

ANGUILLA GENERAL ELECTION

JUNE 2020



CPA BIMR ELECTION EXPERT MISSION

FINAL REPORT

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EXECUTIVE SUMMARY

- **The Commonwealth Parliamentary Association British Islands and Mediterranean Region (CPA BIMR) conducted a virtual Election Expert Mission to the Anguilla General Elections in June 2020.** Due to the Covid-19 pandemic, research was carried out online, and interviews with a wide range of stakeholders were conducted utilising digital meeting platforms.
- Due to Covid-19 restrictions, political parties and candidates could not convene campaign events until 5 June. The Supervisor of Elections was also unable to conduct some planned voter education activities. The election took place on 29 June. As Anguilla had been virus-free for over two weeks by then, social distancing or other public health measures were not required during polling and counting.
- **The conduct of elections in Anguilla was broadly in compliance with the human rights standards and universal principles that are applicable. The right of political participation was well-respected, with the principal exception being the absence of equality in the weight of the vote as there were vast differences in district size. Prisoners were deprived of the right to vote, while the right to stand for election was restricted for public servants. Otherwise, the political freedoms of expression, association, assembly and movement were well respected.**
- Excellent efforts were made to vindicate the right to vote of persons with disabilities.
- Constitutional and electoral reform has been on the political agenda in Anguilla for several decades. A substantial number of electoral reforms were introduced to the legal framework last year. As a result, many of the electoral rules were new, being implemented for the first time during these elections. The Constitution was amended twice in 2019, with the most significant electoral changes having come into force on 14 May 2019.
- A permanent election administration body, the Central Electoral Office, was established under Part 2 of the Elections Act, 2019. Electronic tabulation machines, effectively ballot scanners, were used for the first time in these elections, while voter identification cards were also introduced. Advance voting, which took place three days before election day, was another innovation.
- **The CPA BIMR Election Expert Mission offers 12 recommendations in this report to enhance the conduct of elections in Anguilla and to bring it fully into line with international obligations and standards for democratic elections.** Some recommendations re-emphasise previous recommendations from the 2015 CPA BIMR Election Observation Mission report that have not yet been addressed.¹

¹ The CPA BIMR 2015 report is available on: https://www.uk-cpa.org/media/1941/eom_anguilla_2015_final-report.pdf

INTRODUCTION TO THE MISSION

At the invitation of the Governor of Anguilla, His Excellency Tim Foy OBE, the Commonwealth Parliamentary Association British Islands and Mediterranean Region (CPA BIMR) conducted a virtual Election Expert Mission (EEM) to the Anguilla General Elections in June 2020. The invitation was supported by the then Government and Official Opposition of Anguilla.

This was the second time that CPA BIMR was invited to observe elections in Anguilla. In 2015, CPA BIMR conducted its first election observation mission to Anguilla, which resulted in the publication of a report with 12 recommendations.²

Due to the Covid-19 pandemic, the team of experts conducted the Mission virtually, carrying out research online, as well as undertaking interviews with a wide range of stakeholders utilising digital meeting platforms. This innovative adaptation of election observation methodology in these unprecedented circumstances made this a unique exercise in the history of CPA BIMR's election observation work.

The mission was composed of:

- Anne Marlborough – Legal Expert & Team Leader (Ireland);
- Harald Jepsen – Electoral Expert (Denmark);
- Merce Castells Vicente – Campaign/Media Expert (Spain);
- Fleur ten Hacken – Election Coordinator, CPA BIMR.



The CPA BIMR Team of international observers

The Mission held virtual meetings between 18 June and 1 July. The Mission was guided by the Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers.

² The CPA BIMR 2015 report is available on: https://www.uk-cpa.org/media/1941/eom_anguilla_2015_final-report.pdf

The Mission conducted an independent assessment of the Anguilla elections against international legal standards, commitments and obligations as well as domestic laws. Its assessment considered the legal framework, election administration, political campaign, media, and opportunities for complaints and appeals. In addition, the Mission considered a number of wider issues such as gender equality and participation of persons with a disability. The Mission met key stakeholders, including election officials, candidates, the Governor, Attorney General, Police Commissioner, civil society groups and first-time voters.

The Mission acknowledges its limitations, in particular the inability of members to visit the island in person and to observe the proceedings on Advance Polling Day and Election Day. Despite this, the Mission has striven to look at the wider electoral process to the best of its abilities.

This report will offer a number of recommendations which it is hoped will be given due consideration by all the election stakeholders, most particularly the House of Assembly, for the continued improvement of future elections in Anguilla.

BACKGROUND

Anguilla is the most northerly of the Leeward Islands in the Eastern Caribbean. It is a flat island, with an area of some 91 sq km, which is limited in natural resources. In 1980, after the Anguilla Revolutions of 1967 and 1969, Anguilla separated from St Kitts & Nevis to become a stand-alone UK Overseas Territory. Since that time it has grown in population and wealth. In 2003, Anguilla graduated from UK bilateral development assistance.

Anguilla is a British Overseas Territory, an internally self-governing Territory with executive powers vested in the British Crown through an appointed Governor. The Governor has reserved powers in respect of legislation, and is responsible for external affairs, offshore finance, defence and internal security (including the police force) and aspects of the public service. The Governor chairs the Executive Council (Cabinet) which has general control of the direction of Government. The Premier, along with five other Ministers, are also Members of the House of Assembly.

Elections are held every five years. In 2020, the elections were fought primarily between the Anguilla United Front (AUF) and the Anguilla Progressive Movement (APM, previously known as the Anguilla United Movement). In these elections, the APM, led by Dr Ellis Webster won the election and took power from the Anguilla United Front. In total, APM won seven seats, and the AUF won four seats. None of the independent candidates were elected.

COVID-19 PANDEMIC

Due to the Covid-19 pandemic, there was a period of uncertainty as to when the election would take place. Section 64 of the Constitution requires that a general election should take place within two months of the dissolution of the House of Assembly. On 3 April 2020, the Privy Council made the Anguilla (Coronavirus) (General Election Postponement) Order 2020³, which

³ Caribbean and North Atlantic Territories Statutory Instrument 2020 No. 407

provided for suspension of the application of Section 64 and allowed elections to take place within an extended period of four months after dissolution. The Order would only come into force if the Governor were to sign it. The Governor stated he would only do this if he decided the circumstances of the pandemic required it.⁴ The House of Assembly was dissolved on 8 May. By 13 May Anguilla had been Covid-19 free for 45 days. The Governor did not sign the Order and on 3 June he issued a Writ of Election to each of the returning officers. It was declared that the election would take place on Monday 29 June, in accordance with the Constitution.

Restrictions were put in place which had an impact on the activities of many stakeholders prior to polling day. Gatherings were prohibited, which meant that political parties and candidates could not undertake campaigning activities such as holding rallies. The Supervisor of Elections was also unable to conduct some planned voter education activities. On 5 June the restrictions on gatherings were ended, so campaigning and voter education activities in full could commence.

As Anguilla had been declared virus-free more than two weeks in advance of the election, social distancing or other public health measures were not required during polling and counting. Due to Covid-19, additional voting machines had been acquired and were put into service, expediting the polling process. Borders were closed, with an extremely limited exception for repatriation, with a 14-day quarantine requirement. As a result, registered voters who might have otherwise travelled to Anguilla to vote did not do so, resulting in a lower voter turnout than usual.

In a laudable response to the restrictions on international election observation imposed by the pandemic, the Governor published temporary regulations which enabled a domestic observation exercise. This was necessary as there is no mention of domestic observers in the current legal framework. The Elections (Anguilla Independent Citizens Observers Team) Regulations, 2020⁵ provided for observation activities between 23 and 30 June.

Recommendation 1: Amend section 55 (2)(f) of the Elections Act, 2019 to include domestic observers as persons permitted to be present in polling stations, in addition to international observers.

LEGAL FRAMEWORK

The legal framework for the general elections in Anguilla is to be found in two principal instruments:

- the Anguilla Constitution Order 1982 (Statutory Instrument 1982 No. 334 UK), as amended;
- and the Elections Act, 2019, as amended by the Elections (Amendment) Act, 2020.

⁴ [Press Release](#) from HE the Governor Tim Foy (7 April 2020) "The Timing of the Anguilla's General Election"

⁵ Regulations of Anguilla 58/2020, Act No. 18/2019, Elections Act

The Election Registration Regulations, 2020 add detail to the legislative provisions. The jurisprudence of the courts of Anguilla also contains an element of electoral law, regulating the interpretation of the residency rules which determine eligibility to vote.

A large volume of the legal rules is entirely new, being implemented for the first time during these elections. The Constitution was amended twice in 2019, with the principal electoral changes having come into force on 14 May 2019. It is not possible to read the Constitution as a single document, as the amendments, including one from 1990, have not been consolidated. This is regrettable as it can be a daunting prospect for the non-lawyer to establish the law on some specific points.

Recommendation 2: Consolidate constitutional amendments and ensure the availability of the up-to-date and accurate documents on official websites.

The Elections Act, 2019 came into force on 31 July 2019, with the Elections (Amendment) Act, 2020 becoming law on 12 March 2020, less than four months before the election. The Registration Regulations became law on 10 February this year, just a month earlier. The enactment of law in such close proximity to the election left little time to ensure that all stakeholders and members of the public were properly informed of the legal changes. A change in the law so close to the election is also not considered to be good practice internationally, with a year being the accepted time-limit for amendment in advance of elections. It is important that prevailing law be clear and certain well in advance of elections.

Constitutional and electoral reform has been on the political agenda in Anguilla for several decades. A Constitutional and Electoral Reform Commission published a report in 2006⁶, while in 2017 the Anguilla Constitutional and Electoral Reform Committee also published a report, advancing many proposals for change. Negotiations between the UK and Anguilla have taken place from time to time, most recently in November 2019. These discussions are expected to recommence in the post-election period. A substantial number of proposals for electoral reform were separated from the broad constitutional reform agenda and were implemented last year. A few commentators voiced opposition to what was perceived to be piecemeal reform, fearing the abandonment of the wider constitutional reform enterprise.

International standards for human rights also form part of the legal framework for Anguillan elections. While it is arguable that, as a UK Overseas Territory, the legal obligations of the UK are also applicable in Anguilla, the present-day practice is to extend treaties to overseas territories on an individual basis. Several treaties with rights of political participation have been extended to Anguilla, including, most recently, the Convention on the Elimination of All Forms of Discrimination against Women. The Universal Declaration of Human Rights and other general principles of international law also apply without requiring incorporation. Several treaties

⁶ Constitutional & Electoral Reform Commission Report (25 August 2016) available at http://www.gov.ai/constitutional_reform.php

relevant to elections have yet to be extended, including the International Covenant on Civil and Political Rights (which details obligations to respect political participation rights) and the Convention against Corruption (relevant to regulation of campaign finance).

Recommendation 3: Review the status of core human rights treaties in Anguilla. Consider extension of additional instruments to Anguilla, such as the International Covenant on Civil and Political Rights and the Convention against Corruption.

The conduct of elections in Anguilla is broadly in compliance with the human rights standards and universal principles that are applicable to Anguilla. The right of political participation was well-respected, with the principal exception being the absence in equality in the weight of the vote as there were vast differences in constituency size. Prisoners were deprived of the right to vote, while the right to stand for election was circumscribed for public servants. Otherwise, the political freedoms of expression, association, assembly and movement were well respected. Excellent efforts were made to vindicate the right to vote of persons with disabilities.

ELECTORAL SYSTEM

The House Assembly is comprised of both directly elected and *ex-officio* members. The Speaker is a member, as well as the Attorney-General and the Deputy Governor. The Constitution provides that not less than seven members are to be elected from single-member districts (Article 35(2)(c)), as well as an indeterminate number to be elected from a single island-wide constituency (Article 46(2)(b)). The actual number of members is to be regulated by legislation, which at present is the Elections Act, 2019. This Act provides for Anguilla to be divided into:

- seven single member districts (as had previously existed);
- and one single island-wide electoral district which elects four members to the House of Assembly (these seats were newly created since the last election in 2015)

There is a total of eleven directly elected members of the House of Assembly.

BOUNDARY DELIMITATION

The boundaries of the seven single electoral districts in Anguilla were delineated in 1972. Since then, no mechanism has been created to review these boundaries to permit any adjustment to reflect demographic fluctuations. The current number of voters per district varies from 1,053 registered voters in district 2 (Sandy Hills) to 2,660 in district 4 (South Valley). This disparity in district magnitude does not comply with the principle of “one person, one vote,” enshrined in the International Covenant on Civil and Political Rights,⁷ as the votes in different districts do not have

⁷ “The principle of one person, one vote, must apply, and within the framework of each State’s electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries

the same voting weight. According to international best practice, the size of each electoral district should not deviate by more than 10 percent from the average district size.⁸

Proposals to undertake an island-wide enumeration of electors and to establish an Electoral Boundary Commission are set out in the Report of the Anguilla Constitutional and Electoral Reform Committee published in 2017.⁹ It is anticipated that the House of Assembly will continue to undertake the process of constitutional and electoral reform. In order to create equality among voters, a focus on the proposals to establish a boundaries commission and to review district sizes is crucial.

The draft Electoral Boundaries Commission Bill contained in the Proposals for Constitutional and Electoral Reform (2017 Report) proposes an electoral boundary review following the completion of a national census. This report states that “the Electoral Boundary Commission shall seek to ensure that electoral districts contain, so far as is reasonably practicable, approximately equal numbers of persons qualified to be registered as voters(...) and based on any last previous national census findings or report; but a Commission may depart from this principle to such extent as it considers expedient in order to take into account (a) the density of the population (...); (b) the means of communication and (c) geographical features.”¹⁰

The list of principles for electoral boundary delineation contained in the 2017 Report could be expanded to take into account good international practice.¹¹ The report suggests using population data as the basis for boundary review. In international practice, district boundaries are based either on statistical data about the entire population or on the population of registered voters. It can be argued that members of the House of Assembly elected in single member districts represent the entire population of the district (including minors and un-qualified persons) rather than just the people qualified to register as voters.

To cater for fluctuations in district magnitude, electoral boundary reviews should take place periodically, with a requirement that boundaries might be adjusted expeditiously if sudden changes occur due to urban development or natural disaster. However, it is essential for the credibility of the electoral process that electoral districts are drawn up well in advance of the election in which they are to apply. Some countries prohibit any amendments to electoral

and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely” General Comment 25 of the United Nations Human Rights Committee available at <https://www.refworld.org/docid/453883fc22.html>.

⁸ The Venice Commission’s Code of Good Practice in Electoral Matters permits 15 percent deviation from the norm in special circumstances (such as to protect a concentrated minority or in case of a sparsely populated administrative entity).

⁹ Constitutional and Electoral Reform Committee (2017), Proposals for Constitutional and Electoral Reform, available at http://www.gov.ai/documents/anguilla_constitutional_electoral_reform.pdf

¹⁰ Article 87 (2) on the Electoral Boundary Commission Bill.

¹¹ See section 2.1. and 2.2. of the Code of Good Practice in Electoral Matters of the Council of Europe’s Commission for Democracy through Law (Venice Commission) available at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev2-cor-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev2-cor-e)

boundaries in the year before an election, to avoid speculation that late amendments might serve immediate political interests.¹²

Recommendation 4: Plans for the establishment of a boundary commission should be advanced in order to ensure respect for the equality of the vote. The law should require that boundaries of electoral districts are drawn in such a manner that departure from the norm permitted does not exceed 10 percent (and no more than 15 percent, except in special circumstances). Electoral boundary reviews should take place no less than once every 10 years and be completed no later than one year before a general election, in line with best international practice.

THE RIGHT TO VOTE

The right to vote is set out clearly in Article 45 of the Constitution. This states that the right to vote is contingent upon being registered to vote. Article 43(1)(c) further states that it is required to be resident in the electoral district of registration. This residence requirement has long provoked controversy due to the ambiguity generated by the absence of any definition of “resident”. Anecdotal information offered to the EEM was that a high proportion of Anguillians living outside the territory remain on the voter register and habitually return to vote, the so-called “tourist vote”. Some estimates were as high as 40% of registered voters.

The definition of residence was the subject of judicial interpretation during this election. Objections were made against decisions of the Supervisor of Elections to include 36 putative voters in the voter register. All of the objections were upheld in the High Court, which delivered guidance as to how to establish residence. The term “residence” was defined¹³ to mean that the person “*must have a permanent and settled presence in that electoral district. The meaning to be ascribed to the term residence used in the statute means exactly what it says, the person must be physically resident in that district as opposed to having some transient purpose there.*”

While these rulings will ensure clarity for future voter registration, it would be also be welcome if the test for residence were to be given greater legislative elaboration to ensure certainty and consistency in decision-making.

Recommendation 5: Draw upon the procedural and substantive guidance of the High Court to clarify both legislative provisions and rules of practice on registration to vote. Consider revision of the requirements for voter registration, to ensure that applicants for first time registration, as well voters seeking to change district, appear in person before the Registration Officer, as required by the High Court ruling in the Roberts v Supervisor of Elections case. An assessment of compliance with the residence requirement, based on objective and verifiable proof, should be included.

¹² The Venice Commission’s Code of Good Practice in Electoral Matters, Explanatory Report paragraphs 63-67.

¹³ Roberts v Supervisor of Elections for Anguilla, June 12th 2020, High Court, Anguilla Circuit

Prisoners are denied access to voting rights. The Constitution provides, in Article 44(1), that persons who have been sentenced to prison for more than 12 months are disqualified from registering to vote. In addition, Article 45(2)(c) provides that nobody who is in lawful custody may vote, regardless of registration. There were fifty inmates detained in prison in Anguilla during the election, about half of whom were on remand, not having been on trial yet. This deprivation of voting rights is extremely broad and would violate¹⁴ the European Convention on Human Rights, which considers that broad restrictions of this nature disproportionately interfere with the right to vote.

Recommendation 6: Review the disqualifications from voting imposed on persons in custody in order to vindicate the right to vote.

VOTER REGISTRATION

Voter registration in Anguilla is individual, active and continuous, with updated lists of voters published on a quarterly basis.¹⁵ The Elections Registration Regulations, 2020, prescribe that persons eligible to register as voters may appear in person at the Central Electoral Office and submit an application to be registered. If the Electoral Registration Officer is satisfied the person is qualified, the Officer will issue the person with a provisional certificate of registration in the relevant electoral district. Voters are listed with their name, address and occupation, and a consecutive number unique in their electoral district. The number of persons registered on voter lists for the 2020 general elections totaled 11,951, which is 1,024 or 9.4 percent more voters than in the 2015 general election.

Neither the Elections Act nor the Elections Registration Regulations stipulate what kind of proof must be furnished to establish that an applicant is eligible for voter registration. There is no guidance on verification that the legal criteria for ordinary residence in the electoral district have been met. As pointed out in the CPA BIMR EOM Final Report on the 2015 General Elections, the lax regulation of voter registration procedures has meant that there has been little or no scrutiny of Anguillians residing abroad, allowing them to vote in significant numbers. It has been estimated that up to 40 percent of voters on the lists for the 2020 general elections are residing overseas or on neighboring islands. This underscores the need to conduct a nationwide enumeration of voters, followed by the compilation of new voter lists for each electoral district (in tandem with revision of boundaries).

The introduction of voter identification cards for the 2020 general elections served multiple purposes. Firstly, the cards were intended to ease the identification of voters and speed up the processing of voters in polling stations on election day. All polling stations were equipped with

¹⁴ Hirst v UK (No.2) European Court of Human Rights, [Application 74025/01](#), October 6th 2005

¹⁵ Sections 22 and 23 of the Elections Act, 2019, contain elements of collective registration that run contrary to the principle of individual registration. Under these legal provisions, the Supervisor of Elections may request householders or owners of premises to give information about members of their households or tenants for the purpose of compiling the preliminary list of voters. This practice may facilitate the registration of persons who are de facto absent from the island or otherwise ineligible to be registered as voters.

voter card readers that kept an electronic record that a voter had voted. Secondly, the cards were introduced as a deterrent against multiple voting, and to replace the procedure of finger inking which was applied in the 2015 elections due to the poor quality of voter lists.

The Central Electoral Office ran an information campaign from 2018 to encourage voters to obtain a voting card. As of 1 July, 2020, some 6,500 voter cards have been issued. The voter card was not required to vote, but served as one form of voter ID.

Following revision, the preliminary list of voters becomes the voter list for the election, which must be published prior to nomination day. As also occurred in 2015, the publication of the voter list for each electoral district was late, in breach of legal provisions.¹⁶ This meant that the revision of the voter lists for the 2020 general elections continued after the registration of candidates. The final numbers of registered voters, disaggregated by polling station and by electoral district, were not made available to the public on any of the online platforms supported by the Central Electoral Office prior to the advance voting day. This limited the transparency of the voter registration process.

ELECTION ADMINISTRATION

The CPA BIMR EEM welcomes the introduction of a permanent election administration body, under Part 2 of the Elections Act, 2019, thereby fulfilling a key recommendation of the CPA BIMR Election Observation Mission to Anguilla in 2015. The election administration consists of a permanent Central Electoral Office with five employees at present. The Central Electoral Office seems to enjoy general respect among stakeholders for carrying out its activities in an independent and impartial manner and for its readiness to provide information to voters and contestants.

The duties of the Supervisor of Elections, head of the Central Electoral Office, include the exercise of general direction and supervision over the registration of voters and the administration of elections. The Central Electoral Office conducted training for election administration staff and designed an education programme for voters. Its outreach messages focused on informing voters on innovative technology, reminding them of the need to update their information in the voter register, to obtain a voter identification card, and instructing them on how to complete the ballot and cast their vote using the electronic tabulation machines (ballot scanners).

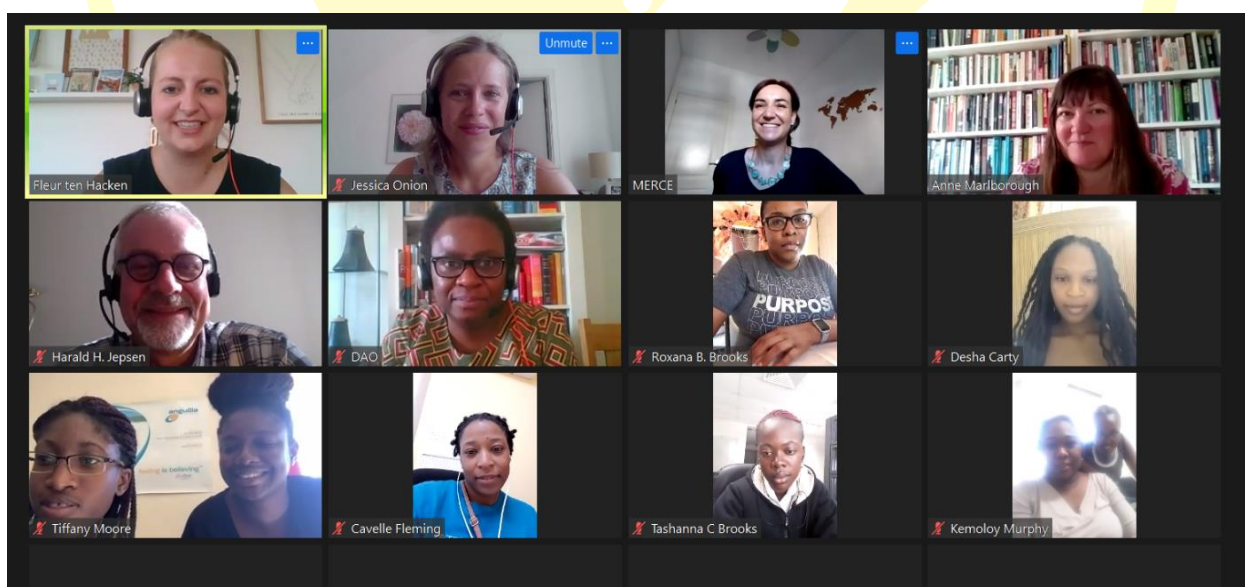
The restrictions imposed to combat the spread of Covid-19 interrupted the election administration's planned public demonstrations of the ballot scanners. However, these and other public outreach activities resumed in early June once restrictions were lifted. The election administration should be commended for producing engaging public service announcements

¹⁶ Under section 32 (b) of the Elections Act, the revised preliminary voter lists must be published in the Gazette (and elsewhere) within three days following the issuance of the writs of the election, i.e. no later than on June 6, 2020. According to the Anguilla Official Gazette vol. 47 Tuesday 23 June, 2020, the voter lists for the 2020 general elections were published in conspicuous places in each electoral district on June 19. Regrettably, the notice in the Gazette did not give the final number of voters on the revised preliminary voter list for each district.

and making these available to the public on online platforms. Instructions on how to mark and cast ballots using the new electronic devices were also available in Spanish.

The Central Electoral Office made an effort to explain the new ballot design and the possibility for voters to mark the ballot with up to five votes (one vote for a candidate in their single member district and four votes for at-large candidates). Unfortunately, the official website of the Central Electoral Office contained partly obsolete and therefore potentially misleading information in this regard.¹⁷ In addition, the “Handbook for Agents & Candidates, 2020 General Elections” posted on the website appeared to be an unedited version of the 2015 edition, which had no reference to the innovations for these elections such as voter cards, ballot scanners and at large candidates. The late introduction of the new voting technology, the resignation of the former Supervisor of Elections in February 2020 and the Covid-19 pandemic are all factors that had a negative impact on the ability of the election administration to properly prepare a comprehensive voter information campaign. However there was no suggestion that any stakeholders were unfamiliar with the rules and practices applicable to voting.

Recommendation 7: New procedures and new voting technology should be introduced well in advance of an election to, among other reasons, give the election administration enough time to update its instructions and produce comprehensive public outreach material.



The Election Observation Team meeting with the Anguilla UWI Guild of Students

¹⁷ E.g. the answer to the FAQ “What happens if I mark more than one candidate on my ballot” is: “Your ballot will be considered spoiled and not be counted”.

TECHNOLOGICAL INNOVATION

The electronic tabulation machines used for the first time in these elections are in fact ballot scanners. They are attached to the ballot box in each polling station and are programmed to tabulate the votes and keep a record of each individual vote on a memory stick. If a voter deposits a ballot with less or more markings for candidates than allowed, the device will notify the voter. In both cases, the device will provide one of two options to the voter, either to accept the ballot and cast it or to reject it and return it to the voter. In the latter case the voter may either hand in the ballot as spoiled and get a replacement, or, in the case of an under-marked ballot, go back the polling booth and put additional marks on the ballot paper.

The voting machines were programmed not to allow voters to cast an unmarked ballot (blank vote). A procedure for casting a blank ballot is set out Section 56A of the Elections Act, 2019, as amended. The omission of the option to actually cast such a ballot falls short of the requirements of the law and also limits voter choice. Furthermore, it opened an unwelcome potential for breaches to the secrecy of the vote as voters inclined to cast a blank vote were compelled to seek out information on this topic during the very act of polling.

Recommendation 8: The options available to voters should include the option to cast an unmarked ballot, in effect acknowledging the wish to the voter to abstain in secrecy. The electronic tabulation machines should be programmed accordingly. Information about the procedure for casting an under-marked ballot should be communicated to voters well in advance of the election.

The election administration is to be commended for conducting public demonstrations of the ballot scanners in each electoral district in the lead up to elections. Surveys of the voter experience of the ballot scanners are planned after the elections, which is also commendable.

The electronic ballot machines were used for the first time during advance voting. Both the machines and the memory tapes with the record of the vote were kept under police protection until the end of polling on election day. The election administration wisely chose not to disclose any preliminary data from the advance voting, including voter turnout.

THE RIGHT TO STAND FOR ELECTION

Since the last elections, the protection of the right to stand for election has significantly improved. Constitutional disqualifications have been removed which had prohibited dual citizens and ministers of religion from running for election. The Constitution has also been amended to dilute the previous requirement that a candidate either be born in Anguilla or have a parent born there. Article 36(b) has extended the breadth of the provision to include someone of whom one of the grandparents was born in Anguilla. This requirement, however, continues to be overly restrictive of the right to stand for election.

Public servants continue to be barred from running for election, by virtue of Article 37 of the Constitution which disqualifies any person who holds any office of emolument in the service of the Crown. This means, in effect, that an individual must resign in order to compete. While the majority of stakeholders viewed this as an important measure to maintain the impartiality of the public service, the requirement to resign is unreasonably burdensome, as this involves the loss of a livelihood. Persons may reapply for employment, but only if and when a post arises, without a guarantee or re-engagement. A leave of absence would be preferable.

Recommendation 9: Consider amendments to the Constitution to reduce the restrictions on standing for membership of the House of Assembly.

CANDIDATE REGISTRATION

Thirty-two candidates were nominated to stand for election on 12 June 2020. The registration of candidates was reportedly well managed, with no complaints filed. All of the nominated candidates participated in the elections, 17 in the single-member districts and 15 in the island-wide at-large district.

Candidates were free to run independently or as a member of a political party, competing in one of the seven single-member districts or in the island-wide district. In order to stand, candidates had to be nominated by at least two voters registered in the electoral district for which the candidate sought election. A nomination fee of \$1,000 East Caribbean Dollars (circa £300 GBP) had to be deposited, a sum which is refunded if elected or if the candidate receives more than one-eighth of votes cast in the relevant district.

Candidates represented two political parties; the Anguilla United Front (AUF), led by Victor Banks, and the Anguilla Progressive Movement (APM), led by Dr. Ellis Webster. Both parties nominated 11 candidates, a candidate in each of the seven districts and four for the island-wide contest. In addition, 10 independent candidates competed, three at district level, and four in the at-large level. Nine women stood for office, two for AUF, three for AUM and four independents, which was a record high, but this still represented less than one third of the total number of candidates running for office.

There is no legal regulation of political parties in Anguilla and they lack legal personality. One of the consequences of this is that political parties do not have accountability for the actions of their representatives and supporters. Neither do parties have any role in candidate nomination. The political party affiliation of candidates is not mentioned on the ballot paper, although a symbol indicative of the party may be included. Additionally, there are no rules governing party structures or operations, making it difficult to monitor party finance.

Recommendation 10: The introduction of legal provisions to regulate the formal registration of political parties ought to be considered.

ELECTION CAMPAIGN

The election campaign was highly competitive, with a record number of 32 candidates seeking seats. Candidates and political parties campaigned freely and peacefully, with no reports of impediments to campaign activities. Restrictions on movement and assembly were imposed temporarily in response to Covid-19, but were lifted in early June. There is no official start date of the campaign. Election campaign activities commenced in 2019 but the campaign only began in earnest after the Covid-19 constraints were lifted.

Candidates employed traditional campaign methods, such as door to door canvassing, billboards, public gatherings, rallies and motorcades. They also developed a range of novel strategies, with an intense use of social media and virtual platforms. Candidates held virtual rallies, online debates and recorded videos published on their own websites and on their Facebook accounts.

The standard requirements of public order law applied to the conduct of the election campaign. Police notification three days in advance of the event was necessary for marches and certain public gatherings. No events were refused authorisation. The Elections Act, 2019, bans campaign activities on election day. The Act also prohibits a wide range of electoral offences, including bribery, treating, and undue influence. There were no reports of any infringements of the campaign rules. Public servants were reminded to maintain their impartiality during the election campaign.

Although instances of negative campaigning and inflammatory posts were noted, the tone of the campaign was generally assessed to be of a higher standard and more issue-based than during the last election. This change was due in large part to debates in all districts organised by the National Youth Council. Stakeholders were uniform in their expressions of appreciation for this worthwhile initiative. The candidates who accepted the invitation to participate in the debates addressed topics of sustainable development and specific district issues. Other campaign issues included the economy, reconstruction, employment and the banking system.

CAMPAIGN FINANCE

The legal framework does not at present contain any regulation of campaign finance. In these elections, as in the past, there were no limits on campaign contributions or on expenditure. There was also no disclosure requirement to allow public scrutiny of the sources of funding and the use of resources for campaigning. The Elections Act, 2019, does, however, enable the regulation of campaign finance, as it includes a provision which permits the Governor to make regulations in the matter.

Section 97 (1) of the Elections Act creates the legal architecture of a campaign finance regulatory regime. It allows for rules “with respect to the financing of election campaigns, including expenses and the making of payments by or on behalf of a candidate, whether before, during or after an election”. It also allows for establishing expenditure thresholds, as well as recording and

verification of expenses. It is to be hoped that, with this provision in place, progress may be made to ensure that regulation of campaign finance is in place for the next elections in Anguilla.

The election campaign is financed by private funds, from personal resources and fundraising activities of candidates, or from contributions from their political parties. Contestants did not report any financial shortage that prevented them from reaching out to voters, but all concurred that the campaign was expensive.

Recommendation 11: It is recommended that Anguilla develops a framework for campaign finance regulations incorporating principles of transparency and accountability. Campaign finance rules should cover campaign donations, expenditure, reporting, auditing, and the publication of data to uphold the right of voters to make an informed choice.



A selection of billboard advertising campaigns for candidates across the island.

MEDIA

The media landscape is diverse and coverage vibrant. There are a dozen radio stations, one weekly newspaper, The Anguillan, and a TV station, TV Anguilla. Radio is the main source of news on the island and Radio Anguilla is the only state-run media outlet. All other print, broadcast and online media are privately owned.

Freedoms of expression, opinion and access to information are constitutionally guaranteed. There are no media guidelines or regulations in place for the campaign period which would oblige media to provide a minimum amount of coverage to all election contestants. Nonetheless, coverage was assessed by most stakeholders as balanced over all. Radio Anguilla, the public broadcaster, offered one hour of free airtime to all candidates and applied equal conditions for the purchase of campaign advertising. Some candidates, however, expressed concerns about unequal exposure in private media.

Traditional media provided a plurality of viewpoints through a variety of news, interviews and debates that contributed to issue-based discussions during the campaign. Much of the political discussion also took place online, where more negative campaigning and the circulation of fake news were reported to have taken place. Interlocutors noted the primacy of social media platforms, particularly Facebook and WhatsApp. Virtual campaign events and debates were broadcast on electronic media and retransmitted on social media.

PARTICIPATION OF WOMEN

The Convention on the Elimination of All Forms of Discrimination against Women was extended to Anguilla in March 2016. This was an important measure, both legally and symbolically, to reinforce the equality of women in the territory. Women have long been active in public and political life in Anguilla. There are no legal impediments to their candidature for election or any other political activities. Neither are there any positive measures in place to support the advancement of women in political life.

The election in 2015 represented historic progress for women, as four women stood for election, three of whom were elected (among the then seven elected members). Prior to this, only two women had been elected to the House of Assembly, which occurred in 1976. Many women had subsequently stood for election, but without success. The momentum towards progress continued this year, as nine women were among the 32 candidates running for office, five of whom ran in single-member districts and four in the at-large district. Four among those nine women were independent candidates, while the political parties both nominated two women. Three women won seats (amongst the total of eleven elected members); two representing the APM and one representing the AUF.

PARTICIPATION OF PERSONS WITH DISABILITIES

Significant progress was made by Anguilla in the promotion and protection of the rights of persons with disabilities during this electoral cycle. The Elections Act, 2019, in part five, included special provisions related to voting by the elderly, persons with physical disabilities and the illiterate. Assistance to vote by either a Presiding Officer or by a friend was allowed.

Advance voting was introduced in these elections, one of the primary objectives of which was to facilitate greater participation by persons with disabilities. Voters availed of the advance voting facility, in premises which were generally reported to be independently accessible for individuals with physical disabilities. The Supervisor of Elections acknowledged that there had been some difficulty in access to one room which contained four polling stations, due to crowding around a single doorway, but commented that this will not be repeated in future. Overall, the system was considerably better than before for persons with disabilities.

Recommendation 12: Consideration could be given to enabling the audio capabilities of electronic voting machines to facilitate independent voting using audio technology.

ELECTORAL JUSTICE

The right to a timely and effective remedy is an important element of an electoral process. Procedures for the resolution of disputes are well-elaborated in Anguilla throughout all stages of elections, although they are most used in the pre-election context relating to voter registration. Access to the courts is protected by law. Decisions of the Supervisor of Elections related to the inclusion of 32 people in the voter register were appealed to the High Court¹⁸. The appeals to the High Court were successful¹⁹ and orders were made to remove all 36 names from the list of voters.

There are well-detailed rules in place for the submission and conduct of an election petition to challenge the results of an election but there has never been an election petition.

ELECTION DAY

The CPA BIMR EEM was not present on the island and could therefore not observe advance voting and election day procedures in polling stations. Thanks to the online transmission from the counting center, members of the EEM were to some extent able to follow the results tabulation process, including the electronic recount of votes in some election districts.

ADVANCE VOTING

Advance voting was organised on Friday 26 June, between 9 am and 5 pm, in four locations across the island, in line with legal requirements.²⁰ Registration for advance voting was available to voters with a physical disability, voters aged 70 and above, as well as to essential workers on duty on election day, such as medical workers, members of the police and election officials. A total of 744 voters were registered on the voter lists for advanced voting. The premises for pre-polling were independently accessible to voters with physical disabilities.

The Anguilla Independent Citizen Observers monitored advance voting in all four polling locations, as well as the opening and voting in all 20 polling stations throughout election day and the counting in the tabulation center. Their preliminary statement pointed to some problems with overcrowding, noise and disorder in the advance voting center where polling stations for four electoral districts were co-located in the same premises.

¹⁸ The Elections Act 2019 provides that appeals against decisions of the Supervisor of Elections are to be taken to the High Court. Under the previous Elections Act the appeals had been to the Magistrates' Court, a court of first instance.

¹⁹ *Roberts v Supervisor of Elections for Anguilla*, June 12th 2020, High Court, Anguilla Circuit

²⁰ The closing hours for the advance polls were extended from 4 to 5 pm, in line with section 60 (5) of the Elections Act, as amended. The notice about this was published in the Official Gazette on June 23, 2020.

VOTING

Voting was conducted in 20 polling stations, established in the seven electoral districts between 6 am and 7 pm on Monday 29 June. Media did not report any major incidents on election day.

Voter turnout was reported at 7,263 voters or 60.77 percent, which is lower than in previous general elections (82.05 percent in 2010 and 73.14 percent in 2015). One explanation for the lower participation was that many of those registered who reside overseas did not return to Anguilla to vote due to the border closing and travel restrictions imposed to mitigate the spread of Covid-19. The turnout figures indicate, nonetheless, that Anguillians residing on the island actually turned up at the polls to vote in significant numbers.

The number of spoiled ballots was 372 or 5.1 percent, which is a relatively high figure, indicating that one in twenty voters made an error on their ballot and requested a replacement. Increased efforts to familiarise voters with the new ballot design and voting methods could mitigate this difficulty in future.

The intake of material from polling stations and the tabulation of results took place in the House of Assembly in the presence of candidates, agents, citizen observers and media. Video from the tabulation centre was broadcast live on the Government of Anguilla website, as well as being projected on screens outside the centre, which allowed the public to follow the entire tabulation process. All results were concurrently announced by the respective Returning Officers, and the winners of the seats in the House of Assembly declared.

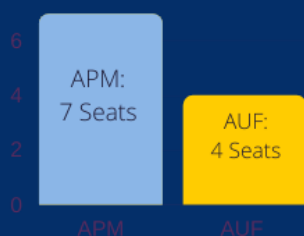
The electronic tabulation significantly speeded up the processing and declaration of results. The Anguilla Progressive Movement (APM) contested the results of the vote in electoral districts 2, 3 and 7 and filed for recounts. These were granted and commenced immediately. The recounts were done electronically by inserting all valid votes into the electronic tabulation machines. The result of all recounts confirmed the initially announced results. The APM subsequently sought a further manual recount of district 3 (Valley North), which took place the following day. This re-confirmed the initial results.

The full match of the results in all four recounts with the initial results indicated the accuracy of the new tabulation technology. Anguilla saw a smooth transition from manual to electronic tabulation, which is important for maintaining public trust in the election process.

ELECTION RESULTS

Anguilla Election Results

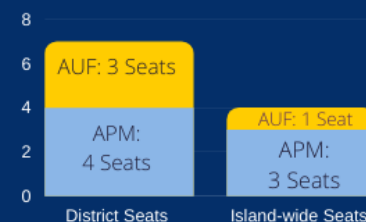
2020 Election Results



Gender Breakdown



Breakdown of results by district and island-wide seats



2015 Election Results



The size of the House has increased from 7 elected members in 2015 to 11 elected members in 2020.



RECOMMENDATIONS

1. DOMESTIC OBSERVERS

Amend section 55 (2)(f) of the Elections Act, 2019 to include domestic observers as persons permitted to be present in polling stations, in addition to international observers.

2. CONSTITUTION

Consolidate constitutional amendments and ensure the availability of the up-to-date and accurate documents on official websites.

3. HUMAN RIGHTS TREATIES

Review the status of core human rights treaties in Anguilla. Consider extension of additional instruments to Anguilla, such as the International Covenant on Civil and Political Rights and the Convention against Corruption.

4. BOUNDARY DELIMITATION

Plans for the establishment of a boundary commission should be advanced in order to ensure respect for the equality of the vote. The law should require that boundaries of electoral districts are drawn in such a manner that departure from the norm permitted does not exceed 10 percent (and no more than 15 percent, except in special circumstances). Electoral boundary reviews should take place no less than once every 10 years and be completed no later than one year before a general election, in line with best international practice.

5. VOTER REGISTRATION

Draw upon the procedural and substantive guidance of the High Court to clarify both legislative provisions and rules of practice on registration to vote. Consider revision of the requirements for voter registration, to ensure that applicants for first time registration, as well voters seeking to change district, appear in person before the Registration Officer, as required by the High Court ruling in the Roberts v Supervisor of Elections case. An assessment of compliance with the residence requirement, based on objective and verifiable proof, should be included

6. RIGHT TO VOTE

Review the disqualifications from voting imposed on persons in custody in order to vindicate the right to vote.

7. ELECTION ADMINISTRATION

New procedures and new voting technology should be introduced well in advance of an election to, among other reasons, give the election administration enough time to update its instructions and produce comprehensive public outreach material.

8. VOTER ABSTENTION

The options available to voters should include the option to cast an unmarked ballot, in effect acknowledging the wish to the voter to abstain in secrecy. The

electronic tabulation machines should be programmed accordingly. Information about the procedure for casting an under-marked ballot should be communicated to voters well in advance of the election.

9. RIGHT TO STAND

Consider amendments to the Constitution to reduce the restrictions on standing for membership of the House of Assembly.

10. POLITICAL PARTIES

The introduction of legal provisions to regulate the formal registration of political parties ought to be considered.

11. CAMPAIGN FINANCE

It is recommended that Anguilla develops a framework for campaign finance regulations incorporating principles of transparency and accountability. Campaign finance rules should cover campaign donations, expenditure, reporting, auditing, and the publication of data to uphold the right of voters to make an informed choice.

12. PARTICIPATION OF PERSONS WITH DISABILITIES

Consideration could be given to enabling the audio capabilities of electronic voting machines to facilitate independent voting using audio technology.

ACKNOWLEDGEMENTS

The CPA BIMR Election Expert Mission wishes to express its gratitude to the authorities of Anguilla, election officials, candidates and to the people of Anguilla for their cooperation and assistance during the course of the virtual Mission.

For further information about this Mission, please contact 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.

For more information about these services, please contact the CPA BIMR Secretariat at cpauk@parliament.uk.



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