

MONTSERRAT GENERAL ELECTION

NOVEMBER 2019

CPA BIMR ELECTION OBSERVATION MISSION

FINAL REPORT



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EXECUTIVE SUMMARY

The 2019 Legislative Assembly elections in Montserrat were vibrant, peaceful and highly competitive. Thirty-five candidates competed for nine seats in a single constituency resulting in a smooth transition of power. Polling was well administered and diligently conducted across all 12 polling stations on the island. The count was exemplary and administered with the highest level of transparency, far beyond legal requirements.

However, there are a number of deficiencies within the legal framework, including protection of the right to stand for election, to form a political party, the secrecy of the vote and a lack of campaign regulation. Efforts initiated by the Electoral Commission to review the electoral system and reform the legal and constitutional framework for elections need further and concerted support from the new Government.

The Commonwealth Parliamentary Association British Islands and Mediterranean Region (CPA BIMR) offers 17 recommendations in this report to enhance the conduct of elections in Montserrat and bring them fully into line with international obligations and standards for democratic elections. Some recommendations re-emphasise previous recommendations from the CPA BIMR 2014 EOM report that have not yet been addressed.



(From left to right)

The observers at a political rally; A training session for tally clerks; The opening of a polling station on election day.

INTRODUCTION TO THE MISSION

In August 2019 the CPA BIMR was officially invited by the Governor, His Excellency Andrew Pearce, to deploy an independent Election Observation Mission to Montserrat to observe the general election.

This invitation was supported by the Government and the official Opposition of Montserrat. This is the second general election CPA BIMR has been invited to observe.

The mission was composed of:

- Hon. Julian Robinson MP, Jamaica, Head of Mission
- Martyn Perkins MHK, Isle of Man, Observer
- Aurjul Wilson, Anguilla, Observer
- Anne Marlborough, Ireland, Legal/Electoral Analyst & Observer
- Harald Jepsen, Denmark, Campaign/Political Analyst & Observer
- Mariam El-Azm, France, Election Coordinator & Observer
- Felicity Newall, UK, Election Administrator & Observer

The CPA BIMR conducted the Mission in accordance with the Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers.

The Mission was present in Montserrat between the 11-20 November 2019. It observed the electoral process in accordance with international standards, including Montserrat's commitments under international and regional law, as well as domestic legislation. The Mission met with key stakeholders, electoral officials, candidates, members of the public and attended the principal political rallies in order to gain a better understanding of the electoral process and the political context of the election.

The Mission considered the legal framework, election administration, political campaign, media, polling and counting, and opportunities for complaints and appeals.

On Election Day the Mission conducted 30 visits to all 12 polling stations across all six divisions including the opening and closing. The Mission also observed the counting and tabulation of results and the immediate post-election period. Since leaving the island, the Mission continues to examine the complaints and appeals system and to follow the handling of any disputes that may arise.

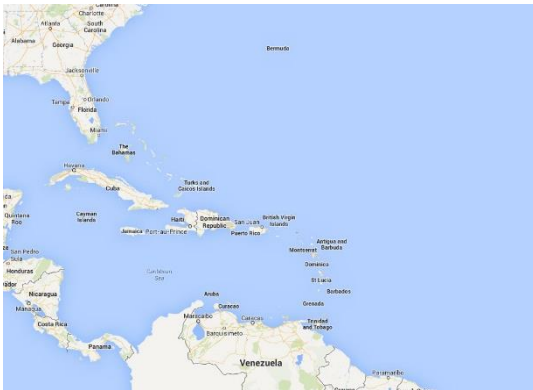
This Mission acknowledges its limitations, in particular the short time spent in Montserrat and inability to meet with all stakeholders involved, due to availability and time constraints. Despite this, the Mission has striven to look at the entire electoral process to the best of its abilities.

This report is the final report of the Mission and, unlike the preliminary report, gives a fuller analysis on the general election. In particular this report offers a number of recommendations

which it is hoped will be given due consideration by all election stakeholders, particularly the Legislative Assembly, for the improvement of elections in Montserrat.

POLITICAL BACKGROUND

The island of Montserrat is a British Overseas Territory which is located in the Eastern Caribbean Sea 17 miles off the Coast of Antigua. It is an internally self-governing Territory with executive power vested in the British Crown through an appointed Governor who chairs the Cabinet. The Cabinet has four ministers who are members of the Legislative Assembly of nine elected members. The Governor is responsible for security, external affairs, defence, public affairs and offshore finance.



The 1995 Hurricane Hugo and the devastating Soufrière Hill volcanic eruptions, which took place between 1996 and 2010, forced the rehousing of most of the population and altered the demographic and societal cohesion of the remaining communities. The 2019 general election is a continuing step towards more stable post-volcanic development in Montserrat.

Prior to the eruption, Montserrat had multiple constituencies under a first-past-the-post system. However, in 1999, as a result of the displacement that ensued, a single constituency system under a first-past-the-post system was introduced. This was partly due to the reduction in the population from 11,314 in 1991 to 4,000 in 1999, as well as to voters being spread across the remaining two and a half constituencies in temporary shelters. The population of Montserrat numbered 4,649 persons in 2018 and the island has in recent years experienced significant immigration, mainly from Guyana, Jamaica, and neighbouring isles. The proportion of the population born in Montserrat was 56 percent in 2018, down from 61 percent in 2011; 63 percent of the population are citizens of Montserrat.¹

Elections are held every five years and in 2014, the elections were contested by 31 candidates. The People's Democratic Movement (PDM) won seven seats and the former ruling party, the Movement for Change and Prosperity (MCAP), won two seats, with a 71.3 percent voter turnout.

¹ The Intercensal Count and Labour Force Survey (ICC/LFS) of Montserrat was conducted over the last three months of 2018 and published in June 2019. See <http://www.gov.ms/wp-content/uploads/2019/06/FINAL-REPORT-KEY-FINDINGS-CENSUS-LABOUR-FORCE-SURVEY-2018-.pdf>.

Both parties had fielded a full slate of nine candidates. The Alliance of Independent Candidates nominated three candidates, with ten other independents also running. The 2014 elections were the first election in Montserrat observed by the CPA-BIMR and were assessed as vibrant, peaceful and participatory, despite challenges in the legal framework. Efforts to initiate electoral reform, including a review of the electoral system after the 2014 elections, have been inconclusive.

Donaldson Romeo (PDM) became Premier after the 2014 election. Reuben T. Meade, Leader of the Opposition, resigned from public office in 2016. He was replaced by Hon. Easton Taylor Farrell as leader of MCAP. Dr Samuel Joseph retained the seat for MCAP in the 30 January 2017 by-election. Two members of the Assembly left the PDM immediately after the formation of the new Cabinet in 2014, one of whom co-founded the Montserrat National Congress (MNC) party in 2019. Premier Romeo was voted out as leader of PDM in October 2019 and replaced by Cabinet Minister Paul Lewis. The outgoing Legislative Assembly was dissolved on 7 October 2019.

Montserrat has strong regional links within and around the Caribbean. It is full member of CARICOM and OECS, and it also has strong relations in the Americas and the Commonwealth. Montserrat continues to receive budgetary aid from the UK Department for International Development (DFID) and other agencies.

LEGAL FRAMEWORK

The legal framework for the conduct of elections is to be found in the Constitution of Montserrat, 2010, the Elections Act, 1952 (as amended up to 2013), and the Electoral Commission Act, 2012. Further elaboration is to be found in the Election Registration Regulations, 1970, the Election (Continuous Registration) Regulations, 1996, and the Legislative Assembly (Election Petition) Rules, 2014. In addition to these legal instruments, elements of the law governing political activities are to be found in the Friendly Societies Act, 1928 (as amended), and the Financial Services Commission Act, 2008.

International and regional standards for human rights and democratic elections also form part of the legal framework for Montserratian elections. The judicial system of Montserrat falls within the jurisdiction of the Eastern Caribbean Supreme Court. Several international treaties have been extended to Montserrat, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child. Other relevant treaties which have yet to be extended include the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Corruption, and the Convention on the Rights of Persons with Disabilities (CRPD).

Recommendation 1: Extend CEDAW and the CRPD to Montserrat. Amend domestic law to prepare for compliance with the obligations in these treaties prior to their extension.

The legal framework provides a basis for the conduct of elections which is broadly in line with applicable international human rights standards. Fundamental rights and freedoms are set out

in the Constitution, including freedoms of expression, assembly and association, with explicit protection for the right to form, or to belong to, a political party. The right to vote is of generous application, extending to Commonwealth citizens who satisfy residence requirements, as well as to Montserratian citizens. No complaints were made regarding voter registration.

The ICCPR requires that elections should be conducted by secret ballot, but this is not, technically, the case in Montserrat. The Elections Act provides for the printing of a serial number on both the ballot paper and the counterfoil. In addition, voters are listed in the poll book in the order in which they voted, including with their number from the list of voters. This number is also written on the counterfoil by the presiding officer, making each ballot paper potentially traceable. This violates the secrecy of voting.

Recommendation 2: End the practice of printing a number on both the ballot paper and the counterfoil. End the practice of writing numbers from the poll book on ballot papers. These measures will vindicate the secrecy of the ballot.

Persons who are serving prison sentences in excess of twelve months are deprived of the right to vote. Prisoners on remand, or those serving sentences of less than twelve months, retain their right to vote. This is set out in the Elections Act. Prisoners did not vote in the elections in 2014, the by-election in 2017, or in these elections. There is a prison population of twenty-three, including five prisoners on remand. Prisoners were not informed of their right to vote. Neither were they asked if they would like to vote.

Recommendation 3: Ensure that the right to vote of qualified prisoners, those on remand and those serving a sentence of less than twelve months, is respected. The Electoral Commission and the Superintendent of Prisons should be obliged both to inform prisoners of their right to vote and to facilitate the exercise of that right.

While there is general satisfaction with the legal framework on the part of electoral stakeholders, there are some areas which are unregulated, principal among them, in the context of democratic elections, being the existence and operation of political parties and the conduct of electoral campaigns. While the Constitution acknowledges the right to form or to belong to a political party, law has yet to be introduced to provide any guidance as to how these rights are to be exercised. Political parties are non-existent for the purposes of candidate nomination and they do not appear on ballot papers. There would be benefits both for political parties themselves and for democracy more generally from the introduction of political party legislation. It is important that they have legal personality.

The absence of a legal personality has not created any difficulties in practice for the operation of parties. Their only formal engagement with the law is through the Financial Services Commission (FSC) which registers businesses as well as charities for financial regulatory purposes. Civil society organisations are registered with the FSC as friendly societies.

ELECTORAL SYSTEM

The Legislature for Montserrat consists of Her Majesty and the Legislative Assembly. The Legislative Assembly consists of eleven members, nine of whom are directly elected. The Attorney General and the Financial Secretary serve *ex officio* as members of the Legislative Assembly. The Speaker of the Assembly is elected by the Assembly at its first meeting after any general election; there is no requirement for the Speaker to be a member of the Assembly.

The havoc wrought by a hurricane and a series of deadly volcanic eruptions is reflected in the electoral system of Montserrat. Previous arrangements were replaced by a single island-wide constituency, which is administratively divided into six electoral divisions. Voters may cast up to nine votes on a single ballot paper. The members of the Legislative Assembly are therefore “at large” representing all of the people, without responsibilities linked to specific areas. Elections are conducted under a first-past-the-post electoral system in a single multi-member island-wide constituency, by means of a simple majority of the votes cast.

Article 46 of the Elections Act envisages run-off elections if “one or more of the nine elected candidates receiving the highest number of votes fails to secure at least six per centum of the votes cast” or if “there is an equality of votes between two or more candidates who, though they may have received six per centum of the votes cast, have received the least number of votes of those candidates who would otherwise have been declared elected”. As pointed out by the Electoral Commission in its annual report to the Legislative Assembly after the 2014 elections, the success threshold requirement of “six per centum of the votes cast” should rightly be formulated as “six per centum of the valid ballots cast” – in line with the qualification contained in Article 46(2) regarding the calculation of the success threshold for return of the electoral deposit to candidates.²

Recommendation 4: Article 46 of the Elections Act should be amended to stipulate that the success threshold for a candidate to be declared elected is “six per centum of the valid ballots cast”, in line with the current interpretation of the Article.

The continued existence of a single constituency for the election of all members of the Legislative Assembly is a matter of much discussion in Montserrat. Views of interlocutors were varied, with many indicating a preference for a reversion to a system which would have a number of smaller constituencies, allowing for a more direct geographic link between the voters and at least some of their elected representatives. Many politicians commented upon the heavy burden of office when all communities on the island must be served.

A cabinet decision was made around two years ago to establish an Election Reform Commission (ERC). This decision has yet to result in the creation of a functioning entity to lead the national consultative process which would be necessary to address reform of the legal and administrative

² Article 23(2) of the Elections Act reads: For the purpose of this section the number of votes polled shall be deemed to be the number of the ballot papers (other than rejected ballot papers) counted.

framework for elections in Montserrat. The intention was to create a three-member body, but only two members have been appointed to the ERC to date. The Electoral Commission also has a constitutional mandate to review the operation of the constitution and report to parliament on their findings. National consultations, which include participation of all sectors of society, are important for the conduct of a credible process of reform and review of the electoral system and electoral law.

Recommendation 5: Revive the nascent Electoral Reform Commission, or give the responsibility to an alternative body, to lead national consultations on electoral reform. Review the operation of the current single-constituency "at-large" system to ascertain the most effective and most legitimate electoral system for Montserrat. Electoral reform should also extend to the recommendations advanced in both reports submitted by the CPA BIMR.

ELECTION ADMINISTRATION

The elections in Montserrat are conducted by the Electoral Commission (EC), which is a constitutional commission first embodied in the constitution in 2010. The Electoral Commission Act, 2012, and the Elections Act, 1952, set out in further detail the operation of the EC.

The EOM found that the EC enjoyed the trust of both the public and the political parties, with confidence expressed both in the impartiality of the EC and the ability of the body to conduct the elections correctly.

The EC is comprised of a chairman (in the language of the law) and three other members. The incumbent EC members took up office in early 2018. All four appointments were made by the Governor, as required by the Constitution. The Premier, the Leader of the Opposition and civil society are, as also required by the Constitution, to provide advice to the Governor on the appointment of the three ordinary members. Civil society does not appear to have had any role in their selection. The Elections Act provides that the EC Chairman shall perform the duties of the Supervisor of Elections. These legal rules have the potential to circumscribe the independence of the EC, so interlinked are the appointments with the executive. The dual role of EC Chairman and Supervisor of Elections removes the separation between the board and the staff, thereby diminishing the oversight function of the commissioners.

Recommendation 6: Revise Section 4(2) of the Electoral Commission Act which provides that the EC Chairman shall serve as the Supervisor of Elections, in order to separate the two functions. Ensure that Article 78 of the Constitution is given real effect in the appointment of members of the EC, ensuring a role for civil society.

In addition to the standard obligations of election administration, the EC has also been conferred with two additional duties under the constitution. These are (Article 96(2)) that the EC must recommend levels of remuneration and allowances for the Speaker and the elected members of the Legislative Assembly; and (Article 114(1)) that the EC should keep the operation of the Constitution under review and report as it considers necessary to the Legislative Assembly. The

previous EC fulfilled the obligation to recommend levels of remuneration and allowances following the general election in 2014. No action has been taken by any EC in the matter of constitutional review.

The EC has the responsibility for voter education. Some of this work began as early as six months before the election, while a calendar of events across all electoral divisions of the island was conducted in the six weeks prior to polling day. The voter education efforts included town hall meetings and focus group meetings, as well as radio broadcasts³. Despite these efforts, the EOM encountered some uncertainty among interlocutors as to the freedom to cast from one to nine votes on ballot papers, with some under the mistaken belief that nine votes were required for validity.

Recommendation 7: Increase efforts in voter education, particularly to provide more guidance on voting and marking the ballot paper. This could be carried out through the distribution of leaflets and through greater dissemination of information in print and electronic media.

THE RIGHT TO VOTE AND VOTER REGISTRATION

The Preamble to the Constitution of Montserrat recognises that the people are entitled to a free and democratic society, and establishes “*the concept of true democracy with free and fair elections*”. Beyond this, there is no explicit recognition of the right to vote in the Constitution.

The Elections Act sets out the qualifications for voting, which are quite generous in that voting is extended beyond Montserratian nationals to Commonwealth citizens who satisfy residence or domicile requirements on the island. Residence in Montserrat for a period of thirty-six months immediately preceding the date of registration is required. Alternatively, domicile in Montserrat and residence upon registration create an entitlement to register.

Students who are overseas pursuing certain courses of study will not lose their domicile for voter registration purposes. Domicile can sometimes be an elusive legal concept to define, which can present difficulties for the EC in ascertaining entitlement to register. No complaints were made regarding the preparation of the voter register for this election. Voters must be eighteen years of age to register to vote, and registration is a precondition to voting. Voter registration is active and continuous.

Prisoners serving sentences in excess of twelve months are deprived of the right to vote. The Elections Act also disqualifies persons of “*unsound mind*” from voting. There is a requirement that there should be a determination to this effect under any law in force in Montserrat. This is positive in that it allows for an individual assessment of voting rights, rather than treating persons as a homogenous group.

³ The Electoral Commission website <http://www.constitution.ms/the-4-commissions/electoral-commission/> provides examples of voter education awareness programmes broadcast on Radio Montserrat.

The Elections Act, the Election Regulations and the Election (Continuous Voter) Regulations, govern the conduct of voter registration. These laws provide for active and continuous registration, for the publication of a preliminary list of voters, and for the making of objections or proposal of adjustments after publication. A period of three months was allowed for the inspection of the preliminary list. The final number of voters registered for the election was 3,858. The number of registered voters for 2014 was 3,866.

REGISTRATION OF CANDIDATES

The qualifications to stand for election are set out in Articles 51 and 52 of the Constitution. Candidates must be 21 years of age; must have been resident in Montserrat for at least twelve months during the preceding five years; and must be a Montserratian national. Only Montserratians by birth are eligible to stand for election, with naturalised individuals disqualified. Candidates must also be registered voters.

The protection of the right to stand for election is not in full compliance with international law. A distinction is made between Montserratians by birth and those who have acquired nationality by naturalisation. This amounts to discrimination, which appears unreasonable.

Montserratians who are “under any acknowledgement of allegiance, obedience or adherence to a foreign power or state”, effectively dual citizens, are disqualified from standing for election, unless the second citizenship has been renounced within ten days after nomination. This appears somewhat harsh in the context of the particular geopolitical realities of emigration from Montserrat following the series of natural disasters which has befallen the island.

Convictions for certain electoral offences also disqualify, as does undischarged bankruptcy.

Recommendation 8: Amend Article 51 of the Constitution to remove the difference in treatment between Montserratians by birth and Montserratians by naturalisation. Ensure that the right to stand for election applies equally to both.

Recommendation 9: Amend Article 52 of the Constitution to remove the disqualification from standing for election of holders of dual citizenship.

Holders of public office are disqualified from becoming candidates for the Legislative Assembly. On 6 November 2019 the High Court of the Eastern Caribbean Supreme Court ruled, in *Stephenson v. AG*, that this disqualification was lawful. It was found necessary to protect the neutrality of the public service. It was noted however, that, of a total labour force of 2,703, per the inter-census count of September 2018, 726 are employed by the Montserrat Public Service. The judge said that “in a voting population of about 3,500, around 21 per cent of voters are public officers”. As there are no entitlements to seek reinstatement in office after an unsuccessful election bid, few of these people are likely to risk their job security. This excludes a substantial proportion of the population from running for election and may disproportionately have affected women’s right to stand for election.

Recommendation 10: Review the terms and conditions of employment in the public service to consider options for rejoining the service following unsuccessful election bids.

The writ of election was issued on 7 October 2019 following the expiry of the term in office of the members of the Legislative Assembly, and the election date was set for 18 November, in line with legal and constitutional requirements.

Nomination was held on 7 November and resulted in the registration of a record-high number of 35 candidates, of which 24 competed on the candidate lists of four political parties and 11 as independents. The MCAP presented a full slate of nine candidates; the PDM – seven candidates; the MULP – five candidates; and the NMC – three candidates. There were eight female candidates, three ran on a party list and five as independent candidates. The MULP did not nominate any women, and no party was female-led. There is also no legislative compulsion for the inclusion of women within party structures. All members of the outgoing Assembly, as well as the un-elected Speaker, contested the 2019 general election.

Recommendation 11: Encourage political parties to take more measures to foster greater participation of women in political life including by adopting internal party guidelines that promote women candidates.

Candidates attend training prior to the general election.



Candidate registration was inclusive, offering voters a genuine choice among political alternatives. All candidates paid an EC\$500 (circa \$185 USD) deposit that is refundable to candidates who obtain more than one-eighth of the valid ballots. Some political parties opined that the deposit is set too low and, among others, ascribed the high number of candidates to this fact. However, the deposit should not be set too high and act as a barrier to candidature.

The lack of legal provisions for political parties meant that political affiliation or membership were not recorded in the candidates' nomination papers, and thus were not reflected on the ballot paper. Candidates were permitted, however, to include a coloured background to photographs on ballot papers. This assisted in the identification of party allegiance, but the practice lacks legal regulation. It is likely to become redundant when the existence of political parties is legally recognised within the electoral process.

THE CAMPAIGN AND CAMPAIGN FINANCE

The campaign was highly competitive, colourful and vibrant, with most candidates using rallies, motorcades, posters and canvassing of voters in their outreach to the electorate. The main parties and some independent candidates appeared on talk shows and purchased campaign slots in print media and on public Radio Montserrat. The Youth Parliament organised four well attended public debates that were streamed online. Instances of negative campaigning were noted, and the MCAP reportedly filed a defamation lawsuit against an off-shore media house.

The campaign focused on greater financial independence, rebooting the tourist industry and infrastructure, job creation and improved social and health care services. Three competing parties and two independent candidates made their manifestos for the 2019 elections public⁴.

The conduct of political campaigning is largely unregulated outside of standard public order law. The Commissioner of the Police, under public order rules, coordinated requests from parties and contestants for outdoor campaign events, such as rallies, use of vehicles with loudspeakers and motorcades on a first come, first served basis. Police officers were present at all campaign rallies and recorded all public campaign meetings on tape to keep on file.

All forms of campaigning, including the display of partisan symbols, are prohibited on election day; public order rules are by common consensus interpreted to require that all campaign posters and banners must be removed throughout the entire island before the opening of polls, although the legal provision only applies to the area within 100 yards of a polling station. Campaign offences such as bribery (vote-buying) and treating are punishable under the law; a person may, if convicted, lose voting rights or the right to be member of the Assembly for a period of up to seven years.

The fundamental freedoms of expression, association and assembly were respected in the campaign. However, the absence of legal personality of political parties results in a situation where they do not have any legal connection with their members or explicit accountability for the activities of their supporters or to society in general. This is unsatisfactory as parties may wield great power, which should be accompanied with responsibilities.

Political parties are not subject to any regulation in the area of political or campaign finance. Parties and candidates can receive donations and incur expenditure for their campaigns as they wish; there are no disclosure requirements. The law is silent on potentially contentious issues such as foreign donations and the participation of non-Montserratian nationals in the campaign.

The lack of legal personality and the absence of accountability requirements for political parties represents a significant lacuna in the law.

⁴ 2019 Manifestos are available at http://www.caribbeanelections.com/elections/ms_elections.asp.

Recommendation 12: Legislation should be introduced to provide for the establishment of political parties. Measures on equality of women, on political and campaign finance, and on accountability more broadly, should be included.

MEDIA

The conduct of campaigning in traditional and online media is under-regulated. Public Radio Montserrat, that has a high listenership rate throughout the island as well as among Montserratians abroad, made commendable efforts to provide contestants with equal access to paid airtime and editorial coverage. Several candidates and all parties purchased political advertisements on public radio. Print media include the *Montserrat Reporter* and *Alligouana Express* which have a circulation of a few hundred copies per week⁵. The latter print outlet offered paid political advertisement to contestants. Social and Internet-based media have become important platforms for passing campaign messages to voters. Some 90 percent of the population use mobile phones; the Internet penetration rate is 68 percent⁶.

While media outlets were granted full access to cover the centrally conducted counting and results process, several media interlocutors informed the CPA BIMR EOM that they would welcome clearer guidelines for media reporting on polling, including regulation of access for media to polling stations on election day. Requests by media to receive preliminary information on voter participation during election day was not handled in a uniform manner by the election administration which resulted in information about preliminary turnout only being partially available to the public during election day.

Recommendation 13: The Electoral Commission could develop guidelines for media conduct during elections in consultation with public and private media outlets. Media representatives could be granted limited access to polling stations to enable media coverage of the election day process; the Electoral Commission could collect preliminary voter turnout data at certain set times and communicate these and other general information on the pace of voting to the public on election day.

PARTICIPATION OF WOMEN

There is poor participation of women in elected office. In 2014 there was much to celebrate in the fact that there were two women elected to the Legislative Assembly. This represented just over twenty-two per cent of the membership. On this occasion, regrettably, just one woman has been elected, representing just eleven per cent of those elected.

Women featured in greater numbers among electoral candidates. Of the thirty-five people seeking election to the Legislative Assembly, eight were women. However just three amongst

⁵ Online media *Discover Montserrat* provides a list of traditional and social media outlets with news and information about Montserrat, see <https://discovermni.com/about-montserrat/get-social-montserrat/>.

⁶ ICC/LFS (2019), p.4.

these were nominated by political parties. A by-election was held in 2017. There were no women among the seven candidates who contested this.

Women are, however, present in many powerful positions in society, including the Attorney General, the Chairman and two of the other members of the EC, and the out-going Speaker of the Legislative Assembly and the Deputy-Governor.

The Constitution of Montserrat contains some limited provisions on gender equality. There is a prohibition of discrimination in respect of fundamental rights in the public sphere on, among other grounds, sex or sexual orientation. There is no guarantee of equality in the law. CEDAW has not yet been extended to Montserrat. The application of this instrument would allow for the introduction of special temporary measures to enhance participation of women in elected office.

Affirmative action to promote improved inclusion of women in political life could be introduced accordingly. The form of affirmative action chosen to promote the greater participation of women in political life will be a matter of policy choice. Measures may be chosen which are addressed to the inclusion of women by political parties. Alternatively, measures may be introduced to provide direct support to individual women to advance their political participation. In any review of the electoral system it will be important to review the impact of systems on the participation of women, as different systems can have different outcomes in this regard.

PARTICIPATION OF PERSONS WITH DISABILITIES

The Convention on the Rights of Persons with Disabilities has not yet been extended to Montserrat. The non-discrimination clause in the Constitution does not make any specific mention of disability as a prohibited ground for difference in treatment. There is at present no specific legislation on disability rights. There is therefore, no special treatment to ensure that the voting rights of persons with disabilities are protected.

Voting is difficult for persons with disabilities in Montserrat, despite commendable efforts by the election administration to choose and equip premises to enhance their accessibility. The CPA BIMR assessed that more efforts could be undertaken to make all twelve polling stations independently accessible for persons with physical disabilities. Only the most-recently constructed buildings provided wheel-chair access. There are no measures of advance voting, mobile voting or postal voting provided for in the law. Such measures are needed if there is to be a realistic prospect of all voters, including the homebound, being able to exercise their voting rights in a dignified and independent manner.

Recommendation 14: Consideration should be given to the introduction of mobile or postal voting in order to facilitate the right to vote of persons with disabilities, the elderly and those in hospital or other institutions.

ELECTORAL JUSTICE

The judicial system of Montserrat has both domestic and trans-national elements. Two Magistrates' courts are present on the island. The prosecution of any electoral offence is commenced before a Magistrates' Court. There is an extensive catalogue of electoral offences within the Elections Act. There were no charges of any electoral offences during this election or during the 2014 general election either.

The regional Eastern Caribbean Supreme Court has jurisdiction over all but minor issues. The High Court sits intermittently during visits to Montserrat. Access to the court may, in general, be slow due to the infrequency of the sittings. Nonetheless, in the single election-related matter which was filed with the High Court, *Stephenson v. AG* (see: Registration of Candidates, above), great expedition was shown and the case was determined in a timely manner.

The plaintiff in the Stephenson case questioned the constitutionality of the rules which disqualify public servants from running for election. The rules of standing in cases claiming an infringement of fundamental rights are open, without any procedural obstacles on access to the courts. The case was ultimately unsuccessful, but principles on access to justice were respected.

The Elections Act, 1952 (as amended up to 2013), and the Legislative Assembly (Election Petition) Rules, 2014 both make detailed provision for the formal adjudication of electoral disputes. No election petitions have been filed relating either to this election or to that in 2014.

ELECTION DAY - VOTING

Voting was conducted from 07.00 to 18.00. The CPA BIMR EOM teams observed election day procedures in all 12 polling stations across the island, visiting most of them at least twice during the day. Observers rated the overall conduct of the voting process as good or very good. This signifies that procedures were generally followed, with only tiny technical procedural flaws noted intermittently. All polling stations opened on time, and election day commenced in a smooth, orderly and peaceful atmosphere throughout the island. All campaign posters had been removed before election day. Police were present at every polling station and in the counting centre and fulfilled their election day roles in full compliance with law.

Polling staff members comprised of a presiding officer and two polling clerks per polling station. Just two of the thirty-six polling staff were men. All staff were highly conversant with the procedures and followed them accordingly. Guidance of voters in completing their ballot paper was displayed in polling stations and communicated orally by presiding officers to voters. Observers noted that voters had a very good understanding of the applicable voting procedures: the reported number of spoilt ballot papers was low, on average three per polling station⁷.

⁷ Information provided by the Supervisor of Elections; the number of spoilt ballots was not made public.

While the strict letter of the law was followed in the provision of guidance to voters, the legal instructions are lacking in that there is no specific guidance given to voters that they may vote for any number between one and nine candidates. Addition of this information to the written and oral instructions might be helpful in future. The average number of votes cast per valid ballot was 8.30, indicating that the vast majority of voters marked their ballot with nine votes.



The Observers attend the opening of a polling station.

The different procedures in place that allow a voter without a photo-ID to vote were not always consistently applied, indicating a need for poll staff to receive more training on this issue. On a positive note, the Election Supervisor went on Radio Montserrat in the early hours on election day to remind voters to bring their ID when going to the polls. This happened after presiding officers had notified her that it was becoming an issue.

Voters requesting assistance were generally accommodated in a proper manner. No voters were turned away for improper reasons. A few eligible citizens did not find their name on the voter list; such citizens were not allowed to vote but reminded to go and register well in advance of the next election.

The legal requirement of numbering that allows a marked ballot to be traced back to the voter undermines the secrecy of the vote that is provided for in the law. This should be reconsidered, as was previously recommended by the CPA BIMR. A few interlocutors again reported concerns that traceability, due to the unique number on the back of the ballot, could deter voters from participating.

Also, the handling (casting) of marked (folded) ballots by the presiding officer is contrary to what is generally accepted to be good practice as it allows for potential allegations against the election administration of violating ballot secrecy or mishandling marked ballots⁸. The Electoral Commission informed the EOM that they ensure that marked ballots are locked up immediately after the count and kept safely under police protection until they are destroyed.

While the voting process in general was transparent for all persons present, the set-up of two polling stations did not allow poll staff and agents present full view of all polling booths. Adding to the transparency of election day, agents of three competing parties and of several

⁸ The Venice Commission's Code of Good Practice in Electoral Matters notes "The signing and stamping of ballot papers should not take place at the point when the paper is presented to the voter, because the signatory or the person affixing the stamp might mark the paper so that the voter could be identified when it came to counting the votes, which would violate the secrecy of the ballot... The voter should collect his or her ballot paper and no one else should touch it from that point on." See <https://www.ohchr.org/EN/Issues/RuleOfLaw/CompilationDemocracy/Pages/CoE.aspx>.

independent candidates were present in all polling stations. Independent observation of elections is not provided for in the law, contrary to authoritative interpretation of ICCPR commitments. The use of mobile phones inside polling stations lacks legal regulation, leading to potential for the use of photographs in vote-buying

Recommendation 15: Independent observation of the elections should be provided for in the law.

COUNTING AND RESULTS PROCESS

Counting was highly professional and allowed all stakeholders and the public full real-time access to the results of the election. Counting was conducted in the Cultural Centre in Little Bay and was fully open to all stakeholders, the public and media. It was conducted for each polling division by an Assisting Returning Officer assisted by two tally clerks and an electronic tally clerk.

Each ballot was shown to agents. The content was announced by the Assisting Returning Officer and recorded by the two tally clerks and the electronic clerk. Preliminary reconciliation took place after data for each ten ballots had been summarised. The electronic data entered passed to a central server and was summarised and displayed in near real time on a projector screen outside the Cultural Centre. The counting and results process was conducted with the highest level of transparency, far beyond legal requirements. This instilled great confidence in the accuracy of the reported results. A brief blackout of the computer information was quickly dealt with and did not cause any disruption of the results process.

Disputed ballots were decided by the Returning Officer in a consistent manner. The law sets rigid rules for ballot validation which were meticulously followed. A disputed ballot is rejected if the voter has marked the ballot with anything other than two crossing lines ("x" or "+"), or if the mark is placed outside the designated box next to the name of a candidate.

The law does not provide any room for discretion to take the intention of the voter into account if the ballot is marked with anything other than a cross or a plus. A ballot is deemed rejected if there is more than one marking next to the same candidate. However, if the photo of a candidate is crossed out and the other markings are correct, the ballot is deemed valid and the correctly placed marking counted as votes. The latter interpretation appeared inconsistent with the previous notion that voter intention is not to be taken into account during the validation of votes.

Recommendation 16: The law should be amended to provide for the validity of ballot papers valid where the intention of the voter is reasonably clear.

The EC did not announce the number of ballots spoiled and returned by voters in polling stations.

The turnout was reported at 62.5 percent, indicating that Montserratians went to the polls in significant numbers and thereby gave a strong mandate to the formation of their new Legislative Assembly and Government.

As a result of the vote, MCAP won five of the nine seats in the Legislative Assembly and formed the new cabinet with Hon. Easton Taylor Farrell as Premier. PDM won three seats, and one seat was taken by an independent candidate. There will be only one female member, elected on the list of MCAP, in the new Legislative Assembly. Paul Lewis, head of PDM, became Leader of the Opposition.

On 19 November 2019 the EC, in accordance with the law, published the election results listing the nine members elected to the Legislative Assembly. There is no legal obligation to publish additional data about printed, issued or unused ballot papers, or about spoiled votes. The Supervisor of Elections provided such data to the EOM (see table below). Unofficial results were published by the media, but some data differed from the official results provided. The absence of an authoritative official publication of complete election data reduces the transparency of the process.

Recommendation 17: Create a legal obligation to publish all data on overall election results, as well as data disaggregated by polling station/division including the numbers of issued, spoiled, rejected and unused ballot papers.

ELECTION RESULTS

Results of the 2019 General Elections ⁹			
1.	Number of registered voters	3,858	
2.	Number of ballots cast	2,410	62.47%
3.	Number of valid ballots	2,364	98.09%
4.	Number of rejected (invalid) ballots	46	1.91%
5.	Number of spoilt ballots	20	

Electoral Contestant	Affiliation	Number of Votes	% of Votes	Seats
Creston Buffonge	MCAP	1,378	6.91%	1
Paul Lewis	PDM	1,251	6.27%	1
Joseph Farrell	MCAP	1,210	6.07%	1
Donaldson Romeo	Independent	1,060	5.31%	1
Veronica Dorsette-Hector	MCAP	1,007	5.05%	1
Dr Samuel Joseph	MCAP	998	5.00%	1
Charles Kirnon	MCAP	970	4.86%	1
David Osborne	PDM	947	4.75%	1
Claude Hogan	PDM	873	4.38%	1
<i>Remaining 26 candidates</i>		<i>10,255</i>	<i>51.41%</i>	<i>0</i>
TOTAL		19,949	100%	9

⁹ Information provided by the Supervisor of Elections.

OVERVIEW OF RECOMMENDATIONS

Recommendation 1: Extend CEDAW and the CRPD to Montserrat. Amend domestic law to prepare for compliance with the obligations in these treaties prior to their extension.

Recommendation 2: End the practice of printing a number on both the ballot paper and the counterfoil. End the practice of writing numbers from the poll book on ballot papers. These measures will vindicate the secrecy of the ballot.

Recommendation 3: Ensure that the right to vote of qualified prisoners, those on remand and those serving a sentence of less than twelve months, is respected. The Electoral Commission and the Superintendent of Prisons should be obliged both to inform prisoners of their right to vote and to facilitate the exercise of that right.

Recommendation 4: Article 46 of the Elections Act should be amended to stipulate that the success threshold for a candidate to be declared elected is “six per centum of the valid ballots cast”, in line with the current interpretation of the Article.

Recommendation 5: Revive the nascent Electoral Reform Commission, or give the responsibility to an alternative body, to lead national consultations on electoral reform. Review the operation of the current single-constituency “at-large” system to ascertain the most effective and most legitimate electoral system for Montserrat. Electoral reform should also extend to the recommendations advanced in both reports submitted by the CPA BIMR.

Recommendation 6: Revise Section 4(2) of the Electoral Commission Act which provides that the EC Chairman shall serve as the Supervisor of Elections, in order to separate the two functions. Ensure that Article 78 of the Constitution is given real effect in the appointment of members of the EC, ensuring a role for civil society.

Recommendation 7: Increase efforts in voter education, particularly to provide more guidance on voting and marking the ballot paper. This could be carried out through the distribution of leaflets and through greater dissemination of information in print and electronic media.

Recommendation 8: Amend Article 51 of the Constitution to remove the difference in treatment between Montserratians by birth and Montserratians by naturalisation. Ensure that the right to stand for election applies equally to both.

Recommendation 9: Amend Article 52 of the Constitution to remove the disqualification from standing for election of holders of dual citizenship.

Recommendation 10: Review the terms and conditions of employment in the public service to consider options for rejoining the service following unsuccessful election bids.

Recommendation 11: Encourage political parties to take more measures to foster greater participation of women in political life including by adopting internal party guidelines that promote women candidates.

Recommendation 12: Legislation should be introduced to provide for the establishment of political parties. Measures on equality of women, on political and campaign finance, and on accountability more broadly, should be included.

Recommendation 13: The Electoral Commission could develop guidelines for media conduct during elections in consultation with public and private media outlets. Media representatives could be granted limited access to polling stations to enable media coverage of the election day process; the Electoral Commission could collect preliminary voter turnout data at certain set

times and communicate these and other general information on the pace of voting to the public on election day.

Recommendation 14: Consideration should be given to the introduction of mobile or postal voting in order to facilitate the right to vote of persons with disabilities, the elderly and those in hospital or other institutions.

Recommendation 15: Independent observation of the elections should be provided for in the law.

Recommendation 16: The law should be amended to provide for the validity of ballot papers valid where the intention of the voter is reasonably clear.

Recommendation 17: Create a legal obligation to publish all data on overall election results, as well as data disaggregated by polling station/division including the numbers of issued, spoiled, rejected and unused ballot papers.

ACKNOWLEDGMENTS

The CPA BIMR Election Observation Mission wishes to express its gratitude to the authorities of Montserrat, to the election officials, candidates and to the people of Montserrat for their cooperation, hospitality, warm welcome and assistance during the course of the Mission.

For further information about this Mission, please contact montserratelectionobservers@gmail.com or cpauk@parliament.uk.



CPA BIMR ELECTION OBSERVATION SERVICES

The first objective of the BIMR Strategy is to strengthen parliaments and the skills of their members. As part of this work, CPA BIMR facilitates election observations when invited to do so.

If you would like to find out more about these services, please contact the CPA BIMR Secretariat at cpauk@parliament.uk.

Opening CPA BIMR
Election Observation
Mission Press Conference
Montserrat | Nov 2019

(From left to right)
Harald Jepsen, Political/
Campaign Analyst, Hon
Julian Robinson MP,
Jamaica, Head of Mission,
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