



CPA BIMR ELECTION OBSERVATION MISSION

VIRGIN ISLANDS GENERAL ELECTION 2019

PRELIMINARY REPORT

“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

BACKGROUND

The Commonwealth Parliamentary Association British Islands and Mediterranean Region (CPA BIMR) Election Observation Mission (EOM) has been present in the Virgin Islands since the 15 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, 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 9 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. The Mission will continue to observe post-election developments and will publish a comprehensive final report outlining recommendations by the end of April 2019.

LEGAL FRAMEWORK

Overall the legal framework provides an adequate basis for the conduct of the 2019 election in line with international standards and commitments extended to the Virgin Islands. It 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.

A new set of amendments to the Elections Act was passed on 22 January 2019 and only came into effect after the House was dissolved on 24 January (Governor’s assent given on the 29 January). According to international good practice the electoral framework should not be changed within one year prior to an election. Whilst recent amendments enjoyed cross-party support, they were not the result of an inclusive process and were rushed through the House without thorough public consultation. The very short deadlines for electoral preparations presented a challenge to the work of the election administration.

Positive efforts were made to address some of the recommendations offered by the previous Mission in 2015. Changes include the use of 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 to allow travellers to vote in advance.

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. The absence of a consolidated legal text raises concerns over accessibility and legislative clarity.

ELECTION ADMINISTRATION

The Supervisor of Elections has overall responsibility for managing the general direction and supervision of the administration and conduct of the election. The Supervisor of Elections is appointed by the Governor with oversight of the Elections Office emanating from the Deputy Governor's Office. Due to the current incumbent's years in office a considerable amount of trust and autonomy by the authorities is given to the Supervisor. The Elections Office works within the legislative and procedural framework, nevertheless, despite the Mission's 2015 recommendation, there remains a perceived lack of democratic accountability and oversight of the Elections Office in the form of an independent Election Commission. Stakeholders expressed concern over the absence of adequate checks and balances in the running of the election, noting particular apprehension over the perceived arbitrary way decisions are made and the lack of a clear complaints and appeals process.

Despite the concerns of stakeholders, the Mission commends the Supervisor and her team in 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 Elections Office, comprised of mainly new staff, should also be praised for its professionalism and capabilities in its voter registration drive, competently rolling out new voter technology and an attempt to issue 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. This could be rectified by implementing the 2015 EOM recommendation to have fixed term elections.

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 to vote. To stand as a candidate at the 2019 election, you must be a registered voter, resident for five years and 21 years of age. However, several of these restrictions on voting and standing go against international standards extended to the Virgin Islands.¹

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. Thus, there are citizens with resident status who are not granted suffrage rights and non-citizens residing abroad with the right to vote and stand. This again undermines the principles of equity, fairness and representation.

VOTER & CANDIDATE REGISTRATION

The Virgin Islands employs an active voter registration system. 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. A lack of resources and adequate verification undertaken by the election administration may have contributed to this sentiment. 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 the 28 January 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 the 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), 9 for the Progressive Virgin Islands Movement (PVIM), and 6 for the Progressives United (PU). There were two further independent candidates.

1. Paragraph 15 of the 1996 UNHRC and General Comment No. 25 to Article 25 of the ICCPR.

CAMPAIGN FINANCE

As with 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 risks 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 is not compliant with the UN Convention Against Corruption which was extended to the Virgin Islands in 2006. 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.

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. But 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 is lacking in identifying how such abuses of the Code can or should be policed or reported. 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. Steps were taken by the Deputy Governor's Office to encourage the application of the Code, but with limited impact.

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

MEDIA

Other than the Government Information Service, there is no state-run media outlet, all print, broadcast and online media is privately owned. The media landscape is diverse and coverage vibrant. Media provided a plurality of viewpoints in a variety of news and opinion pieces. While there are no media guidelines or regulations that would set a minimum coverage to all election contestants, some candidates expressed concern about their possibilities of access to the media or about their media exposure. Candidates utilised paid political advertisement.

ADVANCE POLLING

The Virgin Islands provides for an advance polling day which occurred 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 traveling on election day to vote, the latter two categories were positive steps introduced as part of the 2019 amendment to the election law. Although the law was intended for those at 70 years and above to vote, many seniors below this age bracket who came on the day were still permitted a 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 to voters (and accompanying friends) the new voting processes 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 there were inconsistencies in approaches and processes taken in various districts in terms of signing exit polls and whether agents should accompany friends and supported voters into the polling booth. The Mission expressed concerns that having potentially four people in a polling booth undermines the secrecy of the vote for those most vulnerable.

In total, 1,120 ballots were cast for local and at-large polling which constitutes 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 reflected a district result. As such the integrity of the electoral process has been 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 time of writing this report, an investigation is underway to determine the source of this breach.

ELECTION DAY

In line with CPA BIMR methodology, 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. Space limitations affected the layout of some of the polling stations, this led at times to confusion for the voter as to where to go, some steps being missed (such as the exit poll) and at peak periods, stations were heavily overcrowded, which compromised the secrecy of the vote.

At opening, presiding officers reported that all necessary materials had been present except for one 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 predominately 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 EOM 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, these included confusion over assisted voters taking oaths or not and presiding officers instructing voters 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, this is a decrease on the 2015 turnout.

CLOSING & 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, although there was 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, returning officers, 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. However, the Mission notes that there is a lack of transparency in the process of tabulation for voters, candidates and agents because of the electronic format.

COMPLAINTS & APPEALS

Legislation provides for the right to redress for all participants in the process. While the law is clear that election-related complaints can be filed with the Supervisor of Elections in the first instance, the avenues to appeal the Supervisor's decisions appear to be less straightforward with different EOM interlocutors citing the High Court, the Attorney General, the Governor, the Deputy Governor, and the Complaints Commission. Final results may be challenged before the High Court whose decisions are final. Election related offences and their corresponding sanction are outlined in the Elections Act.

Few formal complaints were filed during the process; initially the VIP party made three complaints relating to the voter list, however all three were rejected for lack of evidence by the Supervisor. Following the election, one request for a recount of the District 6 result was made by a VIP candidate which at the time of this report's publication is ongoing.

DIVERSITY & INCLUSION

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

However, women remain under-represented in political life. All five cabinet members, the Premier and the four

ministers, are men, and two of the 13 members elected to outgoing House were women (or 15%). None of the parties are 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.

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

Three of the 13 elected candidates were women (or 23%) and there were three younger candidates elected, while six incumbents won a seat.

A CALL TO ACTION

This preliminary report will be followed in two months by a final detailed report offering recommendations. As outlined in our opening press conference, the Mission wishes to stress that the outcomes and issues highlighted by this Mission in its publicly available reports should be taken forward by all election stakeholders – from voters and civil society to elected representatives and the Governor, to ensure improvements are made in a timely and comprehensive fashion. CPA BIMR stands ready to offer further assistance to ensure such progress is achieved, if desired and requested.

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.

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