good practice in layout, seating and signage.

16

Candidates and agents should be allowed to observe the entire process, but rules should be introduced to prevent candidates or agents from interfering in the process by distracting polling officials or intimidating voters.

17

Greater clarity is needed in the overall complaints and appeals process for elections. A more transparent system is required in determining who is responsible for complaints and appeals, and how decisions can be systematically recorded. The introduction of an Election Commission might help to simplify such a system and provide clarity on precedent as well as guidance in cases such as the Vanterpool case.



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