



## CPA BIMR ELECTION OBSERVER MISSION

CAYMAN ISLANDS GENERAL ELECTION  
MAY 2017

# FINAL REPORT

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## EXECUTIVE SUMMARY

The 2017 general elections in the Cayman Islands met the international standards for democratic, genuine and transparent elections. There was a vibrant election campaign, which took place in a peaceful environment, during which the freedoms of expression, assembly and association were respected. The administration of the elections was of an extremely high standard, with all aspects of the process conducted with a meticulous attention to detail.

The Elections Office was highly praised by all electoral stakeholders for the manner in which the election was administered. Their officials enjoyed the confidence of the public and of the political parties. The electoral process ran smoothly. Officials acted in a transparent and impartial manner and technical preparations for the elections were accomplished successfully. The 2017 General Election was the first election held using a “one person – one vote” single-member electoral district system. The amendment of the Elections Law in November 2016 increased the number of elected members of the Legislative Assembly from 18 to 19. A record number of 61 candidates ran for election. A total of 16 women stood for election, which, at 26 per cent, represented the highest proportion of female candidates participating in an election to date. However only three amongst them were elected, comprising less than 16 per cent of the elected members of the Legislative Assembly.

Voter registration figures increased to 21,227 for the 2017 election. This represented a significant increase from the figure of 18,492 voters registered for the election in 2013. The increase was achieved by means of a significant voter registration drive by the Elections Office, including going door to door across the country to promote registration.

Significant support was offered, in the form of mobile and postal voting, to ensure that voters with special needs, such as the elderly and persons with disabilities, as well as those working on polling day, exercised their right to vote. Prisoners on remand or serving sentences of less than twelve months were enabled to vote, with 12 such individuals voting at polling stations.

The secrecy of the vote was potentially compromised in several ways. These included by the printing of a serial number on both the ballot paper and the counterfoil, the relatively public procedures adopted for assisted voting, and the sometime small numbers of postal and mobile ballots counted separately.

The Constitution Order 2009 sets out the eligibility requirements to stand for election to the Legislative Assembly. A candidate has to be Caymanian of 21 years of age and above but the overly lengthy residency requirements of up to 20 years are problematic and are an undue restriction on the right to passive suffrage. Further, eligibility for election may be denied where an individual is a holder of dual citizenship or is under any acknowledgement of adherence or allegiance to a foreign power. Individuals who have served a prison sentence in excess of 12 months, or who have been convicted of an offence involving dishonesty, are also excluded from standing for public office which is contrary to the provisions of international law.

The transparency of campaign finances was limited as there are no requirements for contestants



to submit, or for the authorities to audit or publish, reports on expenditure before polling day. Further, there is no obligation on any state institution to actually verify the completeness and accuracy of the expenses and contributions declared.

The media landscape in the Cayman Islands is limited due to the small size of the population but it played an important role in the election campaign. There was no provision of free airtime to candidates, and private media reportedly provided air time and space to all candidates on an equal, first-come-first-served basis; but with a steep increase in advertising rates during the campaign period. There is, however, no legislation or code of conduct regulating the behaviour of the media during the election campaign.

Since 2014 the Cayman Islands has a national disability policy but the United Nations Convention on the Rights of Persons with Disabilities is yet to be extended to the Cayman Islands. The Constitution disenfranchises persons of their right to vote if a person is certified to be insane or otherwise adjudged to be of unsound mind by the Chief Medical Officer which is contrary to the UNCRPD and international jurisprudence.

There are a few instances in which electoral districts depart from the principle of equal suffrage, which requires that all votes should have roughly equal weight. The districts of North Side (716 registered voters), East End (692 registered voters) and Bodden Town East (1,513 registered voters) depart most from the average of 1,186 voters in the seventeen Grand Cayman districts.

## INTRODUCTION

The Commonwealth Parliamentary Association, British Islands and Mediterranean Region (CPA BIMR), deployed an Election Observation Mission (EOM) to the Cayman Islands from 19 to 27 May 2017. This followed an invitation from the Governor of the Cayman Islands, and was undertaken with the agreement of the Government.

The EOM was independent in its assessment of the electoral process. The mandate of the EOM was to conduct an assessment of the electoral process, and to review compliance with the laws of the Cayman Islands as well as with the international legal instruments applicable to the Cayman Islands. The EOM operated in accordance with the Declaration of Principles for International Election Observation adopted at the United Nations in 2005.

In the course of its observation, the EOM held meetings with the Governor, the Premier, the leader of the Opposition and the Supervisor of Elections, and with representatives of the Elections Office, the Royal Cayman Islands Police Service, several constitutional and other commissions, political parties, and members of the public.

On polling day, the EOM was deployed to all nineteen electoral districts, and conducted observations in almost all polling stations across those electoral districts, observing both polling and counting.



1. The UK-Overseas Territories Joint Ministerial Council Communiqué 2016; [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/565228/Overseas\\_Territories\\_Joint\\_Ministerial\\_Council\\_2016\\_Communique.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/565228/Overseas_Territories_Joint_Ministerial_Council_2016_Communique.pdf); p1.

2. The Joint Ministerial Council discussed further “to continue to promote respect for human rights and ensure the highest standards of governance in the Territories. We agreed to work together to achieve progress in the extension of core Human Rights conventions where these have not been extended and to conduct a review of reservations against core UN human rights treaties ahead of the UN Periodic Review of the UK in Geneva in 2017. We committed to working together to further develop the capability of Territories’ National Human Rights Institutions, in line with international standards set out in the Paris Principles, and to promote understanding of our shared international human rights obligations.” <https://www.gov.uk/government/policies/uk-overseas-territories>

### The EOM comprised six members:

- Hon. President Steve Rodan, MLC, Tynwald, Head of Mission (Isle of Man)
- Hon. Deputy Speaker Akilah Nisbett (St Kitts and Nevis)
- Aurjul Wilson, Supervisor of Elections (Anguilla)
- Mariam El-Azm, CPA BIMR, Coordinator (France)
- Anne Marlborough, Election Analyst – Legal (Ireland)
- Dr. Armin Rabitsch, Election Analyst – Political and Media (Austria)

### POLITICAL BACKGROUND

The 2017 General Election was the first election held using a “one person – one vote” single-member district electoral system and the fourth elections since the introduction of a political party system in the Cayman Islands. The amendment of the Elections Law in November 2016 increased the number of elected members of the Legislative Assembly from 18 to 19. A record number of 61 candidates ran for election. A total of 15 candidates stood for the ruling Progressives party, 11 candidates stood for the opposition Cayman Democratic Party, while 37 candidates stood as independents.

In the previous elections in May 2013 the Progressives party candidates won 9 of 18 seats and gained a majority when former premier Juliana O’Connor-Connolly joined the party and accepted the role of Speaker. The Progressives party leader Alden McLaughlin assumed the post of Premier.

Following an unsuccessful referendum in July 2012, which aimed to change the electoral system to single-member constituencies, the government finally passed legislation facilitating 19 single-member districts with a first-past-the-post electoral system in 2016.

The principle of equal rights and self-determination of peoples, as enshrined in the UN Charter, applies to the peoples of the Overseas Territories.<sup>1</sup> The UK has specific constitutional and legal responsibilities for its 14 Overseas Territories and 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.<sup>2</sup>

### LEGAL FRAMEWORK

The legal framework for the May 24th general elections is to be found in two principal instruments, the Cayman Islands Constitution Order 2009 (Statutory Instrument 2009 No. 1379 UK), and the Elections Law (2013 Revision), as amended by the Elections (Amendment) Law, 2016. The jurisprudence of the courts of the Cayman Islands also contains some elements of electoral law, regulating matters such as the interpretation of residency and citizenship rules which determine eligibility for membership of the Legislative Assembly.

The 19 Single Member Electoral District Order and the Elections (Amendment) Law, 2016 provided for a change to the electoral system for the Legislative Assembly. The principle of “one person, one vote” was introduced. There are now 19 electoral districts in place, each represented in the Legislative Assembly by a single elected member. This marked a significant alteration from the previous arrangement, which was based on diverse multi-member constituencies, with voters having differing numbers of votes to cast.

The amending legislation was assented to on November 22nd last, a date relatively close to the election date, allowing just six months for the implementation of measures necessary to bring the changes into effect. A change in the law so close to the election is generally not considered to be good practice internationally, with a year being the accepted time-limit for amendment in advance of elections. It is important that prevailing law be clear and certain well in advance of elections. While the electoral process was well regulated, and most areas of law were clear and comprehensible to all stakeholders, it was unfortunate that there was insufficient time taken by the Legislative Assembly to consolidate the 2016 amendments into the pre-existing law.

The provisions of several pertinent UN human rights instruments, particularly the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women,

and the Convention on the Elimination of All Forms of Racial Discrimination, are applicable in the Cayman Islands. The European Convention on Human Rights and Fundamental Freedoms, as well as the right of individual petition to the European Court of Human Rights, is also binding. All of these instruments contain provisions which establish human rights to participate in political life through elections.

The legal framework provided a basis for the conduct of elections which was in line with the international legal principles and commitments applicable to the Cayman Islands. There was broad compliance with the requirements for the protection of human rights throughout the electoral process. The political freedoms of expression, association, assembly and movement were well respected.

Requirements to register to vote and to stand for election were broadly reasonable. Significant support was offered, in the form of mobile and postal voting, to ensure that voters with special needs, such as the elderly and persons with disabilities, as well as those working on polling day, exercised their right to vote. While prisoners serving sentences in excess of twelve months were deprived of the right to vote, prisoners not lawfully deprived of the right to vote were enabled to vote.

The International Covenant on Civil and Political Rights provides that elections are to be conducted by secret ballot. The Elections Law appears to uphold this provision, requiring that the poll shall be taken by secret ballot. The Law also provides, however, for the printing of a serial number on both the ballot paper and the counterfoil, making the tracing of an individual vote possible, which violates the absolute requirement of a secret ballot. Individual votes are also observed to be potentially identifiable in the counting of mobile and postal votes, where tiny numbers of votes are counted separate from the larger district count. Beyond this, secrecy was also potentially compromised by the procedures adopted for assisted voting, as votes were cast on the table of the presiding officer, rather than in the secrecy of the booth.

### ELECTORAL SYSTEM

The Legislative Assembly of the Cayman Islands consists of twenty-one members, nineteen of whom are directly elected. The nineteen elected members represent geographic constituencies in single-member districts, with elections conducted on a “first-past-the-post” system, by means of a simple majority of votes cast. The Attorney General and the Deputy-Governor serve ex officio as members of the Legislative Assembly. The term of the Legislative Assembly is four years. There are no term limits in place for membership of the Legislative Assembly. The law allows both political parties and independent candidates to contest the election.

The Constitution provides that there should, as far as reasonably practicable, be equality between the number of elected members of the Legislative Assembly and the number of qualified voters in their district. An explicit exception is made in the case of Cayman Brac and Little Cayman, who together must have at least two representatives. Traditional boundaries may also be taken into consideration. The International Covenant on Civil and Political Rights requires that the vote of one elector should be equal to the vote of another. While the Report of the Boundary Commission 2015 and the Elections (Amendment) Law 2016 have contributed to a significant amelioration in the situation, there are still a few instances in which districts depart from the norm which otherwise prevails across Grand Cayman. The districts of North Side (with 716 registered voters) and East End (with 692 registered voters) depart from the average of 1,186 voters in the seventeen Grand Cayman districts. Bodden Town East is the district in which voters are the most under-represented, with just one representative for 1,513 registered voters.

### ELECTION ADMINISTRATION

The elections in the Cayman Islands are conducted by the Elections Office, led by the Supervisor of Elections, and three deputy supervisors, all appointed by the Governor. The Elections Office operates within the ambit of the Ministry of Home Affairs, of which the Supervisor is the Chief Officer. The International Covenant on Civil and Political Rights has been interpreted<sup>3</sup> as requiring that an independent electoral authority should be established in a country, in order to satisfy the requirements of genuine elections. However there was no indication whatsoever

3. 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

4. Source: Economics and Statistics Office, Statistical Compendium 2015, Section 1.01a

of any interference by governmental authorities with the Elections Office in the conduct of elections, and the current arrangements are widely accepted.

The Elections Office has been highly praised by all electoral stakeholders for the manner in which the election was administered. Their officials enjoyed the confidence of the public and of the political parties. Despite the fact that the time was short between the introduction of the revised electoral system and the actual conduct of polling, the electoral process ran smoothly. An electoral calendar was established well in advance of elections and deadlines were met. Officials acted in a transparent and impartial manner and technical preparations for the elections were accomplished successfully. 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 an extensive campaign of voter education, cognisant of the need to inform the electorate of the revised electoral system. Brochures were prepared informing the public of the new electoral boundaries, and responding to the frequently asked questions which arose. During the closing months of 2016, representatives of the Elections Office distributed information materials to all voters, including by going from house to house. Voters were informed of their new electoral districts, as well as being informed of the arrangements for mobile and postal voting. Nonetheless the EOM observed cases of voters turning up at the wrong polling station, probably due to electoral district boundary changes. This confusion could be avoided by the issue of polling cards to all voters at their registered address prior to polling day.

#### VOTER REGISTRATION

The right to vote is conferred by the Constitution Order 2009 on those who hold Caymanian Status, a status which is regulated by the British Nationality Act 1981. Registration is a precondition to voting. The International Covenant on Civil and Political Rights requires that states take effective measures to ensure that all persons entitled to vote are able to exercise that right. Deprivation of the right must only be on reasonable grounds.

Qualifications for registration to vote include the attainment of eighteen years of age, as well as residency in the Cayman Islands for at least two of the four years immediately preceding the date of registration. This period appears to be overly restrictive and may operate to exclude otherwise eligible Caymanians from exercising their right to vote. Registering officers review the Register of Electors every three months and proposed changes are publicly notified. Voters who have previously been registered, but have subsequently been outside the country in excess of the permitted time, may be removed from the Register of Electors.

Regardless of the duration of residency, or the attainment of the status of permanent resident, all persons except those holding Caymanian status are ineligible to vote. This has led to the fact that, out of an estimated population of at least 60,000 people<sup>4</sup>, only around 34,000 hold Caymanian status, with around 24,000 of them eligible to register to vote. The Mission received comments from long term residents without status in the Cayman Islands about their sense of disenfranchisement.



The 31 December 2016 was set as the deadline for registration to vote for these elections, subsequently extended to 16 January. Following that date, there was a period of claims and objections to the Register of Electors, matters which were heard by a Magistrate.

Voter registration figures increased to 21,227 for the 2017 election. This represented a significant increase from the figure of 18,492 voters registered for the election in 2013. The increase was achieved by means of a significant voter registration drive by the Elections Office, including going door to door across the country to promote registration. Nonetheless, voter registration still falls short of including all eligible voters by an estimated 3,000 people, mainly 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-registration.

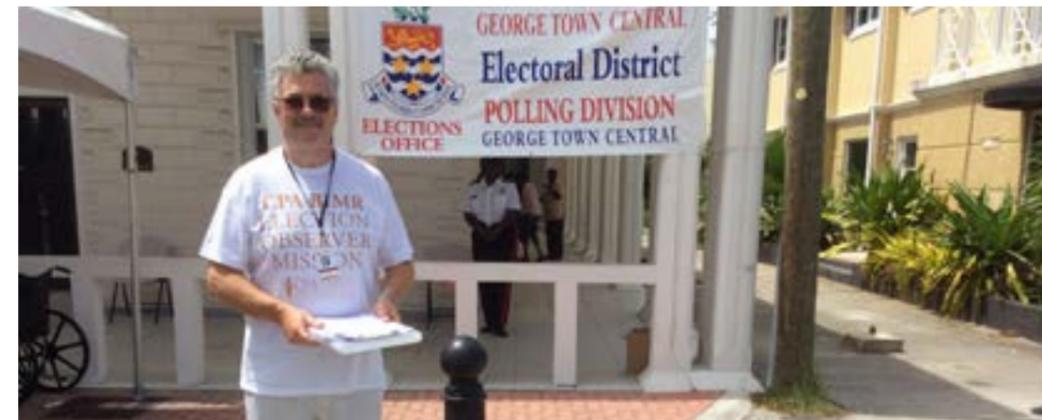
Prisoners serving a sentence of imprisonment in excess of twelve months are also deprived of their right to vote. The European Convention of Human Rights, applicable to the Cayman Islands, has been interpreted as prohibiting blanket bans on voting by prisoners.<sup>5</sup> This interpretation of the European Convention provisions indicates that the ban on all prisoners serving the specific prison term, regardless of the nature of the offence, is likely to be in violation of the human rights obligations of the Cayman Islands.

#### CANDIDATE REGISTRATION

The Constitution Order 2009 sets out the eligibility requirements to stand for election to the Legislative Assembly. A candidate has to be Caymanian of 21 years of age and above. Caymanians by birth must have resided at least seven years prior to nomination day in the Cayman Islands, with less than 400 days out of country within this period. Naturalised Caymanians, those born outside the Cayman Islands and without Caymanian parents or grandparents, must have resided at least 15 of the 20 past years prior to nomination day in the Cayman Islands, and in addition, must have resided at least seven years prior to nomination day in the Cayman Islands, with less than 400 days out of country.

These residency requirements are problematic and are an undue restriction on the right to passive suffrage. While residency is generally accepted as a valid restriction upon candidacy rights, the United Nations Human Rights Committee has expressed concerns with overly long residency requirements and the Venice Commission Code of Good Practice in Electoral Matters states that a length of residence requirement may only be imposed for local or regional elections and that the requisite period of residence should not exceed six months, except in order to protect national minorities.<sup>6</sup>

Eligibility for election may be denied where an individual is a holder of dual citizenship or is under any acknowledgement of adherence or allegiance to a foreign power. The Grand Court has adjudicated upon these provisions in several cases, providing some interpretation of the legal rules. The judgments are complex, with the result that it is difficult to predict with certainty how the eligibility status of any aspiring candidate will be evaluated.



5. Hirst (No.2) v the United Kingdom, Grand Chamber, European Court of Human Rights, 6 October 2005

6. UNHRC General Comment No. 25, para. 15; Venice Commission, Code of Good Practice in Electoral Matters, I. 1.1.c.4.

7. In 1995, the Beijing Platform for Action called upon countries to realise the goal of having 30 per cent of all positions at decision-making levels occupied by women. The UN Convention for the Elimination of Discrimination against Women was extended to the Cayman Islands in 2016.

Individuals who have served a prison sentence in excess of 12 months, or who have been convicted of an offence involving dishonesty, are also excluded from standing for public office. This is contrary to the provisions of international law which require that deprivations of the right to participate in public affairs through standing for election should be proportionate and reasonable. The ban in place here does not make any distinction between the different types of offence which might attract prison sentences of over twelve months.

A total of 61 candidates contested 19 seats in the Legislative Assembly. Competitive elections were held in each of the electoral districts; 1 district with 5 candidates, 6 districts with 4 candidates, 8 districts with 3 candidates and 4 districts with 2 candidates. A total of 16 women stood for election, which, at 26 per cent, represented the highest proportion of female candidates participating in an election to date. However only three amongst them were elected, comprising less than 16 per cent of the elected members of the Legislative Assembly. This falls short of realising the commitments to both de facto and de jure equality for women set out in the Convention on the Elimination of All Forms of Discrimination against Women.<sup>7</sup>

### **ELECTION CAMPAIGN AND CAMPAIGN FINANCE**

The campaign period of eight weeks began on Nominations Day, 29 March, and lasted until the day before elections, 23 May, midnight. Both political parties published informative campaign manifestos outlining their policies. At times independent candidates campaigned together but each candidate provided individual literature.

The campaign period was reported to be peaceful, where candidates could campaign freely and voters received a plethora of information and campaign materials assisting them to make an informed choice. Candidates conducted door-to-door campaigns, put up billboards, printed brochures, distributed t-shirts, held campaign rallies and organised motorcades. 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 at all times. A non-binding Code of Conduct for Candidates outlined the guidelines for candidates and their agents in assisting with the orderly conduct of the election process.

The transparency of campaign finances was limited as there are no requirements for contestants to submit, or for the authorities to audit or publish, reports of expenditure before polling day. In the absence of public funding for either parties or candidates, some Commonwealth Parliamentary Association British Islands Mediterranean Region Election Observation Mission (EOM) interlocutors expressed concern that the amount of funding from private Caymanians was too high and distorted the fairness of the campaign. Campaign expenses may not, by law, exceed 40,000 Cayman Dollars per candidate. Provisions for efficient scrutiny and oversight are, however, absent from the legislation. Further, the UN Convention Against Corruption has not yet been extended to the Cayman Islands.

Every candidate must deliver to the Supervisor of Elections, within 35 days of polling day, a statement of all payments made or received by him or on his behalf. The Supervisor will publish a summary and the reports are publicly accessible for inspection. There is, however, no obligation on any state institution to actually verify the completeness and accuracy of the expenses and contributions declared.

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. Higher accounting and oversight standards have been created under the Standards in Public Life Law which, though passed by members of the Legislative Assembly in 2014, have yet to be implemented as the legislation has not commenced to date.

### **MEDIA AND CIVIL SOCIETY**

The media played an important role in the election campaign. The media landscape in the Cayman Islands is limited due to the small size of the population. There are only three daily printed newspapers, the main daily Cayman Compass, the Cayman Reporter and the

Caymanian Times, as well as numerous commercial radio stations<sup>8</sup> and one local private TV station covering news, the CITN - Cayman 27. In addition there are several online news portals and there is public radio, including Cayman Radio One, Breeze FM, and the weather and traffic radio station Sunny 107.9.

There was no provision of free airtime to candidates, but public radio was reported to have covered candidates fairly. Those candidates met by the EOM 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. CITN – Cayman 27 broadcast party campaign rallies live and covered political events for hours against payment. The private media reportedly provided air time 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. However, the Elections Law provides guidance on the quality and language of political broadcasts. The EOM did not conduct any systematic qualitative and quantitative media monitoring.

The EOM did not become aware of any civil society initiative actively involved in elections oversight, political advocacy or political human rights issues. While there has been a variety of Commissions established (Anti-Corruption Commission, Civil Service Appeals Commission, Constitutional Commission, Human Rights Commission, Judicial and Legal Services Commission, Standards in Public Life Commission, Information Commission, Complaints Commissioner (Ombudsperson)) most of them become active only if a complaint is raised. For a constructive civic electoral involvement advocacy and support to engage in elections oversight activities could be considered.

### **PERSONS WITH DISABILITIES AND ASSISTED VOTING**

Since 2014 the Cayman Islands has a national disability policy.<sup>9</sup> The implementation of the disability policy and associated legislation will set the foundation for the Cayman Islands Government to request via the United Kingdom that the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) be extended to the Cayman Islands.

The Constitution (Section 91.b) disenfranchises persons of their right to vote if a person is “certified to be insane or otherwise adjudged to be of unsound mind” and the Elections Law (Section 19.3) provides for the Chief Medical Officer to provide such details to the Supervisor of Elections. These legal provisions are contrary to the UNCRPD and international jurisprudence.<sup>10</sup>

The Elections Office conducted training for registered voters with disabilities at the Sunrise Adult Training Centre. Polling stations were mostly accessible to persons with disabilities, but no Braille envelopes were available for visually impaired voters. A voter requiring assistance at the polling station could only request assistance from the presiding officer. The voter would then indicate, outside the polling booth, to the presiding officer his/her choice; in front of another polling clerk or the voter’s chosen confidant. The Mission observed in some instances the procedure being carried out within sight and hearing of others present in the polling station, compromising the secrecy of the vote.

### **VOTING AND COUNTING**

On polling day, 25 May, members of the EOM visited all nineteen electoral districts, including almost all 57 polling stations, across the Cayman Islands. The overall conduct of the opening, voting and closing procedures was assessed by the EOM observers as very good in all instances. Procedures were followed to the letter of the law, with meticulous attention to detail. There was clear evidence of extensive staff training, obvious in the efficient discharge of their duties. The ballot paper, new for this election, was of high quality, including colour photographs of candidates and their logos, as well as the list of names in alphabetical order. There were very few spoiled ballot papers.

The facility to vote by post was applied for by 582 voters, people who were outside the jurisdiction on polling day. A total of 733 people applied for mobile voting facilities, which were

8. Praise, STAR, BOB FM, Big Fish Radio, CayRock, IRIE FM, Z99, ICCL-FM, Rooster, Love FM, Hot, Kiss, ZFKX-FM.

9. Stakeholders represented on preparing the policy were from Special Olympics Cayman Islands, Rotaract Blue, the Lighthouse School, Sunrise Centre, the Ministries of Education, Health, Community Affairs, the Attorney General’s Chambers, Department of Children and Family Services, Government Information Services, and parents’ groups.

10. With regard to incapacitation on the grounds of disability see also Article 29 of the UNCRPD and the judgment of the European Court of Human Rights in *Alajos Kiss v. Hungary*.

accorded to persons who were hospitalised, resident in rest homes, elderly or incapacitated and unable to attend the polling station in person. The mobile voting facility, which in reality amounted to advance voting in this instance, was also made available to persons such as polling staff and police officers who might be unable to vote on polling day due to the nature of their duties.

The Elections Law provides that polling stations shall be opened in all electoral districts. An exception is made, in Section 35 (1A) of the legislation, for the case where there may be insufficient or inadequate facilities for polling stations, that electoral district voting may be combined. No voting took place on the island of Little Cayman on polling day, as mobile voting was conducted there in advance.

Mobile voting ended on 19 May, while postal ballots were received until polling day itself. Both sets of ballot papers were kept securely in separate ballot boxes, delivered to returning officers for the respective districts and scrutinised as part of the general count in counting centres after the polls closed. The numbers of postal and mobile votes were often quite small, with, in one station observed by the EOM, the number of postal votes being just three. This made it possible, in theory, to ascertain how a voter had voted if, for example all three postal voters had voted for the same candidate.

Prisoners on remand or serving sentences of less than twelve months in prison are lawfully entitled to vote. Their right to vote was vindicated, with the option of mobile voting open to them. On polling day itself, 12 prisoners were escorted to polling stations and voted there.

The voter turnout was 15,721, amounting to 74.06 per cent of registered voters. Votes were counted in twenty-five counting stations, that being one or two per electoral district. Counting procedures were followed impeccably in the three stations observed by the EOM. All results were officially declared before midnight on polling day.

Candidate agents were present throughout the electoral process, from opening, during polling, to closing and counting. In one electoral district all three polling stations had two agents present representing a particular party, instead of the single agent permitted by law. Otherwise, the EOM observed that party and candidate agents acted in accordance with the law. The 100 yard cordon, within which canvassing and related activities were prohibited, was well observed in all polling stations visited by the Mission.

This Final Report will be available to download on the following websites:  
www.uk-cpa.org & www.bvi.gov.vg

## RECOMMENDATIONS

The EOM wishes to offer recommendations to the people of the Cayman Islands, to the Government, as well as to institutions of state and civil society. These recommendations might be considered in a review of the electoral process in order to further enhance the realisation of human rights and comply with the international legal obligations of the Cayman Islands, while also emulating models of best practice.

### LEGAL FRAMEWORK

The Cayman Islands Constitution Order 2009 sets out the fundamental rules which determine the entitlement to political participation. Eligibility criteria for the exercise of both the right to vote and the right to stand for election are linked to the attainment of the status of being Caymanian. The Mission notes that the issues raised by long term residents are of a constitutional nature.

*Recommendation 1: It would be important, in any review of the Constitution Order, to consider the continued reasonableness of the pertinent provisions, particularly the duration of residence requirements, in light of the mobility of the population of the Cayman Islands and of the contribution made by the diverse ex-patriate community resident here.*

The Elections (Amendment) Law, 2016 was assented to just six months in advance of polling day, while international best practice indicates that laws should not be changed within one year of an election.

*Recommendation 2: Future legislative change should be undertaken further in advance of elections. Equally, prevailing laws should be consolidated well in advance of elections so that the provisions of the law are certain to all.*

Equal suffrage has not been achieved under the current electoral district boundaries.

*Recommendation 3: Constituency boundaries should be reviewed with the aim of achieving greater equality between the numbers of electors within electoral districts. Deviations from the norm should ideally not be more than 10 to 15 per cent.*

### ELECTORAL DISPUTE RESOLUTION

There is an absence of procedures guiding the adjudication of disputes which might arise during the electoral process. The Elections Office has no legal jurisdiction to receive complaints regarding any aspect of the conduct of the electoral campaign.

*Recommendation 4: Consideration should be given to establishing complaints procedures for the resolution of disputes in the period between nomination day and polling day.*

### THE RIGHT TO VOTE

It is important that the Cayman Islands authorities endeavour to achieve higher levels of voter registration.

*Recommendation 5: The underlying process of voter registration could be changed, replacing the active system, which requires positive steps to be taken by citizens to be included in the Register of Electors, with a passive system, linked perhaps to a broader review of the processes of civic registration.*

*Recommendation 6: Polling cards could be issued to voters in advance of polling day. These documents would notify individual voters of the location of their polling station.*

The publication of personal data of voters, in the process of revision and dissemination of the voter register, may encroach upon the individual right to privacy.

*Recommendation 7: Data protection law should be introduced which requires that personal data, gathered for electoral purposes, be treated in a manner which respects the right to privacy. Furthermore removing the requirement for voters to state their occupation when presenting themselves to vote could avoid demeaning situations in the case of some voters.*

*Recommendation 8: The requirement that voters must be resident for at least two of the four years immediately preceding registration should be reviewed, as it appears excessive.*

*Recommendation 9: The blanket ban on the denial of the right to vote to all prisoners serving sentences in excess of twelve months, regardless of the nature of the crime involved, ought to be reviewed.*

#### THE RIGHT TO STAND FOR ELECTION

*Recommendation 10: The legal rules determining who is entitled to be nominated as a candidate for election should be reviewed. The residency requirements appear to be excessively long, while there is inequality in the treatment of different people, depending upon the mode of their acquisition of citizenship.*

There ought to be equality in the law, and consistency as to how it is interpreted.

*Recommendation 11: Clarity on the possible disqualifications from eligibility to stand for election, based on dual nationality or allegiance to a foreign power, is required.*

#### PRISONERS' RIGHT TO STAND

*Recommendation 12: The existing provisions of the Elections Law regarding active and passive suffrage rights of prisoners should be reviewed in order to ensure conformity with international standards as deprivations of the right to participate in public affairs through standing for election should be proportionate and reasonable.*

#### 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.*

*Recommendation 14: Consideration should be given to the intermingling of the ballot papers for mobile and postal with the rest of the votes in a polling station within the electoral district for which they have been cast. This would then totally remove the tenuous possibility that the intent of any single voter might be revealed because the number of votes counted is so small, which would protect the secrecy of the ballot.*

#### PARTICIPATION OF WOMEN

*Recommendation 15: Consideration should be given to introduce strong incentives for women to participate as candidates and for parties to nominate at least 30 per cent women to meet international commitments under the Convention on the Elimination of All Forms of Discrimination against Women.*

#### TRANSPARENCY OF CAMPAIGN FINANCE

*Recommendation 16: Consideration should be given to amend the electoral legal framework to introduce full transparency of campaign donations and campaign expenditure, including in kind donations and expenditure attributed to third parties, and full regular reporting requirements starting well ahead of Election Day, via standardised websites for each candidate and political parties.*

#### OVERSIGHT OF CAMPAIGN FINANCE

*Recommendation 17: The existing provisions of the Elections Law regarding campaign finance oversight and scrutiny should be reviewed to establish clear authority and possible penalties for the lack of reporting and transparency. The Standards in Public Life Law should be implemented and the Commission for Standards in Public Life could take on a stronger oversight role of campaign finance.*

#### FUNDING OF POLITICAL PARTIES

*Recommendation 18: Political party funding could be introduced to strengthen the political party system, including incentives for nominating female candidates and for making candidates less dependent on private donations.*

#### MEDIA REGULATION

*Recommendation 19: Consideration should be given to the introduction of media rules during the campaign period to promote equitable access to the media for all contesting candidates and the provision of free airtime by the public broadcaster.*

#### PERSONS WITH DISABILITIES

*Recommendation 20: Legal provisions of the Constitution and the Elections Law regarding persons with disabilities' voting rights need to be revised to bring them in line with international commitments and European Court of Human Rights judgments.*

*Recommendation 21: Following best international practice it would be advisable if a voter could request the assistance of his/her confidant and vote within the confinement of the polling booth without any other person present.*

#### ACKNOWLEDGMENTS

The Mission would like to express its gratitude to the authorities, election stakeholders and the People of the Cayman Islands for warm welcome received by the Mission.

#### ABOUT CPA BIMR/CPA UK

CPA UK is a signatory to the Declaration of Principles of International Election Observation and Code of Conduct for International Election Observers

The Commonwealth Parliamentary Association UK (CPA UK) acts as the secretariat to CPA BIMR, one of the nine regions of the CPA network, and is committed to strengthening democracy and good governance.

#### CONTACT US

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This Final Report will be available to download on the following website: [www.uk-cpa.org](http://www.uk-cpa.org)

#### 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 when we coordinated the first ever EOM to the Virgin Islands (UK) in 2011. These unique and historic missions were conducted to the highest standards in partnership with regional organisations like CARICOM, ERIS and ACEO.

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