

CAYMAN ISLANDS GENERAL ELECTION

APRIL 2021



CPA BIMR ELECTION EXPERT MISSION

FINAL REPORT

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EXECUTIVE SUMMARY

- At the invitation of the Governor of the Cayman Islands, the Commonwealth Parliamentary Association British Islands and Mediterranean Region (CPA BIMR) conducted a virtual Election Expert Mission to the Cayman Islands General Elections in April 2021. 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 using digital meeting platforms.
- Parliamentary elections are regulated primarily by the Constitution (2009) and the Elections Act (2021 Revision). The Constitution was amended in November 2019, but no changes relevant to elections were made. The Elections Act was revised in January 2021, but several significant changes proposed in 2017 failed to be adopted. The Elections Act was amended the day ahead of Election Day because the originally-prescribed process for counting mobile votes would have compromised voters' secrecy of choice.
- The Elections Office has been praised by electoral stakeholders for the manner in which the election was administered. Their officials enjoyed the confidence of the public and of the majority of candidates. An electoral calendar was established in advance of the election and deadlines were met. Extensive training was provided for all polling staff, and a campaign of voter education was undertaken. However, the short-term nature of the Supervisor of Elections' role, the lack of permanent senior staff in the Elections Office, and the lack of an independent Electoral Commission or equivalent raises some issues.
- Although the Constitution provides that there should be, as far as possible, an equality between the number of registered voters in each electoral district, there were severe differences. For the 2021 election, a registered voter in East End district had more than double the weight of a registered voter in Bodden Town East. It is arguable therefore that electoral boundaries have not been drawn in compliance with the Constitution and international standards.
- Certain categories of persons are disenfranchised of the right to vote and the right to stand in elections. Some of these restrictions do not align with international standards and good practices, particularly with regards to persons with disabilities and prisoners sentenced to imprisonment for 12 months or more. Residency requirements are also particularly restrictive in this regard.
- The funding of election campaigns is opaque. Campaign finance is only regulated during the period from Nomination Day until Election Day, even though interlocutors shared that campaigning started months before Nomination Day. There are limited requirements for candidates to submit details of their campaign expenditure and of donations received.
- There is a lack of clarity on who is responsible for dealing with electoral complaints and appeals.
- The CPA BIMR Election Expert Mission offers 15 recommendations in this report to enhance the conduct of elections in the Cayman Islands and to bring it more fully into line with international obligations and standards for democratic elections.

INTRODUCTION TO MISSION

At the invitation of the Governor of the Cayman Islands, His Excellency Martyn Roper OBE, the Commonwealth Parliamentary Association British Islands and Mediterranean Region (CPA BIMR) conducted a virtual Election Expert Mission (EEM) to the Cayman Islands General Elections in April 2021. The invitation was supported by the then Government and Official Opposition of the Cayman Islands.

Due to the COVID-19 pandemic, the team of experts conducted the Mission virtually between 6 – 19 April, carrying out research online, as well as undertaking interviews with a wide range of stakeholders using 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:

- Armin Rabitsch – Legal & Political Analyst (Austria);
- Alex Folkes – Election Administration/Campaign/Media Analyst (UK);
- Scherrie Griffin – Regional Election Expert (British Virgin Islands);
- Fleur ten Hacken – CPA BIMR Election Coordinator (The Netherlands);
- Diana Atungire-Ocaya – CPA BIMR Election Coordinator (Uganda);
- Axell Kaubo – CPA BIMR Election Administrator (UK).

This was the third time that CPA BIMR was invited to observe elections in the Cayman Islands. In 2013, CPA BIMR conducted its first election observation mission (EOM) to the Cayman Islands, followed by a second EOM in 2017 which resulted in the publication of a report with 21 recommendations.¹ Although the report of the CPA BIMR EOM report of 2017 was cited as a source of recommended amendments for introduction to the Elections (Amendment) Ordinance 2021, only one recommendation was taken forward in time for this election.

The Mission conducted an independent assessment of the Cayman 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. The Mission also considered 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, Director of Prisons and a range of 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 offers recommendations which it is hoped will be given due consideration by all the election stakeholders, most particularly the Parliament, for the continued improvement of future elections in the Cayman Islands.

¹ The CPA BIMR 2017 report is available on: https://www.uk-cpa.org/media/1681/eom_cayman-islands_2017_finalv2-report.pdf

POLITICAL BACKGROUND

The Cayman 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 eight ministers from among the members of the Parliament.

Elections in the Cayman Islands are held every four years. The fifth general election of the Cayman Islands took place on 14 April 2021. It was called early at a time when there was a pending motion of no confidence in the Speaker of the House. The polls were conducted in the midst of the global COVID-19 pandemic. Prior to the election, a people-initiated referendum on plans for a new port had been planned for December 2019. Preparations for the referendum were in the final stages when it was postponed due to legal challenges. The referendum followed popular concern for the islands' natural environment, which manifested itself in a successful people-initiated referendum campaign. Since the May 2017 elections an increasingly active civil society has developed, advocating for various human rights issues.²

The amendment of the Constitution in 2019 by Draft Order has been seen as a move towards greater local autonomy. The unicameral National Assembly was renamed the Parliament and is composed of 21 members:

- 19 elected members for a four-year term;
- and two members *ex officio*; the Deputy Governor and the Attorney General.

The UK has specific constitutional and legal responsibilities for its 14 Overseas Territories including a responsibility to ensure their security and good governance. The UK has set out a partnership approach based on shared values and a right to self-determination, as enshrined in the UN Charter and applicable to the peoples of the Overseas Territories.

In November 2016, the amendment of the Elections Law increased the number of elected members of the Legislative Assembly from 18 to 19 and abolished multi-member constituencies. Since 2017, elections are conducted on a "first-past-the-post" system, by means of a plurality of votes cast. Members are elected for a four-year term. There are no term limits in place for membership of the Parliament.

In 2021, the political party landscape eroded further as 41 of 50 candidates stood as independent candidates for one of the 19 single member constituencies; an electoral system introduced ahead of the 2017 elections. The People's Progressive Movement (PPM) of outgoing Premier Alden McLaughlin nominated eight candidates, while the Cayman Islands People's Party (CIPP) nominated one candidate, and the Cayman Democratic Party (CDP) of the former Speaker ceased to exist. Eleven of the candidates (22 per cent) were women.

In 2017, the CPA BIMR Election Observation Mission made 21 recommendations for improvement, of which only one recommendation (#14) was implemented. This CPA BIMR Mission recommends that authorities address previous recommendations, including those related to suffrage rights, ensuring the secrecy of the vote, establishing the equality of the vote, enhanced women's representation, and complaints procedures, among others. This report will not reiterate all past recommendations although they are considered still valid.

² The civic activism surrounding the Cayman Port Referendum led to the Civil Society Organisation (CSO) Amplify which also addresses social justice issues. The CSO Colours Cayman has been advocating for LGBTQI+ Rights and Inclusion Cayman for persons with disability rights. Compared to 2017, there appears to be a greater momentum of CSOs having an impact and being more visible.

COVID-19 PANDEMIC

As with many other jurisdictions, the COVID-19 pandemic affected the Cayman Islands with the territory entering an early and significant lockdown period when the pandemic first appeared. By the time the election was called, the country had declared itself free of community transmission and there were no mask or social distancing requirements in place for the campaign period. The only limitations were on the size of gatherings with limits of 500 persons at indoor events and 1000 outside. The Mission did not receive any reports that this hindered the conduct of the campaign.

A system of strict quarantine was in place for those entering the islands with a requirement for 14 days of isolation. This led to a small number of persons who had the right to vote being unable to attend a polling station on Election Day. A pragmatic decision was taken by the Supervisor of Elections, in consultation with the Attorney General, to use the mobile voting system for such people. This required them to apply for a mobile vote by 6 April 2021 and they were then visited at their local constituency by the mobile voting team, who were wearing full personal protective equipment. Election officers spoken to by the Mission had no concerns about this aspect of their work. There were 10 voters who took up this option. It is possible that other eligible electors may have arrived on the islands after the deadline to apply for mobile voting.

On Election Day the wearing of masks was encouraged but not required and the Supervisor of Elections issued a press release to this effect. No interlocutors expressed concerns that there would be electors fearful of COVID-19 such that they would not vote, although the mobile voting system was made available to those who might be concerned about COVID-19.

LEGAL FRAMEWORK

Key international human rights instruments like the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and most recently in December 2020 the United Nations Convention against Corruption (UNCAC) have been extended to the Cayman Islands. The Convention on the Rights of Persons with Disabilities (UNCRPD) still requires attention to ensure its extension to the Cayman Islands. European Court of Human Rights (ECtHR) jurisprudence applies to the Cayman Islands.³

Parliamentary elections are regulated primarily by the Constitution and the Elections Act (2021 Revision), supplemented by other laws such as the Standards in Public Life Act (2021), as well as Caymanian jurisprudence. The legal framework generally provides an adequate basis for conducting democratic elections.

The Constitution was amended most recently in November 2019. Amendments did not include changes relevant to elections and an opportunity was missed to bring the Constitution closer in line with international good practice regarding suffrage rights, equality of the vote and greater legal certainty of procedures for constitutional amendments.⁴ The UK Minister for Sustainable Development and the Overseas Territories stated that the decision to retain the Governor's

³ Council of Europe Treaty Office (2010) United Kingdom's Reservations and Declarations for Treaty No.005 - Convention for the Protection of Human Rights and Fundamental Freedoms.

⁴ The Cayman Islands Constitution (Amendment) Order 2020. The amendment introduced an eighth minister.

reserved powers (Section 81) was made because of the necessity for the Governor to use his powers to uphold the rule of law, after the failure of the Legislative Assembly to approve the Domestic Partnership Bill in 2020.⁵

In Section 119, the Constitution provides for Advisory District Councils for each electoral district that would operate as advisory bodies to the elected members of Parliament. A law to put them into effect still has to be drafted and enacted by the Legislature as pointed out by the Constitutional Commission. Their establishment could establish greater inclusion of citizens and provide a chance for all residents to participate in politics.

The Elections Act was revised in January 2021 which included necessary updates due to new legislation such as the Data Protection Act (2017), the Civil Partnership Law (2020), the Freedom of Information Law (2018 Revision) and the Constitution (Amendment) Order (2020). The Elections Act was amended the day ahead of Election Day because the originally-prescribed process for counting mobile votes would have compromised voters' secrecy of choice.⁶ Amending electoral legislation at such a late stage is not in line with the Venice Commission Code of Good Practice in Electoral Matters (2002, Section II.2.b) which recommends that "the fundamental elements of electoral law ... should not be open to amendment less than one year before an election".

Several significant changes to the Elections Act proposed in 2017 failed to be adopted and remain pending. These include establishing improved party and campaign finance regulations, inclusion of gender equality measures, revision of the law for upholding the secrecy of the vote for assisted voters, removing the requirement of noting voter ID numbers on serial numbered ballot stubs, as well as establishing complaints procedures, among others. The Mission was informed that the revision and amendment of the Elections Act was not consulted with respective Commissions (Anti-Corruption Commission, Human Rights Commission, Constitutional Commission, Standards in Public Life Commission) or civil society organisations. Several interlocutors expressed disappointment that comprehensive and inclusive reforms were not being passed and pointed to the lack of political will to reform the legal framework. Government officials referred to the pandemic and the early elections as causes for lack of timely electoral reforms.

The Constitution provides for People Initiated Referendums in Section 70. In 2019, a civic activism movement opposing the Government's plans for a new cruise port submitted a petition to the government, after gaining the constitutionally required 25 per cent of registered voters in support. The Elections Office had to conduct the verification process, and Cabinet set a referendum date for 19 December 2019. However, the acting Judge of the Grand Court of the Cayman Islands delivered a ruling that the Referendum (People-Initiated Referendum Regarding the Port) Law 2019 was "unlawful because it was incompatible with s.70 of the Cayman Islands (Constitution) Order 2009".⁷ Following this order quashing the Referendum Law, the government withdrew its port plans.

⁵ Deputy Registrar of the Cayman Islands and A-G of the Cayman Islands v Day and Bush (2019). The Cayman Islands legislature did not oblige. The Domestic Partnerships Bill was rejected by a vote of 9 to 8. Subsequently, the Governor, acting on the instructions of the UK Government and using reserved powers under the Constitution to make law relating to "external affairs", passed the bill.

⁶ With the prospect of counting in a constituency one single mobile ballot paper of a voter whose name was published as prescribed, the Supervisor of Elections requested the Cabinet to amend the Elections Act. The amendment provided for the joint count of ballots contained in mobile and postal ballot boxes together with the ballot papers cast on election day. This change was recommended by the 2017 CPA BIMR Election Observation Mission (recommendation 14).

⁷ Roulstone v. Cabinet of the Cayman Islands and Legislative Assembly of the Cayman Islands (2020).

Recommendation 1: An inclusive process of electoral reform, including possible reform of legislation on referendums, should be carried out, in which all stakeholders are encouraged to make every reasonable effort to build broad consensus over the reform, to be concluded at least one year ahead of the next election.

ELECTION ADMINISTRATION

Elections in the Cayman Islands are conducted by the Elections Office, led by the Supervisor of Elections, and three deputy supervisors, who are all appointed by the Governor. The Elections Office operates within the organisational domain of the Deputy Governor's Office although the Supervisor of Elections formally reports to the Governor. The Supervisor of Elections and the Deputy Supervisors only take on their responsibilities approximately six months before the anticipated date of the election and return to their regular civil service roles a few weeks after the election has concluded. The normal role of the Supervisor of Elections is as Chief Officer in the Ministry of Employment and Border Control. The current Supervisor of Elections also had to be seconded from his substantive role in the lead up to the 2019 port referendum, to oversee the checking of voter signatures and the preparations for the referendum, which was then aborted.

In addition to the Supervisor of Elections and his deputies, there were two permanent elections staff. When an election is called, additional staff from the civil services are recruited to fulfil the roles of Returning and Deputy Returning Officers, Presiding Officers and Poll Clerks and provided with training by the Supervisor of Elections. For this election, 13 out of the 19 constituency Returning Officers recruited were women.

The Elections Office has been praised by electoral stakeholders for the manner in which the election was administered. Their officials enjoyed the confidence of the public and of the majority of candidates. An electoral calendar was established in advance of the election and deadlines were met. Extensive training was provided for all polling staff, and educational materials were prepared for staff and for candidate and party agents. The Elections Office also undertook a campaign of voter education.

Election staff preparing for Election Day



The short-term nature of the Supervisor of Elections' role does, however, raise some issues. Whilst the incumbent is experienced, there appears to be little in the way of succession planning and the ability to organise a snap election or referendum might be compromised. A few interlocutors expressed some concern that the Supervisor of Elections has a close working relationship with the Premier in his normal role, although there was no indication of any interference by governmental authorities with the Elections Office in the conduct of elections. In addition, the Supervisor of Elections is able to spend little time examining campaign spending and donation returns before returning to his substantive role (see also section on Campaign Finance). Moreover, there is no permanent senior staff member in place in the Elections Office to oversee long term voter education or registration drives.

Recommendation 2: A more substantial Elections Office with a permanent Supervisor of Elections should be established to oversee electoral registration drives with the aim of ensuring all eligible people are on the voter list; to ensure full compliance with election finance laws; in case of a snap election or referendum; and to undertake long-term voter education campaigns.

There is no independent Electoral Commission or equivalent in the Cayman Islands that could oversee the policy and enforcement aspects of elections work, interpret electoral law, advise on changes to electoral law and consider complaints. The International Covenant on Civil and Political Rights has been interpreted as requiring that an independent electoral authority should be established in a country, in order to satisfy the requirements of genuine elections.⁸

Recommendation 3: An independent Electoral Commission should be established to supervise the electoral process, to ensure it is conducted fairly and impartially, to provide expert advice on all aspects of electoral law reform and to consider electoral complaints.

⁸ International Covenant on Civil and Political Rights, General Comment 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Article 25) (1996), paragraph 20.

BOUNDARY DELIMITATION

The Constitution (2009) provides for an Electoral Boundary Commission (Section 88) appointed by the Governor after consultation with the Premier and the Leader of the Opposition not later than eight years following the last submitted report.

The Constitution also provides that there should be, as far as possible, an equality between the number of registered voters in each electoral district. An explicit exception is made in the case of Cayman Brac and Little Cayman, which together must have at least two representatives. According to the Constitution, traditional boundaries may also be taken into consideration. A Census planned for 2020 has been rescheduled to be conducted in October 2021, and could provide genuine population data for more accurate districting.

The Electoral Boundary Commission submits its report containing recommendations for any changes in the number and boundaries of the electoral districts to the Governor and the Parliament. The Premier has the constitutional right to include modifications, and then lays the draft of an order by the Governor before the Parliament for its approval. It is then upon the Elections Office to implement accordingly.

The 2015 Electoral Boundary Commission report provided the boundaries and distribution of voters for the then newly introduced 19 single member constituencies. As commented on by the 2017 CPA BIMR Mission, while the 2015 Boundary Commission contributed to a significant improvement towards increased equality of the vote, there are still a few instances in which districts depart from the norm.

For the 2021 election, there were significant differences in the number of voters registered in each district with the largest, Bodden Town East, containing 1664 registered voters, as compared to much smaller districts such as North Side with 836 registered voters and East End with 769 registered voters. In other words, a registered voter in East End district had more than double the weight of a registered voter in Bodden Town East.

It is arguable therefore, that electoral boundaries have not been drawn in compliance with the Constitution and international standards. The International Covenant on Civil and Political Rights (ICCPR) requires that “the vote of one elector should be equal to the vote of another”.⁹ The European Commission for Democracy through Law (Venice Commission) details further that “the permissible departure from the norm should not be more than 10 per cent, and should certainly not exceed 15 per cent except in special circumstances (protection of a concentrated minority, sparsely populated administrative entity).¹⁰

Recommendation 4: The Electoral Boundary Commission should conduct a delimitation exercise and publish a report by 2023 which should carefully scrutinise how international standards and best practice can be met to further narrow the scope of deviation from the equality of the vote. Deviations from the norm should ideally not be more than 10 per cent and in exceptional circumstances 15 per cent.

⁹ International Covenant on Civil and Political Rights, General Comment 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Article 25) (1996), paragraph 20.

¹⁰ The European Commission for Democracy through Law (Venice Commission), Code of Good Practice in Electoral Matters (2002), 2.2.iv.

THE RIGHT TO VOTE

The right to vote is established in Sections 90-92 of the Constitution (2009). Certain categories of persons are disenfranchised of their right to vote, such as:

- non-Caymanians,
- Returning Officers,
- persons sentenced to imprisonment exceeding 12 months,
- a person certified to be “insane or otherwise adjudged to be of unsound mind”, and
- persons who have not been resident in the Cayman Islands for a period or periods amounting to not less than two years out for the four years immediately preceding the date of registration.

Caymanian Status is regulated by the British Nationality Act 1981. Of an estimated population of 65,000 persons, 34,000 persons hold Caymanian status with about 26,600 of them eligible to register to vote.¹¹ Children of long-term permanent residents born on the Cayman Islands do not obtain Caymanian status. The following persons may apply for the right to be Caymanian:

- A British Overseas Territories Citizen¹² by virtue of his or her connection with the Islands who has been legally and ordinarily resident in the Islands for at least 15 years or after at least five years after the receipt of the certificate of naturalisation or registration;
- A person who has been married to a Caymanian for seven years;
- A person who is the child or grandchild of a Caymanian born in the Islands.

Additionally, in exceptional circumstances the Cabinet, acting on the recommendation of the Caymanian Status and Permanent Residency Board, may grant such right to a person. Such a grant is subsequently ratified by the Parliament and the Cabinet shall not make more than four such grants in any calendar year.¹³

The UN Human Rights Committee in its General Comment 25 on the right to vote and participation in public affairs states that the right to vote "may be subject only to reasonable restrictions" and that it is advisable to enhance integrity and impartiality of electoral conduct while not disenfranchising Returning Officers of their right to vote.¹⁴

Residency in the Cayman Islands for at least two of the four years immediately preceding the date of registration seems to be overly restrictive and may exclude otherwise eligible Caymanians from exercising their right to vote.¹⁵ There could be provisions for more prompt reinstatement of eligibility once a person who has not retained their residency returns to the jurisdiction.¹⁶

¹¹ The Supervisor of Elections estimated that about 3,000 eligible voters have not registered. A total of 23,609 voters were registered. See: <https://portal.elections.ky/index.php/home/official-register>

¹² In order to become a British Overseas Territories Citizen a person must have been lawfully resident in the Cayman Islands for a discretionary period of between three to five years following the grant of permanent residence and can then apply under the British Nationality Act for naturalisation as a British Overseas Territories Citizen.

¹³ The Immigration (Transition) Law (2018) Article 26.

¹⁴ International Covenant on Civil and Political Rights, General Comment 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Article 25) (1996).

¹⁵ Paragraph I.1.1.c.iii of the Venice Commission Code of Good Practice in Electoral Matters (Code of Good Practice) states that “a length of residence requirement may be imposed on nationals solely for local or regional election.”

¹⁶ This was pointed out by the Constitutional Commission, Update 2 July 2020, p.6.

The blanket ban on voting for prisoners serving sentences exceeding 12 months' imprisonment, as per section 91(1)(a), is contrary to European jurisprudence. In its 2018 Report, the Constitutional Commission proposed changes including the revision of a blanket ban on voting for prisoners serving sentences exceeding 12 months' imprisonment (Section 91(1)(a)) to comply with applicable jurisprudence.¹⁷

Recommendation 5: To allow for broader electoral participation on an equal basis, the legal capacity and residency requirements for voting should be reviewed in line with international standards and good practices:

- a. Any discrimination in voting rights against persons with disabilities should be abolished;***
- b. The blanket ban on the right to vote for all prisoners sentenced to imprisonment exceeding 12 months, regardless of the nature of the crime involved, ought to be reviewed;***
- c. Residency requirements could be brought in line with international good practice;***
- d. Returning Officers should be granted the right to vote.***



Election staff on Election Day

¹⁷ The ECtHR ruled in *Hirst v UK* (2005) that a general and automatic deprivation of the right to vote for all convicted prisoners is a breach of Article 3 of Protocol No 1 of the ECHR. This position was confirmed in subsequent cases such as *Scoppola v Italy* (2012), although the Court has accepted that each State has a wide discretion as to how to regulate disenfranchisement, which categories of offence it applies to, and whether it is ordered by a judge or by general application of law. In 2015, the European Court of Justice ruled that the French restriction on voting for a person convicted of a serious criminal offence did not contravene the right of EU citizens to vote in EP elections, as protected by the CFR. This was because the restriction was provided by law, respected the essence of the right because it applied only to specific people in specific circumstances related to their conduct, and the measure was proportionate to the nature of the offending (C-650/13 *Delvigne* [2015]). See also *Prisoners' Right to Vote*, ECtHR, April 2019.

VOTER REGISTRATION

The deadline for registration to vote for these elections was 20 January 2021. Following that date, there was a period for claims and objections to the Register of Electors, matters which were heard by a Magistrate. The Mission heard from a number of interlocutors that a deadline for registration before the election was called could disenfranchise some potential electors. Suggestions were made that the date could be moved closer to Election Day and after Nomination Day so that those who had not registered when the election was called would have a chance to do so.

Each quarter a list of electors has to be compiled by the registering officer of each district. A person wanting to vote can check whether their entry is still valid or register themselves. There is the possibility for voters to object to an entry or a missing entry in the voter register. In addition, a registering officer can object to an entry. A notification has to be delivered to the residence of the person objected to, or sent by registered mail to the last known postal address of the person objected to. The revising officer, a magistrate appointed by the Chief Justice, determines all claims or objections, and the decision of the revising officer is final. Appeals are not possible. If the revising officer is of the opinion that the claim or objection of any person is without foundation or is frivolous, that revising officer may order such person to pay the actual costs of the inquiry including the costs of witnesses.

The number of voters registered for the 2021 election was 23,609, compared to 21,227 voters registered for the election in 2017. The increase followed a voter registration drive by the Elections Office, including a social media drive, events in schools and colleges and information aimed at younger people, which was the demographic that was felt to be most likely to be missing from the register. Nonetheless, voter registration still falls short of including a significant proportion of eligible voters, mainly those between the ages of 18 to 25. The requirement of active registration, as well as a possible intention to avoid jury duty (which is drawn from the Register of Electors) on the part of some eligible voters, may have contributed to this under-registration¹⁸. The 2017 CPA BIMR report proposed that voter registration be moved to a passive basis from the current active requirement to register. This proposal was not taken forward.

The voter list, certified by a magistrate, includes the full addresses of all electors and is available online. A number of interlocutors felt that this is an unwarranted publication of personal data, so it may also contribute to under-registration. The publication of full address and occupation details online may be in contravention of applicable privacy rights.¹⁹

Recommendation 6: Voter registration could be undertaken on an ongoing basis with the last date to register in an election or referendum brought closer to polling day and consideration could be given as to whether a deadline within the period of the campaign (i.e. after Nomination Day) is possible. In addition, there should be continued efforts to ensure that all those who are entitled to register do so.

¹⁸ The Supervisor of Elections estimated that about 3,000 eligible voters have not registered. A total of 23,609 voters were registered. See: <https://portal.elections.ky/index.php/home/official-register>

¹⁹ General Data Protection Regulation (EU) 2016/679 (GDPR)

THE RIGHT TO STAND FOR ELECTION

The Constitution (Section 61) provides for the qualifications for elected membership of the Parliament and limits candidacy to Caymanians of 21 years of age and above. Although a few exceptions are granted, like being on government duty, studying abroad, employment at sea and for hospital patients, there are some severe restrictions.

Candidates that are a) born in the Cayman Islands or b) outside the Cayman Islands with at least one parent or grandparent born in the Cayman Islands must have:

- resided in the Cayman Islands for a period not less than seven years immediately preceding the date of his/her nomination;
- and must not have had more than 400 days of absence in that period.

Candidates that are born outside the Cayman Islands must have:

- resided in the Cayman Islands for a period or period amounting to not less than 15 years out of the 20 years immediately preceding the date of his/her nomination;
- and must not have had more than 400 days of absence in the immediate past seven years.

The exclusion of candidates on the basis of residency is unreasonable and discriminatory according to international law.²⁰

Caymanians born outside the Cayman Islands are not allowed to possess another citizenship if they would like to be nominated as a candidate. In 2017 the Supervisor of Elections sought a clarification from the Grand Court as to the eligibility of a possible candidate born in Cayman Islands but with US citizenship. The Chief Justice of the Grand Court ruled that this person was not qualified to stand for election on account of his foreign citizenship acquired by descent.²¹ The Constitutional Commission recommended that this and other limitations of suffrage rights deserve review.²²

As per Section 62 of the Constitution, eligibility for election may also be denied where an individual is under any acknowledgement of adherence or allegiance to a foreign power. The Grand Court has adjudicated upon the above provisions in several cases, providing some interpretation of the legal rules but there is a degree of uncertainty how the eligibility status of any aspiring candidate would be evaluated as emphasised by the Constitutional Commission.²³

²⁰ Paragraph 15 of the 1996 UNHCR General Comment No. 25; Section I.1.1.c of the 2002 VC Code of Good Practice recommends that residency requirements may only be imposed for local and regional elections with the requisite residency period not exceeding six months.

²¹ Supervisor of Elections v. Dacosta; Grand Court, Civil Division (Smellie, C.J.): May 17th, 2017

²² The Constitutional Commission outlined four areas of passive suffrage deserving review: The qualifications and disqualifications for elected membership to the Legislative Assembly in sections 61 and 62 of the Constitution and whether these need clarification on account of the range of case law that these provisions have generated, with particular reference to (a) the residency requirement of seven years immediately preceding the date of nomination for election in section 61(1)(e); (b) periods of absence in section 61(3); (c) dual citizenship and section 62(1)(a); and (d) the rehabilitation of offenders and section 62(1)(e); see <http://www.constitutionalcommission.ky/constitutional-matters>. See also as reference: Eastern Caribbean Supreme Court in the Court of Appeal SKBHCVAP2019/0007 The AG of St. Christopher and Nevis and Dr. Denzil Douglas, 12 March 2020.

²³ In another judgment issued on 8 August 2017 on the objection from the Elections Supervisor to Mr. Lindsay's candidacy the Chief Justice ruled that in Mr. Lindsay's case, it would have been "unduly rigid" and "unreasonable," given the intent of the territory's constitution, to disqualify him, who had spent about 797 days away from Cayman in the past seven years. Available on: <https://cilr.judicial.ky/judgments/Cayman-Islands-Law-Reports/Cases/CILR2017/CILR171341.aspx>

Section 62 of the Constitution places further restrictions on the following categories:

- persons convicted for imprisonment exceeding twelve months;
- those convicted of an offence involving dishonesty;
- those “insane or otherwise adjudged to be of unsound mind”;
- those who hold or are acting in any public office.

The ban in place for persons convicted for imprisonment exceeding twelve months does not make any distinction between the different types of offence. The ban in place for those convicted of an offence involving dishonesty is too broad. The restriction against persons with disabilities is contrary to the provisions of international law.²⁴ If public servants wish to stand for election, they have to resign, which is restrictive. A leave of absence could be preferable.

Recommendation 7: To allow for broader electoral participation on an equal basis, candidature rights should be reviewed in line with international standards and good practices, including:

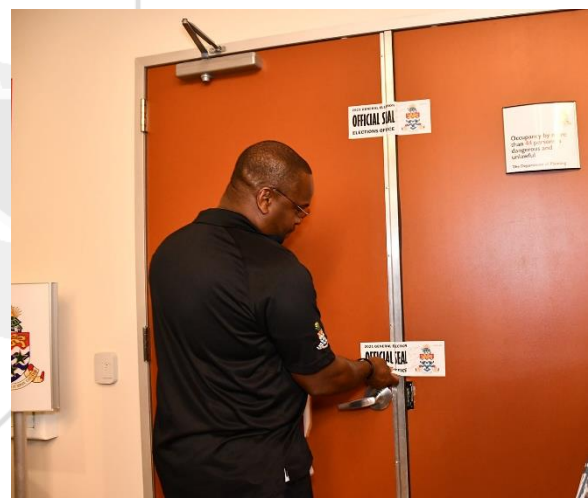
- Any discrimination against persons with disabilities should be abolished;**
- The blanket ban on the right to stand for all prisoners sentenced to imprisonment exceeding 12 months ought to be reviewed and/or include a distinction between the different types of offences;**
- Residency requirements could be reviewed in line with international good practice;**
- Dual citizenship legislation regarding the right to stand could be reviewed in line with international good practice.**

CANDIDATE REGISTRATION

With the dissolution of Parliament and proclamation of elections on 14 February, and the issuance of writs on 15 February, the notice of nominations was published on 22 February. Prospective candidates could lodge their nomination on nomination day, which was on 1 March. This was also the official beginning of campaigning. On 4 March, the Supervisor of Elections gave notice of contested elections.

The Supervisor of Elections maintains the Political Party Register. A group of persons contesting an election together are eligible to register as a political party, and have to provide a party constitution, party logo and colour as well as a website address. While the Constitution refers to the role of political parties, there are currently no incentives for candidates to form political parties.

An eligible person may stand in only one electoral district and must be nominated by at least two electors. The payment of a nomination fee of 1,000 Cayman Dollars is required and reimbursable if the nominated candidate wins election or at least 10 per cent of the vote. The Supervisor of Elections may consult the Grand Court for a declaration as to the qualification or disqualification of a candidate.



The Supervisor of Elections breaks the official seal of the room with election materials on Election Day

²⁴ United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).

For the 2021 parliamentary elections the Supervisor of Elections received nominations from 50 candidates:

- 8 from the People's Progressive Movement (PPM);
- 1 from the newly founded Cayman Islands People's Party (CIPP);
- and from 41 independent candidates.

None of the received nominations were rejected and each of the 19 seats was contested by at least 2 candidates. No declared LGBTQI+ candidate or candidate with a declared disability stood for election.

ELECTION CAMPAIGN

The campaign period of six weeks began on Nomination Day, 1 March, and lasted until the day before elections (13 April at midnight). Although 41 of the 50 candidates were nominally running as independents, it became clear that a number of groupings had been formed. Three candidates ran under the 'Community Creates Country' banner and were a party to all intents. Another group of candidates referred to themselves as 'The Alliance' and indicated they were running in conjunction with the Progressives.

The campaign period was reported to be peaceful. Candidates could campaign freely and a plethora of information and campaign materials was available to voters to assist them to make an informed choice. Candidates conducted door-to-door campaigns, put up billboards, printed brochures, distributed t-shirts and held campaign rallies. As confirmed by numerous candidates across the political spectrum as well as other election stakeholders, fundamental rights and freedoms, such as freedom of expression, peaceful assembly and movement were respected.

Some interlocutors told the Mission that the decision to bring Election Day forward from the anticipated date had adversely affected some candidates, particularly independents, who had planned their campaigns, including taking leave from their jobs, on the basis of the original date. However, many candidates had started their campaigns a long time in advance of Nomination Day, which is not prohibited in law.

The Anti-Corruption Commission, following discussions with the Supervisor of Elections and the police designed a pledge for candidates and voters to sign and submit in an effort to increase awareness of corruption and the adverse effects that it could have on elections during the campaign. The total number and names of candidates who signed the pledge were not made public.

CAMPAIGN FINANCE

The funding of election campaigns in the Cayman Islands is opaque.²⁵ There are requirements for candidates to submit details of their campaign expenditure and limited information on donations received after the elections. The Commission for Standards in Public Life maintains a Cayman Islands Register of Interests. Candidates on Nomination Day have a constitutional obligation to declare to the Commission interests, assets, income and liabilities as prescribed by law. Following the receipt of the electoral candidate declarations in March, and in accordance with the Standards in Public Life Law (Section 11(3)) the Commission for Standards in Public Life reminded all candidates that any changes to interests, assets, income and liabilities had to be declared via an amendment to the original declaration within 30 days of the change occurring. However, there is no requirement for candidates or parties to submit, or for the authorities to audit or publish, reports of donations or expenditure before polling day.

The source of a donation only has to be fully declared in case of donations of more than 10,000 Caymanian dollars. The legal limit on donations is 40,000 Cayman Dollars in total per candidate. Some interlocutors suggested this limit was too high whilst others suggested it was too low. Every candidate must deliver to the Supervisor of Elections a statement of all payments made or received by them or on their behalf, within 35 days after polling day. The Supervisor publishes a summary of declarations rather than a full overview, and these summary reports are publicly accessible online for inspection. The full declarations are only available for inspection in person. There is, however, no obligation on any state institution to verify the completeness and accuracy of the expenses and contributions declared.

Recommendation 8: Full online transparency of campaign donations and expenditure above a de minimis limit could be introduced, including in-kind donations and expenditure attributed to third parties.

There is no legislation limiting the source of donations to candidates or parties. This is at odds with international norms which limit donations to legal residents and registered companies trading in the country.

Campaign finance is only regulated during the period from Nomination Day until Election Day, even though interlocutors shared that campaigning started months before Nomination Day. A number of interlocutors also suggested that it was the practice of candidates to make payments for campaign services, including printing and media buys, in advance of Nomination Day, including for delivery during the regulated campaign period. Although this is legal under current provisions, such practices would appear to be against the spirit of the legislation.

Recommendation 9: Consideration could be given to extending the regulated campaign finance period.

²⁵ Article 7.3 of the United Nations Convention Against Corruption (2003) prescribes to consider taking “appropriate legislative and administrative measures ... to enhance transparency in the funding of candidatures for elected public office and... of political parties”.

Recommendation 10: The electoral legal framework could be amended to require the following to be declared:

- a. all goods and services bought for benefit during the regulated period, regardless of when the contract or payment was made;***
- b. the sources of funding for all campaign expenditure during the regulated period, whether or not received during that time.***

Regular financial reporting and regular publication of the reports submitted in the run-up to Election Day could be introduced to provide for greater transparency.

There is no official pre-election period in the Cayman Islands elections during which there are specific restrictions on communications activity for the Government and for parliamentarians. Hence, there is no prohibition on members of the government using state resources to make announcements during the election period, or for parliamentarians to use their official communication channels for campaign purposes. Allegations of bribery and treating are commonplace although the Mission was not given any evidence to support such allegations and the police has not prosecuted any cases.

Authority for oversight of campaign finance rests with the Supervisor of Elections. Whilst he may present the forms to the Auditor General for review, the law does not specify whether a formal audit is required and this has not historically taken place. The Supervisor of Elections does not have investigatory powers in matters of campaign finance. Both the Supervisor of Elections and the Auditor General have made recommendations to the Cabinet since 2017 for reform of the electoral finance system although these have not been taken forward.

Recommendation 11: All campaign finance declarations could be audited by a qualified person upon receipt by the Elections Supervisor. The Elections Ordinance could be amended to introduce deterrent penalties for those who fail to make the required declarations or where declarations are found to be incomplete or inaccurate.

MEDIA AND SOCIAL MEDIA

The media landscape in the Cayman Islands is somewhat limited due to the small size of the population. There are two printed newspapers that are no longer published daily, although they produce online updates on a regular basis. The local TV station covering news has shut down since the 2017 election. There are a number of radio stations and several online news portals.

The law does not provide for free airtime for candidates, although the government owned radio station, Radio Cayman, invited each candidate to take part in a 15-minute interview during one of the regular talk shows. In addition, there were two series of debates organised on a constituency by constituency basis, one by the Chamber of Commerce and the other by the Cayman Compass newspaper. Each was streamed live online and available to watch on demand afterwards. A number of candidates met by the Mission commented on the steep increase in advertising rates in the media during the campaign period which allegedly took advantage of the limited media space available paired with the high demand. As well as short political advertisements, Radio Cayman and other news outlets sold longer periods of airtime during which rallies or campaign events could be broadcast. The private media reportedly sold airtime and space to all candidates on an equal, first-come-first-served, basis.

There is no legislation or code of conduct regulating the behaviour of the media during the election campaign. Media interlocutors told the Mission that they had access to information from the Government, Governor and Elections Supervisor and that they consider the media landscape on the Cayman Islands to be free. The Freedom of Information Act (2019) is in place and the Ombudsman may adjudicate on complaints made over failure to provide information.

Social media was used extensively by most candidates to promote themselves and it was used by the media and voters to discuss electoral issues. The Mission's limited observation of media and online coverage showed that there were instances of disinformation and of claims and accusations that were presented without evidence and could be considered defamatory.

No instances have been reported to date on attempts made from overseas to influence the outcome of an election in the Cayman Islands via social media. However, the ability of the Cayman Islands to withstand such an attack is limited. Legislation is out of date when it comes to cybercrime²⁶ 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.

PARTICIPATION OF WOMEN

In 2016 the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was extended to the Cayman Islands. Most public offices and offices related to the conduct of elections are held by men. Methods to enhance women's representation as proposed by CEDAW have not yet been included in political practice. While more women (54 per cent) than men (46 per cent) have been included on the voter register, only 22 per cent of candidates were women (11 in total). This is a decline in comparison with the previous elections, when 26 per cent of candidates running for office were women (16 in total). However, 26 per cent of candidates elected to Parliament were women (5 in total), representing an increase from the 16 per cent (3 members) previously elected, but still falling short of gender parity. The decline in traditional party politics may have some bearing on the next generation of aspiring legislators as many women also lack the resources necessary to run a political campaign.



Election staff preparing for Election Day

Recommendation 12: In order to promote equal participation of women and men in political life and processes, proactive measures should be considered in conjunction with mainstreaming awareness about gender equality and harmonising official language, in line with international good practice.

²⁶ In Section 80 of the Elections Act (2021 revision), political broadcasts and announcements are defined as being by television or radio and no reference is made to online campaigning or broadcasting. Section 90 of the Information and Communications Technology Law (2019 Revision) refers to an offence of "Use of an ICT service to defraud, abuse, annoy, threaten or harass", but does not reference elections, referendums or other political campaigning. This situation is not unique to the Cayman Islands.

PARTICIPATION OF PERSONS WITH DISABILITIES

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) remains to be extended to the Cayman Islands.²⁷ The Constitution (Section 91(1)b) still disenfranchises persons of their right to vote if a person is “certified to be insane (sic) or otherwise adjudged to be of unsound mind (sic)”. A similar provision in Constitution (Section 62(1)b) prevents persons with disabilities from the right to stand. The Elections Law (Section 19(3)) provides for the Mental Health Commission to provide details of these affected citizens to the Supervisor of Elections. Such limitations on the right to vote and on the right to stand as a candidate based on mental or intellectual disability or lack of legal capacity is contrary to relevant jurisprudence²⁸ and international good practices.

While the Cayman Islands has a national disability policy and a National Disability Council, the government has no persons with disabilities focal point. Discriminatory language in legislation (Constitution: “insane”, “unsound mind”; Elections Act: “blindness”) still prevails. Concerns remain regarding the level of support and information granted to persons with disabilities to enable them to make an informed choice and to exercise the right to vote independently. Digital tools and key online resources, including the Supervisor of Elections’ website and online voter information services and campaign materials are often not configured for persons with disabilities. For Election Day, the Elections Office supplied a large print candidate list to each Electoral District.

Persons with disabilities were allowed to request mobile polling or ask for assistance at polling stations when voting on Election Day. A voter requesting assistance could only be assisted by the presiding officer and could also request a family member or confidant to be present, although the presiding officer would still have to fill in the ballot. This procedure is contrary to international good practice which suggests that voters should be enabled to vote themselves or with the assistance of a trusted family member or confidant alone.

Recommendation 13: Measures aimed at mainstreaming awareness about the rights of persons with disabilities and supporting their independent, informed voting and decision-making should be prioritised and remaining barriers to effective electoral participation of persons with disabilities should be removed, including:

- a. those related to restrictions on the right to vote and the right to stand based on mental/intellectual disability;***
- b. lack of accessible voter materials;***
- c. mandatory assistance by the presiding officer.***

²⁷ Article 12 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) requires states to “recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life”. Paragraph 9.4 of the 2013 CRPD Committee’s Communication 4/2011 provides that “an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability.”

²⁸ *Alajos Kiss v. Hungary (2010)* judgment by the European Court of Human Rights (ECtHR), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-98800>.

COMPLAINTS AND APPEALS

In the Cayman Islands, there is a lack of clarity on who is responsible for dealing with electoral complaints and appeals. Responsibility seems to be partly shared by a number of statutory Commissions that have been set up under the Constitution (2009):

- the Constitutional Commission,
- the Human Rights Commission,
- the Judicial and Legal Services Commission,
- the Standards in Public Life Commission,
- the Complaints Commissioner (Ombudsman (sic)),
- the Information Commissioner and the Electoral Boundary Commission.

The Anti-Corruption Commission is constituted under the Anti-Corruption Law (2018 Revision) and covers a broad range of local corruption offences by public officials, private individuals and entities. The Anti-Corruption Commission referred any electoral complaints to the Supervisor of Elections.

As per Section 116 of the Constitution, the Human Rights Commission has the power to receive and investigate complaints of breaches or infringements of any right or freedom contained in the Bill of Rights or international human rights treaties that have been extended to the Cayman Islands, and investigate such possible breaches or infringements on its own initiative, as well as provide advice to persons who consider that their rights or freedoms have been infringed.

The Ombudsman office, established by the Ombudsman Law in 2017, helps to resolve complaints about government decisions and unfair treatment by government. It investigates complaints about police misconduct, protects whistle-blowers and ensures data privacy rights and government transparency.

Neither the Human Rights Commission nor the Ombudsman are mandated to receive electoral complaints. There is an absence of procedures guiding the adjudication of disputes which might arise during the period between nomination and polling day.

The Supervisor of Elections has no legal jurisdiction to receive complaints regarding any aspect of the conduct of the electoral campaign, as the Elections Act (2021 Revision) is silent on that matter and only refers to petitions against elections to the Grand Court. Nonetheless, the Mission was informed about several complaints made to the Supervisor of Elections, which were mostly about alleged treating and defacing of campaign materials.

The Supervisor of Elections forwards complaints to the police and closely communicates with them about any election related incidents. If there is substance to a case, the police submits a file to the Director of Public Prosecution who institutes and undertakes criminal proceedings. However, as there is no official complaints procedure or database, it was difficult for the Mission or the public to understand how a complaint is accepted, considered, and processed, as well as how many complaints were received and processed in total.

Petitions against the election result can be lodged with the Grand Court by any voter, candidate or rejected nominee within 21 days after the result announcement by the Returning Officer. In the case of an allegation of corrupt practices, a petition has to be lodged within 28 days after the date

of such payment. An election related trial follows the same procedures of a civil action in the Grand Court. It would appear that no deadlines for a judgement prevail.²⁹

Recommendation 14: Clear and coherent complaints and appeals procedures should be introduced, in line with international good practices. Effective time limitations for complaints, appeals and petitions could be considered.



Police preparing for Election Day

ELECTION DAY

The Mission was unable to be physically present in the Cayman Islands for the 2021 election period due to COVID-19 travel restrictions. As the Mission did not attend or observe polling day activities, it is unable to offer an assessment of the voting, counting and tabulation process.

In the absence of an international election observation mission on the ground, a small group of nine domestic observers was recruited on an initiative from the Governor. This group was created shortly before Election Day and did not necessarily conform to accepted international best practice. Following an open recruitment process, the Premier and opposition were asked to nominate two members each, and the remaining five members were selected by a panel chaired by the Deputy Governor. Observers from this group were active during the second early voting period and on Election Day, observing procedures during those periods except for voting by voters in quarantine, and may have provided some reassurance to electors and candidates.

Recommendation 15: Legal provisions and accreditation procedures for domestic and international observers could be established, and such groups should be independent of other election actors and should have access to fully observe the entire election process including access to information. Genuinely independent domestic observation efforts in accordance with the 2012 Declaration of Principles for Domestic Election Observation could be encouraged.

²⁹ Bedell Cristin (2020) 'In Review: Court procedure in Cayman Islands', *Lexology*. Available at: <https://www.lexology.com/library/detail.aspx?g=1cf351fa-e0a5-4924-a01d-ef0ecdc8728f>

The previous CPA BIMR Mission that observed the 2017 election recommended that the intermingling of ballot papers from mobile and postal ballot boxes with one of the Election Day ballot boxes should be undertaken to remove the risk that small numbers of electors voting via mobile ballot box or post could have their voting intentions revealed.³⁰ This proposal was put into effect for the 2021 election at a late stage.

Following concerns about the number of potential voters stuck overseas due to COVID-19, a decision was made by the Cabinet, on the proposal of the Supervisor of Elections, to allow courier services rather than express mail to be used for postal ballots.

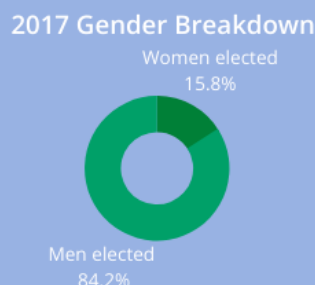
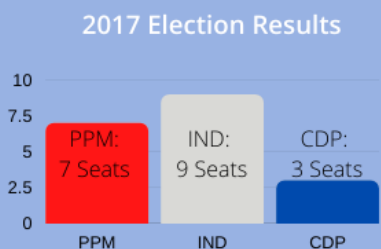
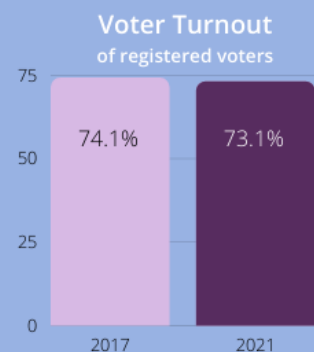
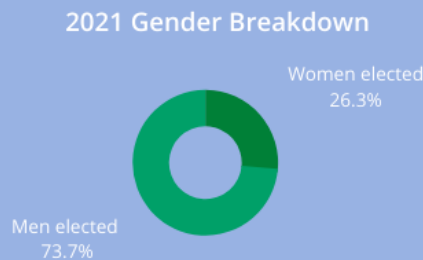
Under the law, prisoners sentenced to a term of less than 12 months and those on remand are eligible to vote. The Governor approved a request by the Prison Superintendent, following consultation with the Attorney General and Supervisor of Elections, to use the mobile voting process for these electors under Article 50 of the Election Code.

The police had a deployment plan to allocate one officer inside and one outside each polling station, as well as having others available. This goes against best practice which suggests that police officers should only be present inside a polling station where they themselves are in the process of voting or when invited by the presiding officer to restore order.³¹

During Election Day, the Supervisor of Elections published hourly updates on voter turnout. These figures remain available online and are a helpful tool for transparency.

ELECTION RESULTS

Cayman Islands Election Results



³⁰ For example, the postal ballot box from Cayman Brac West had a single vote and the list of postal voters is publicly available.

³¹ The Venice Commission's Code of Good Practice in Electoral Matters and Code of Good Practice for Referendums, provide guidance on key aspects of these processes. The Explanatory Notes to the Code of Good Practice in Electoral Matters (paragraphs 112-113) offers specific guidance on the role of security providers in and around polling stations on election day.

RECOMMENDATIONS

1. ELECTORAL REFORM

An inclusive process of electoral reform, including possible reform of legislation on referendums, should be carried out, in which all stakeholders are encouraged to make every reasonable effort to build broad consensus over the reform, to be concluded at least one year ahead of the next election.

2. ELECTIONS OFFICE

A more substantial Elections Office with a permanent Supervisor of Elections should be established to oversee electoral registration drives with the aim of ensuring all eligible people are on the voter list; to ensure full compliance with election finance laws; in case of a snap election or referendum; and to undertake long-term voter education campaigns.

3. ELECTORAL COMMISSION

An independent Electoral Commission should be established to supervise the electoral process, to ensure it is conducted fairly and impartially, to provide expert advice on all aspects of electoral law reform and to consider electoral complaints.

4. ELECTORAL BOUNDARIES

The Electoral Boundary Commission should conduct a delimitation exercise and publish a report by 2023 which should carefully scrutinise how international standards and best practice can be met to further narrow the scope of deviation from the equality of the vote. Deviations from the norm should ideally not be more than 10 per cent and in exceptional circumstances 15 per cent.

5. RIGHT TO VOTE

To allow for broader electoral participation on an equal basis, the legal capacity and residency requirements for voting should be reviewed in line with international standards and good practices:

- a. Any discrimination in voting rights against persons with disabilities should be abolished;
- b. The blanket ban on the right to vote for all prisoners sentenced to imprisonment exceeding 12 months, regardless of the nature of the crime involved, ought to be reviewed;
- c. Residency requirements could be brought in line with international good practice;
- d. Returning Officers should be granted the right to vote.

6. VOTER REGISTRATION

Voter registration could be undertaken on an ongoing basis with the last date to register in an election or referendum brought closer to polling day and consideration could be given as to whether a deadline within the period of the campaign (i.e. after Nomination Day) is possible. In addition, there should be continued efforts to ensure that all those who are entitled to register do so.

7. RIGHT TO STAND

To allow for broader electoral participation on an equal basis, candidature rights should be reviewed in line with international standards and good practices, including:

- a. Any discrimination against persons with disabilities should be abolished;
- b. The blanket ban on the right to stand for all prisoners sentenced to imprisonment exceeding 12 months ought to be reviewed and/or include a distinction between the different types of offences;
- c. Residency requirements could be reviewed in line with international good practice;
- d. Dual citizenship legislation regarding the right to stand could be reviewed in line with international good practice.

8. CAMPAIGN FINANCE TRANSPARENCY

Full online transparency of campaign donations and expenditure above a de minimis limit could be introduced, including in-kind donations and expenditure attributed to third parties.

9. CAMPAIGN FINANCE

Consideration could be given to extending the regulated campaign finance period.

10. FINANCIAL REPORTING

The electoral legal framework could be amended to require the following to be declared:

- a. all goods and services bought for benefit during the regulated period, regardless of when the contract or payment was made;
- b. the sources of funding for all campaign expenditure during the regulated period, whether or not received during that time.

Regular financial reporting and regular publication of the reports submitted in the run-up to Election Day could be introduced to provide for greater transparency.

11. AUDIT OF CAMPAIGN FINANCE

All campaign finance declarations could be audited by a qualified person upon receipt by the Elections Supervisor. The Elections Ordinance could be amended to introduce deterrent penalties for those who fail to make the required declarations or where declarations are found to be incomplete or inaccurate.

12. WOMEN PARTICIPATION

In order to promote equal participation of women and men in political life and processes, proactive measures should be considered in conjunction with mainstreaming awareness about gender equality and harmonising official language, in line with international good practice.

13. DISABILITY RIGHTS

Measures aimed at mainstreaming awareness about the rights of persons with disabilities and supporting their independent, informed voting and decision-making should be prioritised and remaining barriers to effective electoral participation of persons with disabilities should be removed, including:

- a. those related to restrictions on the right to vote and the right to stand based on mental/intellectual disability;
- b. lack of accessible voter materials;
- c. mandatory assistance by the presiding officer.

14. COMPLAINTS AND APPEALS

Clear and coherent complaints and appeals procedures should be introduced, in line with international good practices. Effective time limitations for complaints, appeals and petitions could be considered.

15. ELECTION OBSERVERS

Legal provisions and accreditation procedures for domestic and international observers could be established, and such groups should be independent of other election actors and should have access to fully observe the entire election process including access to information. Genuinely independent domestic observation efforts in accordance with the 2012 Declaration of Principles for Domestic Election Observation could be encouraged.

APPENDIX I

The CPA BIMR Election Observation Mission that observed the 2017 Cayman Islands General Election made 21 recommendations for improvement, of which only one recommendation (#14) was implemented.³² The 2021 CPA BIMR Election Expert Mission recommends that authorities address previous recommendations, as they are still considered valid.

The 2021 Mission wishes to highlight the following past recommendation in particular:

VOTING AND COUNTING

Recommendation 13: An amendment to the Elections Law, removing the requirement that a serial number be present on both the ballot paper and the stub of the paper, should be introduced in order to protect the secrecy of the vote. Alternative security measures, such as the introduction of embossed paper or the use of bar codes, could be undertaken.

³² The CPA BIMR 2017 report is available on: https://www.uk-cpa.org/media/1681/eom_cayman-islands_2017_finalv2-report.pdf



ACKNOWLEDGEMENTS

The CPA BIMR Election Expert Mission wishes to express its gratitude to the authorities of the Cayman Islands, election officials, candidates and to the people of the Cayman Islands 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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