



TURKS & CAICOS ISLANDS GENERAL ELECTION

FEBRUARY 2021



CPA BIMR ELECTION EXPERT MISSION FINAL REPORT

CONTENTS

EXECUTIVE SUMMARY	2
INTRODUCTION TO MISSION	3
BACKGROUND	4
COVID-19 PANDEMIC	4
LEGAL FRAMEWORK	5
ELECTORAL SYSTEM	7
BOUNDARY DELIMITATION	8
ELECTION ADMINISTRATION	9
THE RIGHT TO VOTE	10
VOTER REGISTRATION	12
THE RIGHT TO STAND FOR ELECTION	12
CANDIDATE REGISTRATION	14
ELECTION CAMPAIGN	14
CAMPAIGN FINANCE	15
MEDIA	16
SOCIAL MEDIA	17
PARTICIPATION OF WOMEN	18
PARTICIPATION OF PERSONS WITH DISABILITIES	19
ELECTORAL JUSTICE	19
ELECTION DAY	20
ELECTION RESULTS	20
RECOMMENDATIONS	21

EXECUTIVE SUMMARY

- **The Commonwealth Parliamentary Association British Islands and Mediterranean Region (CPA BIMR) conducted a virtual Election Expert Mission to the Turks and Caicos Islands General Election in February 2021.** 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.
- The legal framework in the Turks and Caicos Islands that regulates the electoral process provides a good basis for the conduct of elections in compliance with the international legal obligations of the territory. The civil and political rights pertaining to elections, including the right to vote and to stand for election, are protected, as well as the freedoms of assembly, association and expression. However, equality in the weight of the vote is not protected, as constituency sizes varied significantly despite a constitutional imperative of such equality.
- CPA BIMR was pleased to note that the report of the Election Observation Mission in 2016¹ was cited as a source of some of the amendments which were introduced by the Elections (Amendment) Ordinance 2020. Some of the reforms to polling day practice, for instance in relation to the inking of the finger of the voter and the standardisation of the layout of polling stations, were influenced by recommendations made in that report.
- There were severe differences amongst the numbers of voters registered in each electoral district. It is arguable, therefore, that that electoral boundaries have not been drawn in compliance with the Constitution of the Turks and Caicos Islands. In addition, the differences in numbers of voters per elected representative undermine the principle of equality of the suffrage and the equal weight of the vote.
- The principal qualifications for voting are that a voter must be a Turks and Caicos Islander; be aged eighteen years or over; and resident in the islands. Naturalisation is largely inaccessible to many migrants who reside in the territory. At present, just over one third of the population are believed to hold Islander status.
- The process of voter registration is active, requiring the voter to make an application for inclusion in the register of electors. There was a period of more than fourteen months between the deadline to apply to vote and the date on which that vote was to be cast. This is an excessive delay, which may have disenfranchised some potential voters.
- **The CPA BIMR Election Expert Mission offers 10 recommendations in this report to enhance the conduct of elections in the Turks and Caicos Islands and to bring it more fully into line with international obligations and standards for democratic elections.** Some recommendations re-emphasise previous recommendations from the 2016 CPA BIMR Election Observation Mission report that have not yet been addressed.

¹ The CPA BIMR 2016 report is available on: <https://www.uk-cpa.org/media/1940/tci-eom-2016-final-report.pdf>

INTRODUCTION TO MISSION

At the invitation of the Governor of the Turks and Caicos Islands (TCI), His Excellency Nigel Dakin CMG, the Commonwealth Parliamentary Association British Islands and Mediterranean Region (CPA BIMR) conducted a virtual Election Expert Mission (EEM) to the TCI General Elections in February 2021. The invitation was supported by the then Government and Official Opposition of TCI.

Due to the COVID-19 pandemic, the team of experts conducted the Mission virtually between 10 February and 23 February, carrying out research online, as well as undertaking interviews with a wide range of stakeholders utilising digital meeting platforms. The Mission was guided by the Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers.

The mission was composed of:

- Anne Marlborough – Legal Analyst & Team Leader (Ireland);
- Sandi Gale – Electoral Analyst (UK);
- Alex Folkes – Campaign/Media Analyst (UK);
- Juliette Penn – Regional Election Expert (British Virgin Islands);
- Fleur ten Hacken – CPA BIMR Election Coordinator (The Netherlands);
- Diana Atungire-Ocaya – CPA BIMR Election Administrator (Uganda).

This was the third time that CPA BIMR was invited to observe elections in TCI. In 2012, CPA BIMR conducted its first election observation mission (EOM) to TCI, followed by a second EOM in 2016, which resulted in the publication of a report with 11 recommendations.² CPA BIMR was pleased to note that the report of the EOM in 2016 was cited as a source of some of the amendments which were introduced by the Elections (Amendment) Ordinance 2020.



The CPA BIMR Team

The Mission conducted an independent assessment of the Turks and Caicos Islands election 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

² The CPA BIMR 2016 report is available on: <https://www.uk-cpa.org/media/1940/tci-eom-2016-final-report.pdf>

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 and civil society groups.

The Mission acknowledges its limitations, in particular the inability of members to visit the island in person and to observe the proceedings on 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 the Turks and Caicos Islands.

BACKGROUND

The Turks and Caicos Islands have the status of a British Overseas Territory. The Governor, appointed by Her Majesty the Queen, has the responsibility of appointing the Premier and a Cabinet of not more than six ministers from among the members of the House of Assembly. The House of Assembly consists of 15 elected and 4 appointed members.

The 2021 General Election to the House of Assembly was the third legislative election in TCI since the introduction of the direct interim administration by the UK in 2009. This resulted in the TCI Constitution being partially suspended and the Assembly dissolved as a result of the report of the Commission of Inquiry on corrupt practices by senior members of government.

Elections are held every four years. In 2021, the election was fought primarily between the People's Democratic Movement (PDM) and the Progressive National Party (PNP). In this election the PNP, led by Charles Washington Misick, won and took power from the PDM. In total, PNP won 14 seats, and the PDM won 1 seat. None of the independent candidates were elected.

COVID-19 PANDEMIC

The global pandemic has had a huge impact on the Turks and Caicos Islands, including in the electoral domain. A series of emergency measures was introduced to combat the spread of the virus throughout the islands. On polling day, special measures under the Public Health Ordinance were in place. The conduct of campaigning and of polling changed. A curfew was in place during the election period, with exemptions to facilitate essential service providers, including the Supervisor of Elections and polling staff on the day of the election.

In early October 2020, the Supervisor of Elections published proposals to amend the Elections Ordinance to allow for advance polling one day prior to the standard polling day. This advance voting was proposed for voters who were COVID-19 positive or under quarantine by order of the chief medical officer. This initiative was intended to diminish the risk of the virus being spread through voting. The House of Assembly, however, in a unanimous decision, rejected the proposal to introduce advance voting.

A single clause in the Elections (Amendment) Ordinance 2020, which came into effect on 11 December 2020, relates to COVID-19. Section 39A (e) provides that persons who have tested

positive for the disease, or who have been placed under quarantine, could be accorded “priority” in voting. This allowed the Supervisor of Elections to permit these persons to vote without entering a queue and/or to allocate certain times on polling day for these persons to vote. Other sections of 39A established priority for voters above the age of 70, persons with disabilities, prisoners, essential workers and election candidates.

In anticipation of advance voting, public health protocols were put in place by the chief medical officer in October 2020 to regulate the movement of voters who were COVID-19 positive or under quarantine during advance voting. These protocols were rendered useless by the absence of advance voting. The General Elections (COVID-19) Health Protocols were published on 5 February 2021 as guidelines under Regulation 18 of the Public and Environmental Health (COVID-19) (Control Measures) Regulations 2021. The content of these guidelines had been the subject of consultation with stakeholders, among which the two principal political parties, an independent candidate and the Human Rights Commission submitted observations.

The Guidelines split the polling day into three slots for different categories of voters:

1. The period from 7am to 9am was designated for the vulnerable and other priority voters throughout the islands;
2. Mainstream voters were to vote between 9am and 6pm in Providenciales and between 9am and 4pm on all other islands;
3. Voters who were in quarantine or in isolation would vote between 6pm and 9pm in Providenciales and between 4pm and 7pm in all other islands.

This is the system which was in place on polling day.



Signs explaining COVID-19 measures at a polling station

LEGAL FRAMEWORK

The legal framework which regulates the electoral process in the Turks and Caicos Islands provides a good basis for the conduct of elections in compliance with the international legal obligations of the territory. The civil and political rights pertaining to elections, including the right to vote and to stand for election, are protected, as well as the freedoms of assembly, association and expression. However, equality in the weight of the vote is not protected, as constituency sizes varied significantly despite a constitutional imperative of such equality. Procedures for complaints and appeals are provided, while corruption in campaigning is prohibited.

The fundamental elements of the electoral legal framework are to be found in the Constitution of the Turks and Caicos Islands (Statutory Instrument 2011 No. 1681 UK), which came into force on 15 October 2012, and in the Elections Ordinance of 2012, as amended. Other significant legal provisions relating to the elections are to be found in the Political Activities Ordinance, as amended, and the Publication of Donations by Political Parties Order, both of 2012, as well as in the Radio Turks and Caicos Ordinance, also of 2012. The jurisprudence of local and international

courts serves as an aid to interpretation in some instances of ambiguity in statutory and constitutional law.

The Elections Ordinance has been amended four times, most recently in December 2020. The Elections (Amendment) Ordinance 2020 was passed by the House of Assembly little more than two months prior³ to the general election. This represents poor practice, as international good practice indicates that changes to the law should be made not later than one year prior to an election. This would enable stakeholders to become familiar with the new law and would protect legal certainty. The most significant changes to the law on this occasion, however, related to the introduction of an electronic tabulation system for future elections, inapplicable to the present election.

Several important technical changes were introduced by the Elections (Amendment) Ordinance, 2020, which effect changes to the law addressing several of the recommendations offered by the CPA BIMR in 2016.⁴ The changes are not so wide-ranging, however, as to change the substance of the law, but practical details have been improved. The amendments relate to the conduct of polling and the procedures to be followed:

- The insertion of Section 32 (2A) to the Elections Ordinance created the requirement that every polling station shall have a standard layout, in line with a recommendation (number 8) of 2016.
- A series of amendments to Section 45 has given effect to recommendations dealing with voting procedures and the issuing of the ballot paper (9 and 10). The former requirements of writing the date on the ballot counterfoil and of checking for the initials of the presiding officer on the counterfoil have been removed. The rules on the application of ink to the finger of the voter have also been clarified.
- Additionally, a new provision requiring the display of results outside polling stations has been added (recommendation 11).

International human rights standards also form part of the legal framework for elections in the Turks and Caicos Islands. Several treaties with rights of political participation have been extended to the territory, including the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Racial Discrimination. The European Convention on Human Rights and Fundamental Freedoms, including the right of individual petition to the European Court of Human Rights, is also binding.

As was noted by the CPA BIMR in 2016, two treaties containing elements relevant to elections have yet to be extended to the Turks and Caicos Islands, namely, the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention against Corruption. The existing law on the status and rights of persons with disabilities in Turks and Caicos does not meet the high standards of the CRPD, indicating that law reform would be necessary as a prerequisite to

³ Ordinance 29 of 2020 commenced on 11 December 2020; preparation of a consolidated version of the Elections Ordinance and related legislation was approved by the Governor on 21 December 2020.

⁴ The CPA BIMR 2016 report is available on: <https://www.uk-cpa.org/media/1940/tci-eom-2016-final-report.pdf>

extension of this treaty. Extension of the Convention against Corruption would, among other advances, bolster the existing legal framework for the regulation of campaign finance.

Recommendation 1: Extend the Convention on the Rights of Persons with Disabilities to the Turks and Caicos Islands. Amend domestic law to ensure compliance with this instrument, as necessary, prior to extension.

Recommendation 2: Extend the Convention against Corruption to the Turks and Caicos Islands. Amend domestic law to ensure compliance with this instrument, as necessary, prior to extension.

ELECTORAL SYSTEM

The House of Assembly of the Turks and Caicos Islands is comprised of a Speaker, the Attorney General (without the right to vote), fifteen elected members and four appointed members. Of the fifteen elected members, ten are elected to represent geographic districts in ten single-member constituencies. Five members are elected in a single All Islands district, within which voters may cast up to five votes on a single ballot paper. Both elections are by means of a plurality of votes cast.

Of the appointed members, one is proposed by the Premier and appointed by the Governor and one is put forward by the Leader of the Opposition and appointed by the Governor. The other two nominations fall within the absolute discretion of the Governor. There are no term limits in place for members either elected or appointed to the House of Assembly. The House of Assembly must be dissolved, at the latest, four years from the date when the House first met after a general election. A general election must be held within three months, but not sooner than 35 days, from the date of the dissolution.

The Constitution of Turks and Caicos was enacted in 2011 and has been the subject of some debate since then. A Constitution Review Committee, established in 2013, reported on possibilities for constitutional change in 2014, with proposals for amendments unsuccessfully submitted to the UK in 2015. In 2019 the Government and Opposition agreed on a set of proposals to amend the Constitution. A new Constitution Review Committee was formed to conduct consultations on these proposals throughout the territory, with recommendations subsequently sent, with bi-partisan political support, to the UK.

Some of the proposals would significantly alter the system of government, including aspects of the electoral system. One of the proposals suggested a reduction of the number of the Governor's discretionary appointees to the House of Assembly from two to one and an increase in the number of appointees for the Premier from one to two. There is also a proposal that there should be a fixed date for general elections in the islands and that the parliamentary term should be five years. Changes to qualifications for standing for election were also advanced, discussed below.⁵

⁵ See Chapter "The Right to Stand for Election", p. 12

The process of decolonisation of the Turks and Caicos Islands is also relevant to the debate on constitutional reform and political rights. On 13 December 2019, the UN General Assembly adopted resolution 74/110 which reaffirmed the inalienable right of the people of the Turks and Caicos Islands to self-determination, in conformity with the Charter of the United Nations and with Assembly resolution 1514 (XV), containing the Declaration on the Granting of Independence to Colonial Countries and Peoples. The resolution also reaffirmed that, in the process of decolonisation of the Turks and Caicos Islands, there is no alternative to the principle of self-determination, as this is a fundamental human right.⁶ The resolution also stressed the importance of having a constitution in place in the territory, that reflected the aspirations and wishes of its people, based on the mechanisms for popular consultation.

BOUNDARY DELIMITATION

The Constitution provides, in Article 60, for the establishment of an Electoral District Boundary Commission which would be appointed anew, not later than four years from the report published by the previous such commission.

Despite the clear instruction in the Constitution to this effect, political agreement was not reached to appoint a commission in advance of the 2016 election. Following the 2016 election, an Electoral District Boundary Commission was set up and reported to the House of Assembly. However, the report was not acted upon. As a result, the boundaries in force for the 2021 election were those created by the Turks and Caicos Islands (Electoral District Boundary Commission) Order (UK) 2011 and the Electoral Districts (Boundaries Amendment) Ordinance 2012.

The Constitution also requires that the Electoral District Boundary Commission “shall ensure that the electoral districts contain, so far as is reasonably practicable, approximately equal numbers of persons qualified to be registered as electors”. There were severe differences amongst the numbers of voters registered in each district, with the largest, ED 7 Richmond Hill and Cheshire Hall, containing 1,305 registered voters, as compared to the smallest, ED 3 South Caicos, which had just 352 registered voters. This disparity has grown since the previous elections.

It is arguable, therefore, that electoral boundaries have not been drawn in compliance with the Constitution. In addition, the differences in numbers of voters per elected representative undermine the principle of equality of the suffrage⁷ and the equal weight of the vote, with a vote in ED 3 having more than three times the power of a vote in ED 7 in electing a representative to the House of Assembly. International standards are for single member seats to vary by no more than 15% from the mean, and ideally to fall within a 10% margin.⁸ Of the present boundaries,

⁶ UN General Assembly Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples – Turks and Caicos Islands Working Paper, A/AC.109/2020/15, 12 February 2020

⁷ General Comment 25 to the ICCPR, paragraph 21: 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.

⁸ Venice Commission Code of Good Practice in Electoral Matters, 1.2.2.iv: The permissible departure from the norm should not be more than 10%, and should certainly not exceed 15% except in special circumstances (protection of a concentrated minority, sparsely populated administrative entity).

only four districts (ED 1, ED 2, ED 5 and ED 6) out of ten are within 15% of the mean number of registered voters.

The reasons given for such disparity include a desire to protect the character of natural communities. Whilst this is a legitimate factor to be considered, it should not override the need to balance numbers more equitably. Smaller islands may prove to be an exception, but the six seats currently elected for the island of Providenciales could be demarcated more fairly without unreasonable loss of community. No guidance is provided either in the Constitution or in the Elections Ordinance as to the factors which an Electoral District Boundary Commission is bound to take into account when undertaking boundary revision, nor the level of deviation from the mean which is acceptable.

Recommendation 3: A new boundary commission should be established in compliance with the Constitution. This Commission should begin work immediately and should be tasked with presenting a report aimed at revising district boundaries and creating equal suffrage. The House of Assembly should commit to considering the report and implementing new boundaries no later than one year before the likely date of the next general election.

Recommendation 4: The Elections Ordinance should be amended to include legal principles which are necessary to guide any future Electoral District Boundary Commission as to the interpretation and practical application of the constitutional requirement of equality of districts. As absolute equality is almost impossible to achieve, guidance as to what standard deviation will be tolerated is essential, with international norms taken into consideration.

ELECTION ADMINISTRATION

Elections in the Turks and Caicos Islands are managed by the Supervisor of Elections, an independent office holder appointed by the Governor, following consultation with the Premier and the Leader of the Opposition. The Supervisor leads the Elections Department, which has a permanent staff of three people, with additional staff members either hired or seconded during different stages of the electoral cycle. The Elections Department is responsible for the planning and implementation of all aspects of the electoral process, including:

- voter registration;
- printing and distribution of ballot papers;
- training of candidate agents and police on election protocols;
- production and distribution of voter and civic education materials;
- and the administration and counting of the vote on polling day.

Polling staff are recruited close to an election. Staff numbers were greatly increased for this election, reaching over 300, a substantial increase from 190 in 2016. This number was required to accelerate both queuing and voting, to minimise the time voters were in polling stations and to respect social distancing, as well as to ensure an adequate supply of staff should any be absent due to sickness or quarantine.

The Supervisor of Elections and the Integrity Commission⁹ have separate roles in regulating the participation of political parties and candidates in the electoral process. Registration with the Integrity Commission is a prerequisite for competing in the election, while the Supervisor of Elections manages the nomination process. The Supervisor is also responsible for communicating with parties and candidates and for training their agents. Information on aspects of the electoral process did not always appear to have been adequately disseminated to stakeholders, suggesting that the absence of formal channels of communication between stakeholders could sometimes be detrimental to the free flow of information.

Recommendation 5: A new working group, comprising the Supervisor of Elections, political parties and other election stakeholders, could be established several months prior to elections. This group would conduct regular meetings to promote better communication between election stakeholders and increase the transparency of the electoral process.

Prior to the election, an Elections Oversight Group was set up by the Governor to facilitate the conduct of the elections in the context of the pandemic. This consisted of, amongst others, the Governor, Deputy Governor, Attorney General, training officer and the Elections Supervisor himself. The group responded to many issues which arose from the pandemic, including the management of voting by persons who were under quarantine or who had tested positive for COVID-19.

On the whole, the Supervisor of Elections and the Elections Department enjoyed a high level of trust among interlocutors. Despite the challenge of the pandemic, the election went ahead as planned.

THE RIGHT TO VOTE

The right to vote is established in the Constitution, in Article 55. This states that exercise of the right to vote is dependent upon being registered to vote. The principal qualifications for voting are that a voter must be a Turks and Caicos Islander; be aged eighteen years or over; and resident in the islands. Residency is defined as having spent a total of twelve months, within the two years prior to the registration qualification date, in the islands. Exemptions from the residency requirements are conferred on those serving in Her Majesty's Forces or working abroad on government business or studying overseas.

The status of being a Turks and Caicos Islander is regulated by the Turks and Caicos Islander Status Ordinance 2015, which came into operation on 1 April 2016. The Ordinance has been twice amended, but not in relation to the substance of status determination. The Ordinance sets out the criteria for acquisition of Islander status, which may be either by descent or by grant or by marriage. At present, from a population which is estimated to be around 44,543 people, 15,755 (just over one third) are believed to hold Islander status. Of the adults amongst this number, 8581 have registered to vote. The rest of the population holds British Overseas Territories Citizenship or nationality of other countries.

⁹ See Chapter "Campaign Finance", p. 14.

Only those who hold Turks and Caicos Islander status may vote. Naturalisation is largely inaccessible to many migrants who reside in the territory. The acquisition of Turks and Caicos Islander status by grant has been a matter of controversy, with the work of the Turks and Caicos Islander Status Commission, under the Turks and Caicos Islander Status Ordinance, entangled in delays. Research by UNICEF has drawn attention to the risk of statelessness of children born of migrant parents. It has been recommended¹⁰ that consideration should be given to the amendment of the law to facilitate the acquisition of permanent residency and “belongership status” by children born in the Turks and Caicos Islands, particularly to prevent statelessness.

Additional disqualifications from voting are set out in the Constitution. Persons certified to be insane or of unsound mind may not register to vote. Persons serving terms of imprisonment of in excess of twelve months, as well as persons convicted of electoral offences, may not vote either. The European Convention on Human Rights, which TCI is bound by, has been interpreted¹¹ as prohibiting blanket bans on voting by prisoners, regardless of the nature of their offence. It is possible, therefore, that the ban on voting by all persons serving sentences in excess of one year may not be lawful. Prisoners, who are on remand, or in detention serving sentences of less than twelve months, are entitled to vote.

Prison authorities enabled two prisoners to exercise their voting rights on polling day, transporting them from the prison on Grand Turk to polling stations in Providenciales. This represented a laudable vindication of the right to vote, particularly in view of the onerous burden imposed by compliance with public health protocols to avoid COVID-19. Mobile voting, namely opening a temporary polling station in the prison for a brief period of time, could be considered by electoral authorities as a way to avoid the requirement of transportation in future. Secrecy of the vote could be protected in that case by the mingling of the prisoner votes with those in their home polling stations in advance of counting.



Signs explaining voting procedures at a polling station

¹⁰ [Study on Children in Situations of Migration and Statelessness in the Caribbean UK Overseas Territories](#), UNICEF Office for the Eastern Caribbean Area, 2017, page 53

¹¹ *Hirst (No.2) v the UK*, Grand Chamber, European Court of Human Rights, 6 October 2005

VOTER REGISTRATION

The process of voter registration is active and continuous, requiring the voter to make an application for inclusion in the register of electors. The closing date for persons to register to vote in these elections in February 2021 was 30 November 2019. The draft register was published in January 2020, followed by a period for submitting claims against omission from the register and objections against inclusions in the register. Forty-five claims were made, as well as 57 objections. The Supervisor of Elections dealt with these claims and objections. Appeals were made to the elections adjudicators against decisions in 28 of these cases, fewer than ten of which were successful.

There was a period of more than fourteen months between the deadline to apply to vote and the date on which that vote was to be cast. This is an excessive delay, which may have disenfranchised some potential voters who had either returned to resume residence in the territory, had newly acquired Islander status, or had reached voting age. Seventeen year olds may apply for pre-registration, but this time gap would have required the pre-registration of sixteen year olds also. The election date is not fixed. It is imperative, therefore, that the closing date for voter registration be similarly flexible. It should be possible, when an election is called, for a closing date to then be fixed. This would protect voting rights to the greatest extent possible.

Recommendation 6: It is crucially important that voter registration efforts are undertaken on an ongoing basis, with the goal of increasing the proportion of eligible voters registered to vote. In order to protect the right to vote, consideration could be given to amendment of Part II of the Elections Ordinance to remove the fixed dates set out for the publication of the Register of Electors.

THE RIGHT TO STAND FOR ELECTION

The qualifications to be elected as a member of the House of Assembly are set out in Article 46 of the Constitution. This provides that a candidate must be a Turks and Caicos Islander, must be 21 years of age on the date of nomination, and must have been resident in the Turks and Caicos Islands for twelve of the twenty-four months preceding nomination.

One of the recommendations of the Constitution Review Committee is that Article 46 should be amended to further narrow the qualification requirements. The proposal is that only “natural born” Turks and Caicos Islanders would be eligible, excluding islanders who have acquired their status through legal grant of naturalisation. Such a recommendation may, however, fail to satisfy the non-discrimination requirements of the International Covenant on Civil and Political Rights¹² which applies to the Turks and Caicos Islands, as it would amount to discrimination against citizens based on their birth.

¹² General Comment 25 to the ICCPR, paragraph 3: No distinctions are permitted between citizens in the enjoyment of these [electoral] rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

A catalogue of disqualifications from standing for election is set out in Article 49 of the Constitution. Those disqualified include persons holding certain public offices, judges, persons who have been declared bankrupt and persons doing business with government, unless disclosed to the Integrity Commission. Convictions for electoral offences, corruption, and the serving of any part of a prison sentence of more than one year, within the fifteen years preceding the election, also disqualify a person. This latter exclusion of former prisoners appears to contravene international norms which require that political rights should be restored within a reasonable time upon completion of a sentence.¹³

Article 49 (1) (a) of the Constitution disqualifies certain individuals who hold dual citizenship, stating that a person who “is, by virtue of his or her own act, under any acknowledgement of allegiance, obedience or adherence to any foreign power or state” shall not be qualified for membership of the House of Assembly. The interpretation of this provision has had a disputed legal history, as the elements of the disqualification (whether acquisition of citizenship has been active or passive, as an adult or as a child) are not defined in the Constitution or in the Elections Ordinance. Jurisprudence of the domestic, regional and international courts has historically been relied upon to advise aspiring candidates whether they ought to renounce foreign citizenship in order to qualify to stand for election.

The Court of Appeal of the Eastern Caribbean Supreme Court, in the Saint Christopher and Nevis case of Dr. Douglas,¹⁴ delivered a ruling in March 2020 which offered an authoritative interpretation of identical disqualification provisions. The AG of the Turks and Caicos Islands offered advice on the rules on dual citizenship to the Supervisor of Elections, including the application of the Douglas decision, for these elections. The Mission was informed that circulation of this advice was very tardy and that three intending candidates renounced citizenship of the Bahamas in order to ensure compliance with the law. The advice, when circulated, indicated that there had been no need for such renunciation. Those three candidates had therefore lost a precious asset needlessly.

The law on dual citizenship remains uncertain to stakeholders. The AG advised aspiring candidates to seek their own legal counsel to assist them with the interpretation of the rules on dual citizenship. As was noted by the CPA BIMR in 2016, this is an unsatisfactory position. There ought to be clarification of this disqualification to provide legal certainty of this fundamental aspect of electoral law.

Recommendation 7: The Constitution should be amended to clarify the specific meaning of Article 49 (1) (a) which imposes a disqualification from membership of the House of Assembly where a candidate is, in some measure, under allegiance to another state. Detailed legal provisions are needed to create legal certainty for intending candidates who hold dual citizenship.

¹³ General Comment 25 to the ICCPR, paragraph 14: If conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence; Paragraph 24 of the 1990 OSCE Copenhagen Document states that “...any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law”.

¹⁴ Eastern Caribbean Supreme Court in the Court of Appeal SKBHCVP2019/0007 The AG of St. Christopher and Nevis and Dr. Denzil Douglas, 12 March 2020.

CANDIDATE REGISTRATION

Following the decision to hold the election on 19 February 2021, a total of 38 candidates were successfully proposed on Nomination Day on 29 January. The Progressive National Party (PNP) and the People's Democratic Movement (PDM) parties each nominated one candidate for each of the 10 single mandate electoral districts and five candidates for the all-island seats. There were seven independent candidates and one Progressive Democratic Alliance (PDA) candidate nominated for the all-island seats. All candidates paid a deposit of \$500 USD. No objection was made to any candidate.

Of the 38 candidates, there were nine women nominated (constituting 24%), four by the PDM, three by the PNP and two independents.

ELECTION CAMPAIGN

Although the election was not formally called until January 2021, campaigning for the expected election started well before this. The law does not require parties or candidates to seek permission to hold rallies or other campaign events, although common practice has been for the police to be notified in advance of large-scale events.

TCI entered a lockdown early in the COVID-19 pandemic, but by the summer case numbers had dropped significantly and restrictions were eased to the extent that in-person rallies and other campaigning were allowed. Both parties held rallies and went door-to-door until COVID-19 numbers spiked again in December and further restrictions, leading up to a night time curfew, were put in place. Whilst some small scale in-person campaigning continued, much of the attempt to win voter support went online.

Both parties relied heavily on Facebook and presented virtual rallies, promotional videos and images, and talk show style events to present their case for election. Although many of the posts were personalised for one candidate or another, the majority were designed with a corporate feel to promote the party as a whole, in keeping with each party's message for voters to support their party in the electoral district as well as their all-island candidates. The online activities meant that voters from every part of the country had the opportunity to see a wide range of campaigns. The videos could be watched at any time convenient for the viewer.

Independent candidates had an equal chance to campaign. The virtual nature of the contest worked in their favour in as much as it meant that they were not reliant on large numbers of supporters to organise rallies or other events. All independent candidates were standing for all-island seats and so the virtual campaign offered them the chance to reach voters across the Turks and Caicos Islands without having to travel extensively. However, none appeared to have a very active presence on social media, although a few used Facebook from time to time.

No concerns were articulated by any interlocutors concerning their right to campaign, indicating that the freedoms of assembly, association and expression were respected. Parties understood the need for additional restrictions due to COVID-19. There was some dissatisfaction with the late communications coming from the office of the Elections Supervisor. The law prohibits public campaigning on election day, as well as canvassing within 150 yards of polling stations. Posters or other election materials were not allowed to be visible from polling stations.

CAMPAIGN FINANCE

The Political Activities Ordinance 2012 (as amended in 2016) is an anti-corruption measure which was introduced to promote transparency in political financing, both during elections and on an ongoing basis. Turks and Caicos was the first territory in the region to establish an Integrity Commission, an institution with the general function of monitoring compliance with the rules in the Political Activities Ordinance. Any party or individual wishing to contest elections must apply to be registered with the Integrity Commission prior to nomination. Once the election was called, unregistered parties and independent candidates had an opportunity to apply, submitting reports of all donations received and all expenditure incurred during the preceding 365 days with the application.

All donations and expenditure connected with elections must be recorded and reported to the Integrity Commission, with information subsequently made public. Political parties must submit weekly reports of donations received during the campaign period, whereas independent candidates are not required to do so. Both political parties and independent candidates must file full returns of campaign expenditure after the election. The Integrity Commission requires party treasurers to submit finance reports on behalf of all party candidates and the party, which places a large burden of responsibility on them. The CPA BIMR report on the 2016 election noted that further legal changes were needed to require independent candidates to submit similar weekly donation reports, but this has not yet been implemented. The Integrity Commission reports that are available online are summary versions only. Viewing of the full reports and of declarations requires in-person travel to the Integrity Commission offices in Grand Turk.

The maximum limit on expenditure is \$600,000 USD per political party, if it nominates the maximum number of candidates for all fifteen seats. Donations over \$3000 must be declared and the permissibility of all donations over \$150 must be checked by party treasurers. In the case of a donation which does not exceed \$150, it is presumed that the donor is a permissible donor (namely, a registered voter, a Turks and Caicos Islander, a TCI resident or a company, partnership, party or trade union registered in TCI), unless the party knew, or had reasonable grounds to believe, that the donor was not a permissible donor.

The Political Activities Ordinance, as well as the prohibitions in the Elections Ordinance against “treating” and bribery to secure votes, is aimed at reducing the influence of money on voters during the election campaign. Rumours are widespread that treating occurs, but convictions are elusive. In a message on the eve of polling, the Governor urged voters not to cast their ballot for anyone who had offered them money or goods in return for their votes.

Recommendation 8: The Integrity Commission could provide more transparency in campaign donations and spending by publishing full details of all party and candidate donations and spending online, redacted only to remove the home addresses and contact details of individual donors.

MEDIA

The media landscape in the Turks and Caicos Islands is comparatively small. There are two weekly newspapers, the *Turks and Caicos Sun* and the *Turks and Caicos Weekly News*, each of which published the press releases put out by the Governor and election officials. They also ran articles introducing some of the candidates, their platforms and the party manifestos, and there were a few paid-for political advertisements. The full content was available online and was updated on a rolling basis. None of the coverage observed seemed to be inflammatory or significantly partisan.

There is a government owned radio station - Radio Turks and Caicos (RTC) - which broadcasts mainly music with news bulletins. RTC appears to be rebuilding its infrastructure and staffing following the recent hurricanes. They made little attempt to engage with the election or to provide listeners with information about the political decision. This station is bound by the Radio Turks and Caicos Ordinance 2012 to offer a number of 15 minute slots to parties and independent candidates, four to each of the parties and one to each of the independents. Not all of these opportunities were taken up by those entitled to them. The station ran advertisements from election officials to give information to voters about voting methods and regulations, particularly about measures being taken to keep them safe from COVID-19. On election day they had reporters in the field who provided limited updates on polling. In addition to Radio Turks and Caicos there are a number of other radio stations broadcasting on the islands although their output was not evaluated.

There is one TV station which broadcasts on Turks and Caicos - PTV - which carries limited local news. There are a number of outlets, calling themselves TV stations, which largely broadcast online. The high level of internet penetration in the territory gives a boost to the online news outlets and new outlets that emerged during the COVID-19 pandemic as more people were confined to their homes for long periods of time. Many of these do not carry any news or elections coverage, although some made an effort to interview candidates from the different parties, as well as independents.

There were no debates between candidates of different parties. All interlocutors suggested such debates would have been helpful to voters in making up their minds, and there were debates in 2016. The Mission was informed that such events did not take place this time because one or both of the parties did not consent to them.

Journalists expressed the view that they are able to work freely within Turks and Caicos. Some support was expressed for the introduction of freedom of information legislation.

Overall, there was little attempt from the mainstream media to analyse party programmes or to seek the views of experts or the public on the different aspects of the policies being presented. The ability of voters to compare and contrast the platforms of the different parties and candidates was therefore not well served, although some of the online outlets did a better job than others in seeking to analyse policy proposals and interview candidates.



Sign at polling station

SOCIAL MEDIA

Parties made significant use of social media during the campaign and this was likely heightened because of COVID-19. Each main party used Facebook as the primary means of communication. Neither party had an active presence on Twitter or Instagram. Most candidates had their own Facebook accounts (33 out of 38 candidates) and posted videos and footage of virtual rallies as well as party messaging. However, there was little in the way of personally developed posts and interaction with voters on these accounts was limited. In addition, 16 candidates had active Instagram accounts and five had active Twitter accounts.

Platforms became a blizzard of party promotions with much less concentration on issues. During the last days of the campaign, as many as twenty posts per day were shared by party and candidate accounts.

As well as publicly available content, interlocutors suggested that use of private networks such as group messages and WhatsApp was widespread. Such content was much more likely to include attacks and disinformation. For example, a fake WhatsApp message was circulated suggesting that the leader of the PNP had engaged in illegal activity. Another fake message suggested that the leader of the PDM (and outgoing Premier) was seeking to give greater powers to the Governor and raise taxes. There is no way of knowing how widely such disinformation was spread or the effect it might have had on voters. Interlocutors suggested that such disinformation was not being produced by the parties or candidates but that they did little to condemn nor stamp out such practices.

Section 71 of the Political Activities Ordinance 2012 requires that all printed election material includes details which identify the source.¹⁵ Section 71 (6) creates the power to extend this identification requirement to “any other material”. This power could be used to extend the identification requirements to online and social media campaigning content, which would enhance transparency of the political campaign and of the expenditure of campaign finance. However, this section has not yet been acted upon.

Recommendation 9: Consideration could be given to the introduction of regulations under Section 71 of the Political Activities Ordinance to require identification of those who pay for online campaigning content.

No instances have been reported to date where an attempt has been made from overseas to influence the outcome of an election on Turks and Caicos via social media. However, the ability of Turks and Caicos to withstand such an attack is limited. The Election Ordinance and Telecommunications Ordinance are out of date when it comes to cybercrime and the ability of authorities to investigate such matters depends on mutual legal aid agreements with other countries. Given the ability of those behind such attacks to mask their true location and use servers in small third party countries, such a remedy is not likely to be sufficient.

¹⁵ Chapter 21:12 Political Activities Ordinance 2012, revised edition published in 2018

PARTICIPATION OF WOMEN

In the Beijing+25 Report for the Turks and Caicos Islands, published in 2020, the Department of Gender Affairs reported that there had “been great success of women in political and public roles over the last reporting period.”¹⁶ This remains the case in public life, as women occupy many leadership roles in government. These include women in the positions of Deputy Governor, Chief Justice, and Attorney General.

Women have also been well represented in political life, with the first female Premier elected in 2016. The 2021 election, however, has witnessed a reduction in the number of women elected to the House of Assembly, as just three of the fifteen elected members are women. This represents one fifth of the elected members, well below the equality in political decision-making advocated in the Beijing Platform for Action and the commitments to both de facto and de jure equality set out in the Convention on the Elimination of All Forms of Discrimination against Women. All fifteen elected members are representatives of political parties, indicating that the parties failed to select and nominate a sufficient number of female candidates.

The lack of women in parliament is a matter which requires attention in advance of future elections. The Constitution establishes a guarantee of equality and also prohibits discrimination on the grounds of sex. There are no provisions in the law requiring affirmative action to promote the advancement of women, although temporary special measures are permitted under the Convention on the Elimination of All Forms of Discrimination against Women. Political parties ought to incorporate gender issues in their agenda and introduce measures, such as the mentoring of women within their parties, to ensure that more women are available to be nominated as candidates.

Recommendation 10: Affirmative action could be considered to promote the advancement of women, as permitted under the Convention on the Elimination of All Forms of Discrimination against Women.



Polling station staff at a polling station



TCI election sign

¹⁶ Beijing+25 Report – Turks and Caicos Islands, Department of Gender Affairs, 2020

PARTICIPATION OF PERSONS WITH DISABILITIES

Amendments to the Elections Ordinance in December 2020 gave legal effect to some good practice. Priority voting at general elections was made available, in Section 39A (1) (b), to voters with “a physical incapacity or blindness”, who are entitled to vote without entering a queue.

The legal framework, as mentioned earlier,¹⁷ does not include the Convention on the Rights of Persons with Disabilities. While persons with disabilities have the right to vote, there are no legal provisions requiring that polling stations be accessible to persons with physical disabilities. It is widely acknowledged that not all polling stations are independently accessible to wheelchair users. The introduction of mobile voting, or of some other alternative measure to voting in person at polling stations, would facilitate independent voting.

ELECTORAL JUSTICE

Access to justice, through avenues to make complaints regarding aspects of the electoral process and to have these heard, varies as the electoral cycle progresses. Procedures relating to challenges to voter registration are well elaborated, as are procedures for challenges to election results by way of election petition. Issues which might arise during the election campaign or on polling day are less well regulated. The formal judicial system is available throughout and is accessible to all electoral stakeholders.

Formal procedures for claims and objections to the voter registration process are detailed extensively in the Elections Ordinance 2012. A formal hearing before the Supervisor of Elections may be held, with legal representation and witnesses included as required. If an individual does not accept the outcome, an appeal may be made to a panel of two elections adjudicators, who are non-partisan individuals appointed by the Governor. Formal hearings are conducted by the adjudicators and their decisions are final and conclusive. For this election, appeals were made to the elections adjudicators against decisions of the Supervisor of Elections in 28 cases related to voter registration, fewer than ten of which were successful.

There are no formal procedures in place to regulate dispute resolution during the election campaign period. Similarly there are no formal procedures in place dealing with the resolution of disputes during polling day. Although not observed, the Mission was informed that disputes are referred to returning officers and assistant returning officers in cases of difficulty, with records of such matters noted in polling station log books.

The Supreme Court has jurisdiction to hear and determine elections petitions, which are challenges to the election or return (in an uncontested election) of a member to the House of Assembly. Cases are heard by a single judge sitting alone. Decisions are final and may not be appealed. Two election petitions were filed in 2016, one of which progressed to a full hearing. The petition taken by George Pratt challenging the election of Porsha Stubbs-Smith was unsuccessful.¹⁸

¹⁷ As mentioned in Chapter “Legal Framework”, p. 5.

¹⁸ Petition No. CL 187/2016 In the Matter of the Elections Ordinance 2012 George CD Pratt v Porsha Stubbs-Smith, Supervisor of Elections, Returning Officers and AG of TCI

A catalogue of election offences is set out in Part V of the Elections Ordinance, listing behaviour which is prohibited during the election campaign and on polling day. Much of the law is well complied with, including rules such as those requiring employers to allow employees time off to vote and the prohibition on the use of loudspeakers on polling day. More significantly, however, it is widely believed that the rules in Section 71 prohibiting “treating”, which is the provision, directly or indirectly, of food, drink or entertainment to influence voters, are being disregarded by both candidates and voters. The actions of the donor and of the recipient are both against the law. There have not, however, been any successful prosecutions for treating during recent elections as evidence is difficult to obtain.

ELECTION DAY

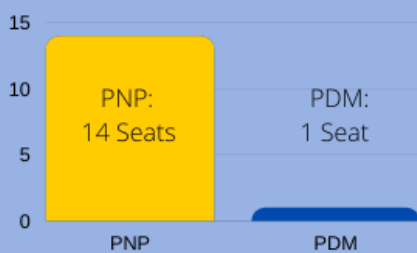
The CPA BIMR Election Expert Mission to the Turks and Caicos Islands was unable to be present in the territory for the 2021 election period due to COVID-19 travel restrictions. This means that the mission is unable to offer an assessment of the voting, counting and tabulation process.

The Caribbean Community (CARICOM), of which the Turks and Caicos Islands is an associate member, conducted an election observation mission to the Turks and Caicos Islands. The International Foundation for Electoral Systems (IFES), an NGO, also conducted an observation mission.

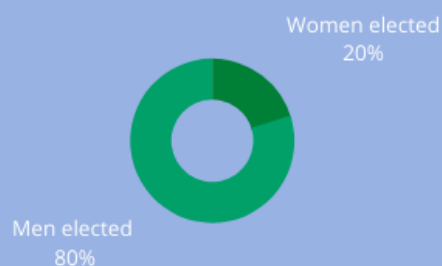
ELECTION RESULTS

Turks and Caicos Islands Election Results

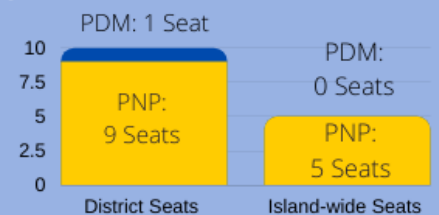
2021 Election Results



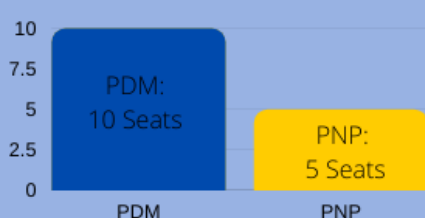
2021 Gender Breakdown



2021 Breakdown of results by district and island-wide seats



2016 Election Results



2016 Gender Breakdown



Voter Turnout

2021: 76.7%
2016: 80.4%

The 2021 result represents a 13.5% swing from PDM to PNP.

RECOMMENDATIONS

1. RIGHTS OF PERSONS WITH DISABILITIES

Extend the Convention on the Rights of Persons with Disabilities to the Turks and Caicos Islands. Amend domestic law to ensure compliance with this instrument, as necessary, prior to extension.

2. CORRUPTION

Extend the Convention against Corruption to the Turks and Caicos Islands. Amend domestic law to ensure compliance with this instrument, as necessary, prior to extension.

3. BOUNDARY COMMISSION

A new boundary commission should be established in compliance with the Constitution. This Commission should begin work immediately and should be tasked with presenting a report aimed at revising district boundaries and creating equal suffrage. The House of Assembly should commit to considering the report and implementing new boundaries no later than one year before the likely date of the next general election.

4. EQUALITY OF ELECTORAL DISTRICTS

The Elections Ordinance should be amended to include legal principles which are necessary to guide any future Electoral District Boundary Commission as to the interpretation and practical application of the constitutional requirement of equality of districts. As absolute equality is almost impossible to achieve, guidance as to what standard deviation will be tolerated is essential, with international norms taken into consideration.

5. TRANSPARENCY

A new working group, comprising the Supervisor of Elections, political parties and other election stakeholders, could be established several months prior to elections. This group would conduct regular meetings to promote better communication between election stakeholders and increase the transparency of the electoral process.

6. VOTER REGISTRATION

It is crucially important that voter registration efforts are undertaken on an ongoing basis, with the goal of increasing the proportion of eligible voters registered to vote. In order to protect the right to vote, consideration could be given to amendment of Part II of the Elections Ordinance to remove the fixed dates set out for the publication of the Register of Electors.

7. DUAL CITIZENSHIP

The Constitution should be amended to clarify the specific meaning of Article 49 (1) (a) which imposes a disqualification from membership of the House of Assembly where a candidate is, in some measure, under allegiance to another state. Detailed legal provisions are needed to create legal certainty for intending candidates who hold dual citizenship.

8. CAMPAIGN FINANCE

The Integrity Commission could provide more transparency in campaign donations and spending by publishing full details of all party and candidate donations and spending online, redacted only to remove the home addresses and contact details of individual donors.

9. ONLINE CAMPAIGNING

Consideration could be given to the introduction of regulations under Section 71 of the Political Activities Ordinance to require identification of those who pay for online campaigning content.

10. WOMEN PARTICIPATION

Affirmative action could be considered to promote the advancement of women, as permitted under the Convention on the Elimination of All Forms of Discrimination against Women.



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