



BRITISH VIRGIN ISLANDS GENERAL ELECTION

APRIL 2023



CPA BIMR ELECTION OBSERVATION MISSION

PRELIMINARY STATEMENT

“The British Virgin Islands has delivered a well-administered election, which was carried out in a calm and professional manner. Advance Polling Day provided a welcome opportunity for an increased number of voters to cast their vote. Polling staff were well-trained, diligent and helpful, and efforts to promote voting by elderly voters and persons with disabilities were commendable.

The lack of campaign finance regulations means voters are unaware of sources of campaign funding, which is not in line with international best practice.

Following an audit process, there is now further clarity on eligibility for belonging status, which is linked to the right to vote. The Mission welcomes the momentum towards achieving legal certainty and improved implementation of the granting of belonging status, to enfranchise eligible voters.

Following a lively campaign, voters were able to choose from a wide range of candidates. The Mission also notes that a considerable number of voters chose to stay away from the polls with a lower turnout compared to previous elections. The participation of women in political life is not actively promoted, and only 3 out of 13 elected Members to the House of Assembly were women.

Hon. Fatoumatta Njai (The Gambia)

Head of Mission

CPA BIMR Election Observation Mission to the British Virgin Islands 2023

INTRODUCTION TO THE MISSION

At the invitation of Governor John Rankin CMG, with support from the Premier and the Leader of the Opposition, the Commonwealth Parliamentary Association British Islands and Mediterranean Region (CPA BIMR) conducted an Election Observation Mission to the British Virgin Islands General Election on 24 April 2023.

This is the fourth time CPA BIMR was invited to observe a general election in the British Virgin Islands. The Mission held virtual meetings before arrival and was present in the British Virgin Islands from Monday 17 April until Wednesday 26 April 2023.

The eight-member Mission was composed of:

- Head of Mission – Hon. Fatoumatta Njai (National Assembly of The Gambia)
- Short-Term Observer – Hon. Shellya Rogers-Webster (House of Assembly of Anguilla)
- Short-Term Observer – Hon. Randy Howell (House of Assembly of Turks and Caicos Islands)
- Short-Term Observer – Hon. Samantha Sacramento (Gibraltar Parliament)
- Legal/Political Analyst – Anne Marlborough (Ireland)
- Electoral/Campaign Analyst – Vasil Vashchanka (Sweden)
- CPA BIMR Election Observation Lead – Fleur ten Hacken (the Netherlands)
- CPA BIMR Mission Coordinator – Matthew Hamilton (USA/UK)



The CPA BIMR Team

The Mission conducted an independent assessment of the British Virgin Islands General Election against international legal standards, commitments and obligations as well as domestic laws. Its assessment considered the legal framework, election administration, political campaign, campaign finance, voter and candidate registration and opportunities for complaints and appeals. In addition, the Mission considered a number of wider issues such as gender equality and participation of persons with disabilities. The Mission met key stakeholders, including election officials, candidates, the Attorney General, media outlets, voters, and attended campaign events.

On Election Day, the Mission visited all 18 polling stations across all nine districts, and observed the central vote count. The Mission also observed Advance Polling in seven out of ten polling stations across Tortola and Virgin Gorda.

The Mission is independent in its composition, findings and conclusions, adhering to the Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers signed at the United Nations in 2005. It will continue to follow post-election developments and will publish a final report, containing recommendations, within two months of Election Day.

BACKGROUND

The Territory operates as a parliamentary democracy. Ultimate executive authority in the British Virgin Islands is vested in The King, and is exercised on his behalf by the Governor of the British Virgin Islands. The most recent constitution was adopted in 2007 (the Virgin Islands Constitution Order, 2007) and came into force when the Legislative Council was dissolved for the 2007 General Election. The Head of Government is the Premier, chosen from among the members of the House of Assembly, elected in a general election.

The last General Election in the British Virgin Islands took place in February 2019. The Virgin Islands Party (VIP) won eight of the thirteen contested seats; while the National Democratic Party (NDP)

won three seats; and the Progressive Virgin Islands Movement (PVIM) and the Progressives United (PU) won a single seat each. The VIP subsequently formed a government.

On 28 April 2022, the then premier, Andrew Fahie, was arrested in the USA on allegations of drug trafficking and money laundering. The following day, the British Virgin Islands Commission of Inquiry Report was published.¹ On 5 May 2022 a motion of “no confidence” in the Premier was passed. A new Government of National Unity was constituted, a coalition comprised of ministers from across party lines, namely the VIP, NDP and PVIM, with the sole PU representative serving as leader of the opposition. This unity government remained in office until the election in 2023.

All four parties contested the 2023 election again, with the VIP fielding 13 candidates, the NDP and PVIM nine each, and one on behalf of the PU. There was also a total of ten independent candidates, some of whom secured endorsements from political parties. The VIP secured six of the 13 elected seats in the House of Assembly, the NDP and the PVIM both won three, and the PU retained its single seat.

LEGAL FRAMEWORK

The British Virgin Islands is subject to a wide range of human rights obligations that have a bearing upon the electoral process. These include:

- the International Covenant on Civil and Political Rights;
- the Convention on the Elimination of All Forms of Racial Discrimination;
- the Convention on the Elimination of All Forms of Discrimination against Women;
- the Convention on the Rights of the Child; and the Convention against Corruption.

The European Convention on Human Rights was extended to the British Virgin Islands in 1969, with the right of individual petition accepted on a permanent basis since 2009.² The Convention on the Rights of Persons with Disabilities has not yet been extended to the British Virgin Islands.

The legal framework for elections in the British Virgin Islands is comprised principally of the Constitution of 2007 and the Elections Act, as amended, of 1994. As a non-self-governing territory, the British Virgin Islands remains on the agenda of the UN Special Committee on Decolonisation.³ The Constitution sets out the electoral system and elaborates an extensive catalogue of fundamental rights, including the political rights to vote, to stand for election, to equality and to freedoms of expression, assembly, association and movement.

The Elections Act has repeatedly been amended since 1994, with the last consolidation prepared by the Law Revision Commission in 2013. Amendments have been introduced since then in 2017, 2019 and 2023, but no further consolidation has been published. All of these instruments must be read together in order to ascertain the applicable law, which is a burdensome task for electoral stakeholders to accomplish. There is no freedom of information legislation in the British Virgin Islands.

¹ British Virgin Islands [Commission of Inquiry website](#).

² The UK has extended the territorial application and right of individual petition under the European Convention on Human Rights to the British Virgin Islands [on a permanent basis](#).

³ UN General Assembly [Resolution 9 December 2021](#) 76/93 on the Question of the British Virgin Islands.

ELECTORAL SYSTEM

The House of Assembly is elected through a mixed electoral system. Nine members are elected in single-mandate electoral districts by a plurality of votes (“first past the post” system). Four members are voted in the territorial “at large” constituency, with the candidates who garner the highest numbers of votes deemed elected (this system is known as “block vote”).

The electoral system is well understood by the stakeholders and is easy to administer. The electoral districts which return nine members of the House are defined in Schedule 1 to the Elections Act. These districts do not correspond to any administrative boundaries and exist solely for electoral purposes. Considerations of equal suffrage imply that votes of the electors should carry similar weight.⁴ The Mission noted with satisfaction that the electoral districts were indeed similar in size.⁵ For election administration purposes, each electoral district is divided into up to four polling divisions, with each division served by one polling station.

ELECTION ADMINISTRATION AND TECHNOLOGICAL INNOVATION

The primary responsibility for administering the elections lies with the Supervisor of Elections, who is appointed by the Governor.⁶ By all accounts, the Supervisor of Elections is perceived as politically independent and enjoys confidence of election stakeholders. The election administration appeared to be adequately resourced. The Supervisor of Elections recruited and trained returning officers for each electoral district, including for the “at large” constituency, as well as Presiding Officers and polling clerks for each polling station. In line with good electoral practice, all election staff received standardised training.⁷ The Supervisor of Elections also produced a handbook for candidates and a manual for election officers, both of commendable quality.

Electronic pollbooks and ballot scanners were used to administer the polls for the second time.⁸ These technologies were welcomed by nearly all Mission interlocutors, who especially noted the marked improvement in the efficiency of the ballot count and the tabulation of voting results. The Supervisor of Elections carried out public demonstrations of the voting equipment and prepared educational videos which circulated in social media. Still, on Election Day the Mission observed that voters often required help from polling staff because they were not familiar with marking and casting their machine-readable ballot, which indicates the need for a broader reach of the voter information campaign.

THE RIGHT TO VOTE AND VOTER REGISTRATION

The right to vote is protected in the Constitution, which provides that persons who “belong to the Virgin Islands” are entitled to vote, subject to having reached the age of 18 and being resident and

⁴ See inter alia Article 25 of the ICCPR and views of the UN Human Rights Committee in *Mátyus v. Slovakia*, Communication No. 923/2000 (CCPR/C/75/D/923/2000).

⁵ The highest deviation from the average district size was 22 per cent.

⁶ The office of the Supervisor of Elections is structurally part of the office of the Deputy Governor.

⁷ See the Council of Europe’s Venice Commission Code of Good Practice in Electoral Matters, Guidelines, paragraph II.3.1.g.

⁸ This equipment was previously purchased from Election Systems & Software, a US company headquartered in Omaha, Nebraska, which was contracted to provide technical support for this election.

domiciled in the territory.⁹ Residence in the US Virgin Islands, while retaining domicile in the British Virgin Islands, does not disqualify a voter.

The attainment of belonging status is governed by immigration legislation, read together with Section 2(2) of the Constitution. The legal rules lack clarity as to the duration of residency required to apply for belonging status, with different practices and degrees of discretion applied over time.

The Commission of Inquiry recommended a review of processes for the grant of residency and belonging status. An audit was recently conducted on a Fast Track scheme for applications of residence and belonging, which raised questions as to the legal validity of the belonging status of 688 individuals. Arising from the first ever recall of the House of Assembly, the Immigration and Passport (Validation) Act 2023 and the Immigration and Passport (Amendment) Act 2023 were both enacted on 19 April 2023 to avert any potential invalidity of the election posed by questionable grants of belonging status.¹⁰

The voter registration system is active, i.e. based on voter application, and continuous. Between elections, voter lists are published and updated on an annual basis. In line with the legal requirements, preliminary voter lists were displayed for public scrutiny in hard copy and published electronically, disaggregated by polling division, four days after the dissolution of the House of Assembly, and voters had four days to request updates and corrections. The revised voter lists used in this election were published on 27 March and comprised records of some 16,100 voters. No substantial concerns about the accuracy of the voter register were expressed to the Mission. During Advance Polling and on Election Day, voters were requested to provide their current details in polling stations, enabling the Supervisor of Elections office to encourage updates of the register after the election.

THE RIGHT TO STAND AND CANDIDATE REGISTRATION

The right to stand for election is restricted exclusively to those described in the Constitution as “Virgin Islanders”. This a subset of the overall group of belongers, and is determined by blood and descent from those who have historically been Virgin Islanders. Qualifying periods of residence and domicile also apply. The distinction between different groups of belongers on historical grounds appears to be in conflict with the constitutional protection of equality, which guarantees rights without distinction based on descent. It is also in apparent conflict with the international requirements of non-discrimination between citizens in their right to participate in public affairs.¹¹

Prospective candidates are required by law to submit nomination papers supported by at least two eligible voters and pay a deposit of USD 1,000, refundable to candidates who receive at least one eighth of votes in their district (1/32nd in the “at large” constituency). Candidates could stand for election as party representatives or independents. In an inclusive process, the Supervisor of

⁹ Domicile connotes a deeper degree of attachment than mere residence. It is where one resides and intends to continue residing.

¹⁰ Grants of residence and belonging status made between 12 June 2019 and 30 June 2020 were retrospectively validated by the two pieces of legislation, in case any subsequent revocation of their status would undermine the lawfulness of the elections. There is also a substantial backlog of applications (up to 3,000) for belonging status awaiting determination.

¹¹ International Covenant on Civil & Political Rights, Article 25.

Elections registered 42 candidates to contest the election, including 17 in the “at large” constituency.¹² All district races were competitive, contested by two to four candidates.

ELECTION CAMPAIGN AND CAMPAIGN FINANCE

The campaign was vibrant and the candidates used a variety of means to reach out to the electorate, including door-to-door visits, rallies, posters, billboards, and jingles. Fundamental freedoms of movement, expression, and peaceful assembly were respected in the campaign. Social media played an important role for the dissemination of campaign messages, as well as critical views.¹³ Candidate debates and rallies were livestreamed on Facebook, expanding their reach. Rather than advancing specific policies, candidates’ messages often emphasised their personal credentials, experience in public office, and the responsiveness to their constituents. Positively, several debates were organised, including between premier candidates, allowing voters to compare their views directly.

In the absence of any campaign finance regulations, sources of campaign funding are not made public which is at odds with the internationally encouraged electoral practice.¹⁴ Most Mission interlocutors spoke in support of transparency of campaign donations, noting that it was discussed by Cabinet prior to the election, but the introduction of reform was postponed until after the election. The Mission was also informed of the high cost of campaigns, which some interlocutors attributed to the lack of rules safeguarding a level playing field.

DIVERSITY AND INCLUSION

There are no special measures in place to promote the participation of women in political life. Seventeen among the forty-two candidates who stood for election were women. Three women were among the thirteen people elected to the House of Assembly, two representing the VIP and one from the NDP. Three women were also elected in 2019. This represents approximately 23% of the elected membership of the House.

While the Convention on the Rights of Persons with Disabilities has yet to be extended to the British Virgin Islands, laudable efforts were made to promote the participation of persons with disabilities as voters. Independent voting, in secret, was not possible, however, for persons with visual impairments. Advance polling was made available for those with special needs of assistance. Respect and compassion were displayed by polling staff towards voters, who were facilitated to vote regardless of the time or level of support required. On Election Day, around several polling stations were assessed by the Mission as not being independently accessible for persons with reduced mobility.

¹² The VIP fielded a full slate of candidates in all electoral districts and for the “at large” constituency. The NDP and the PVIM contested five district races each and all “at large” seats. The PU contested one district seat. Five independent candidates registered for the district races and an equal number competed in the “at large” constituency.

¹³ Personal attacks on social media were mentioned to the Mission by some of the candidates, and several complaints on such attacks were made to the police.

¹⁴ See [UN Convention against Corruption, Article 7.3](#).

ADVANCE VOTING

In line with the law, Advance Polling was organised on 20 April in nine polling stations (one per electoral district). Voters with disabilities, as well as elderly and illiterate voters who require assistance, are entitled to cast their ballots early without a prior application, while police officers, election officials, remand prisoners, and voters unable to vote on Election Day due to employment or travel could vote early upon prior application and approval by the Supervisor of Elections. Positively, medical practitioners, social care providers, prison officers, election candidates and persons assisting other voters were added to the categories of those eligible for advance voting preceding these elections.¹⁵ The opportunity to vote in advance provides a welcome additional avenue for exercising the right to vote by those unable to come to the polls on election day. Some 1,400 voters cast their ballots on Advance Polling Day.

In the seven polling stations visited by the Mission on Advance Polling Day, voting proceeded smoothly. Queues formed outside of some polling stations as voters requiring assistance and the persons providing such assistance had to take oaths, which extended their processing time. For persons assisted by the Presiding Officer, rather than by a friend, the law requires for the assistance to be witnessed by party agents, which compromises the secrecy of the vote. The Mission also noted that that some voters with disabilities and elderly voters who otherwise appeared capable of voting independently have apparently resorted to assistance due to their lack of familiarity with the machine-readable ballot and equipment.

ELECTION DAY

Election Day was orderly, peaceful, and well-run. The Mission assessed the implementation of opening, voting, and closing procedures as good or very good.¹⁶ No instances of Election Day campaigning or undue influence on voters was observed. Polling personnel were polite, helpful, knowledgeable, and promptly assisted in case of non-standard situations requiring advice from election officials.

A few technical issues with the functioning of the electronic pollbooks and ballot scanners were resolved without delay and did not impede the voting process. Outdated voter records occasionally caused delays during polling, as voters were required to take an oath if the data in their identification documents did not fully match their information in the voter list. In isolated instances registered voters were not found on voter lists and were allowed to vote only after their eligibility was confirmed by the Supervisor of Elections' office.

The tabulation of voting results was organised on suitably spacious premises and unfolded transparently, with the Returning Officers' successive transfer of the voting results in their districts for the electronic tabulation, and the announcement of all voting results per district and the territorial constituency by the Supervisor of Elections. Candidates accepted election results and no challenges were made.

¹⁵ The Elections (Amendment) Act, 2023, which became law on 17 March 2023, amended section 47 of the Principal Act, added the new categories of voters eligible for advance voting.

¹⁶ With possible options including Very Poor, Poor, Good, Very Good

ACKNOWLEDGEMENTS

The CPA BIMR Election Observation Mission wishes to express its gratitude to the authorities of the British Virgin Islands, election officials, candidates and to the people of the British Virgin Islands for their cooperation and assistance during the course of the Mission.

CPA BIMR ELECTION OBSERVATION SERVICES

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

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



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