CPA BIMR ELECTION OBSERVER MISSION

MONTSERRAT GENERAL ELECTION
SEPTEMBER 2014

PRELIMINARY REPORT
The 2014 Legislative Assembly elections in Montserrat were vibrant, peaceful and participatory. Thirty-one candidates competed for nine seats in a single constituency. Polling was very diligently and effectively conducted. The count was exemplary, undertaken with the utmost rigor and the highest possible levels of transparency (with running totals instantaneously displayed on two external screens and uploaded onto an official website). However there are a number of challenges with the legal framework, including the right to stand and the lack of provision for the campaign. The Election Commission needs further support to institutionalise its successes so that it can consistently function as an effective and independent administration.

The Commonwealth Parliamentary Association, British Islands and Mediterranean Region, Election Observer Mission (EOM) has been present in Montserrat since 3 September 2014 following an invitation from His Excellency The Governor of Montserrat and with support of the Premier and Leader of the Opposition. The Mission was led by Hon. Mario Galea MP, Member of Parliament from Malta. In total the EOM deployed four observers including a parliamentarian from Bermuda, Hon. N.H. Cole Simons JP MP; an Election Analyst, Hannah Roberts; and one Election Coordinator, Matthew Salik to assess the electoral process in accordance with international commitments for elections as well as the laws of Montserrat. Whilst in Montserrat the Mission held a number of meetings with amongst others, political, media and civil society stakeholders. During election day the Mission made 26 visits to all 12 polling stations and observed all the counting stations at the counting centre.

The EOM is independent in its findings and conclusions and adheres to the Declaration of Principles for International Election Observation signed at the United Nations in October 2005. The EOM will remain in country until 14 September 2014 to observe post-election developments and will publish a final report, containing recommendations, within two months of the conclusion of the electoral process.

The UN's International Covenant on Civil and Political Rights (ICCPR), the primary international law instrument covering elections, has been extended to and committed to by Montserrat, thus article 25 covering elections is applicable. Montserrat's legal framework is largely in compliance with such obligations. However there are excessive restrictions on the right to stand, and no legal regulation of the campaign (including campaign finance), although a variety of election offences are stipulated providing some limits to conduct. There is also no legislative provision for political parties.

Following the population displacement after the volcanic eruption, one multi-member constituency was established with each voter having nine votes. The nine persons receiving the highest number of votes,

1. ICCPR article 25: “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;”
and not less than six percent of the total votes cast, are elected. Now that the population is more settled and local communities are reforming, there is a growing frustration with this system as it is seen as reducing the immediate connection between constituents and their representatives.

**ELECTION ADMINISTRATION**

The Election Office implemented its responsibilities effectively and commanded widespread confidence. People interviewed consistently referred to the approachability, willingness, impartiality, dedication, competence and leadership of its officers. Extensive efforts were made with training to prepare candidates and party agents and to reach out to all stakeholders through the media, and to provide voter education.

Following the passing of the Electoral Commission Act 2012, the Chairperson and Commissioners were appointed in early 2013. This new organisation was immediately under operational pressure to deliver the 2014 elections. While activities for the 2014 elections were successfully executed, the establishment and development of the Election Commission institution remains. For example a systematic record of Commission decisions made public via an official election commission website and other channels.

**VOTER REGISTRATION**

Voter registration took place in less than ideal circumstances with little time before the general election allocated for this cumbersome process. A base list from the previous election was used which was out of date due to considerable population changes. Extensive efforts were made to compile and accurate register, but a prolonged process of changes and some lack of information on the final list left some people frustrated that they had been incorrectly disenfranchised. These errors were never attributed to bias, but rather to capacity issues. The total number of registrants on the final list was 3,878 voters, of a population of approximately 5,000.

The Elections Act defines voter eligibility, stipulating that registrants need to be at least 18 years of age, a Commonwealth citizen, and residing/domiciled in Montserrat (“resided in Montserrat for 36 months immediately preceding the date of registration as a voter or is domiciled in Montserrat and is resident therein at the date of such registration”). However the term “domicile” although it provides for boarder enfranchisement, is not sufficiently legally defined, resulting in the Election Commission seeking advice from the Attorney General on interpretation. This resulted in undue pressure on the Election Office to take decisions on individual cases.

**CANDIDATE REGISTRATION**

Members of the Legislative Assembly are constitutionally required to be at least 21 years of age, a registered voter, be Montserratian, and to “have been in Montserrat for at least twelve months during the five years immediately preceding the date of his or her nomination for election.” There is a further requirement to be “born of a father or mother who at the time of the birth was a Montserratian”. This additional requirement of heritage is excessively restrictive of the right to stand as it establishes two tiers of citizenship.2

The Constitution further stipulates that “no person shall be qualified to be elected” if he/she “holds or is acting in any public office…” Stakeholders reported that this is problematic as potential candidates would lose income from having to resign thus deterring other suitable people from running. As the Montserratian public service is very large, this restriction on nomination affects a considerable proportion of the population, and thus may be regarded as unduly limiting of the right to stand.3

Candidate nomination forms do not include any opportunity for identification of political party affiliation, and similarly the official records lists candidates’ names but not their party association. In total

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2. General Comment 25 the UN Human Rights Committee (the ICCPR treaty monitoring body) notes “No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of... national or social origin... Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with article 25.”

3. The UN Human Rights Committee, the ICCPR treaty monitoring body, notes “if there are reasonable grounds for regarding certain elective offices as incompatible with tenure of specific positions (e.g. the judiciary, public service), measures to avoid any conflicts of interest should not unduly limit the rights protected [in ICCPR, article 25].” UN Human Rights Committee, General Comment 25, paragraph 16.
31 candidate nominations were submitted, all of which were accepted and no subsequent challenges were made. The incumbent Movement for Change and Prosperity (MCAP) and People’s Democratic Movement (PDM) each submitted nine candidates, another three identified themselves as the Alliance of Independent Candidates (AIC), and the remaining ten were independent.

CAMPAIGN The high number of candidates contesting in this election, the most there has been to date in Montserrat, contributed to a vibrant and very peaceful campaign with the fundamental freedoms of movement, assembly, association and expression fully respected. Overall campaigning was characterised as being based on individual standing, power-bases and connections than political positions. The two parties, MCAP and PDM, and the AIC, produced manifestos approximately half way through the campaign period.

Radio Montserrat, the government-owned broadcaster committed to public service, sold airtime to all candidates based on standard commercial rates. Although figures are not yet available on party/candidate uptake, it appears that candidates were satisfied with their access to the media, and voters had access to a wide variety of viewpoints and information.

VOTING Voting was freely conducted in a peaceful and orderly atmosphere. All signs of campaigning were removed by parties and candidates prior to election day. There was a 71% voter turnout, which is considerably higher than in many other countries and gives a strong mandate to the new Legislative Assembly and the Government.

Polling was very efficiently administered in the presence of candidate agents, primarily from MCAP, PDM and AIC. Polling procedures were consistently and rigorously followed. Despite the frustrations voiced with the voter register, there appear to have been only a few cases of people arriving at a polling station to find they were not registered. The relatively high number of voters needing assistance were always accommodated as per the legislation.

The lack of legal provision for the ballot paper to give party identification compromises voters’ right to information and further complicates the voting process. The Supervisor of Elections was pragmatic in encouraging candidates to choose a colour background according to their party or independent status for their photo on the ballot. The unique number on the back of the ballot paper and counterfoil (upon which a voter’s number is also recorded), could compromise the secrecy of vote. Although the tracing of a ballot to its voter is highly improbable the very fact that such possibility exists could be used to coerce or threaten voters.

COUNTING Counting was exemplary, with extremely high levels of checks and full real-time transparency. It took place at a central location with a fresh set of staff. The running totals were instantaneously displayed for the public and shared live on an official website, with a breakdown by division (each consisting of two polling stations). Thus the Election Commission went well beyond the vague transparency references of the law. Counting staff performed diligently and efficiently.

The Elections Act specifies that voters must mark their ballots “with a black lead pencil and not otherwise a cross within the space opposite the name of the candidate for whom he intends to vote”. The law lacks specification that a vote may be accepted if the intention of the voter is clear and is thus excessively restrictive which may result in votes being unnecessarily discarded.

COMPLAINTS & APPEALS The law does not provide for immediate relief through a complaints mechanism at the Election Commission (no requirement is made for the Election Commission to respond to complaints, to do so within a certain time, or to provide
information to stakeholders on how to complaint). Explicit provision is made for petitions to courts to be filed regarding voter registration and “within 21 days after the return made by the returning officer”. However there are no time limitations given for dealing with cases, which risks delayed arbitration thereby affecting individuals’ right to remedy and potentially delaying the formation of the Legislative Assembly and the Government. To date no petitions have been lodged regarding registration or other parts of the electoral process.

PARTICIPATION OF WOMEN

Two women were elected to the Legislative Assembly, which is a marked improvement on the previous Legislature which had no elected women representatives. Amongst the 31 candidates for these elections, 5 were women. Of these, two were independent, one was running with MCAP and two with PDM. These proportions are below the 30% Beijing Declaration and Platform for Action target for women’s participation in positions at decision-making level. In manifestos only PDM make reference to promoting women’s participation, including in politics.

ACKNOWLEDGEMENTS

The CPA BIMR EOM wishes to express its appreciation to the authorities of Montserrat, election officials, candidates, political parties as well as the people of the Montserrat for their cooperation, hospitality, warm welcome and assistance in the course of the observation.

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This report will be made available for download on the following websites: www.uk-cpa.org, www.parliament.uk/cpauk & www.gov.ms

CPA BIMR ELECTION SERVICES

The central aim of the BIMR strategy is to promote knowledge and understanding of constitutional, legislative, economic, social and cultural aspects of parliamentary democracy within the Commonwealth. By promoting close relations and cooperation between its branches and other CPA Regions, the BIMR works to build informed parliamentary communities within the Region and across the Commonwealth. Its two key outputs are in promoting gender equality through its Commonwealth Women Parliamentary (BIMR CWP) activities and its strengthening democracy through EOMs.

Our first foray into EOMs was in November 2011 that we coordinated the first ever EOM to the British Virgin Islands and more recently, in May 2013, to the Cayman Islands. These unique and historic missions were conducted to the highest standards in partnership with regional organisations like Caricom and ACEO.

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