



CPA BIMR ELECTION OBSERVER MISSION

MONTSERRAT GENERAL ELECTION
SEPTEMBER 2014

FINAL REPORT

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EXECUTIVE SUMMARY

The 2014 Legislative Assembly elections in Montserrat were **vibrant, peaceful and participatory**. Thirty-one candidates competed for nine seats in a single constituency resulting in a smooth transition of power. **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, to form a political party and a lack of campaign regulation. **The Election Commission needs further support to institutionalise its successes** so that it can consistently function as an effective and independent administration. **Thirteen recommendations** are listed at the end of this report with the aim of further strengthening democratic rights and minimising the risk of problems for future elections in Montserrat.

INTRODUCTION TO THE MISSION

In June 2014 the **Commonwealth Parliamentary Association British Islands and Mediterranean Region (CPA BIMR)** was officially invited by the

Governor, His Excellency Adrian Davis to deploy an independent Election Observation Mission to Montserrat to observe the September general election. This invitation was supported by the Government and the official Opposition of Montserrat.

The mission was composed of:

- **Hon. Mario Galea MP, Malta - Head of Mission**
- **Hon. Nelson Cole Simons JP MP, Bermuda – Observer**
- **Ms Hannah Roberts, UK - Election Analyst / Observer ERIS**
- **Mr Matthew Salik, UK - Election Coordinator / Observer**

The Mission was present in Montserrat between the 3-14 September 2014. The Mission was guided by the **United Nations Declaration of Principles for International Election Observation** and **Code of Conduct for International Election Observers**.

The Mission observed the electoral process in accordance with **international standards**, including Montserrat's commitments under **international law** as well as **domestic legislation**. The Mission met with key stakeholders, for example the **election administration, political parties, candidates, civil society, media representatives, police officials, academics** and members of the **public**; it also attended **campaign rallies** and **observed reporting in the media** both prior to arrival and whilst on the Island. The Mission considered the **legal framework, election administration, political campaign, media, polling and counting**, and opportunities for **complaints and appeals**. In addition, it considered a number of wider issues such as **gender equality**. Whilst observing the **latter part of the campaign**, the Mission gave particular attention to the **fundamental freedoms of expression, assembly, association, movement and the right to information**. On Election Day **26 visits** were made to all **12 polling stations** including the **opening and closing**. Also observed were the **counting and tabulation** of results and the immediate post-election period. Since leaving the Island, the Mission continues to examine the complaints and appeals system and follow the handling of any that may arise.

This Mission acknowledges its limitations in particular the short time spent in Montserrat. Despite this, the Mission has strived to look at the entire electoral process to the best of its abilities.

This report is the final report of the Mission and unlike the preliminary report will give a fuller analysis on the general election. In particular this report offers a number of **recommendations** which it is hoped will be given due consideration by all **election stakeholders**, including the **general public**, for the continuous improvement of elections in Montserrat.

BACKGROUND

The Island of Montserrat is a **British Overseas Territory** located in the Eastern Caribbean just 27 miles off the coast of Antigua. It is an internally self-governing Territory with executive power invested in the British Crown through an appointed Governor. The Governor chairs the Cabinet which has general control of the direction of government. The four Ministers in Cabinet are members of the Legislative Assembly of nine elected Members. The Governor retains responsibility for security, external affairs, defence, the public service and offshore finance.

Following on from **Hurricane Hugo** in 1995, the devastating impact of **Soufriere Hills Volcanic eruptions** which took place between 1996 and 2010 forced the rehousing of a vast proportion of the population which altered the demographic and societal cohesion of the remaining communities. **The 2014 election is a continuing step towards a more stable post-volcanic development in Montserrat.**

Prior to the eruption, Montserrat had multiple constituencies under a **first-past-the-post system**. However in 1999, as a result of the displacement which ensued, a Commission was set up which recommended amongst others, a **single constituency system** under a modified first-past-the-post system. This was in part due to the reduction of the population from **11,314 in 1991** to approximately **4,000 by 1999** as well as voters spread across the remaining two and a half constituencies in temporary shelters.

Elections are held every **five years**. The 2009 election was contested with three main parties standing; the **Movement for Change and Prosperity (MCAP)**, the **Montserrat Labour Party (MLP)** and the **Montserrat Reformation Party (MRP)** as well as ten further independents. Six seats were won by MCAP led by Reuben T. Meade who as Premier formed the Government, although Joseph Easton Taylor-Farrell won the most votes. The remaining three seats went to independent candidates; with Donaldson Romeo becoming Leader of the Opposition. However political parties in Montserrat tend to fluctuate and dissolve after an election, by 2010 only MCAP would remain in existence.

Montserrat continues to receive budgetary aid from the UK Department for International Development (DFID) and other aid agencies. Although this continues to decrease as Montserrat seeks future financial independence.

Montserrat has strong regional links within and around the Caribbean. It is a full member of CARICOM and the Organisation of Eastern Caribbean States (OECS). It also has strong relations in the Americas and the Commonwealth. There appears to exist a desire by the majority of Montserratians to remain as a British Overseas Territory.

LEGAL FRAMEWORK

The United Nations 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 applicable¹ Montserrat's legal framework is largely in accordance the obligations of the treaty, with provisions made for **periodic elections, equality of the vote, universal suffrage and fundamental freedoms**. However, as detailed below, some compliance issues exist in relation to the **right to stand, freedom of association, the right to information and secrecy of the ballot**.

The preamble of the **2010 Constitution of Montserrat** refers to *"Believing in the concept of true democracy with free and fair elections... [the people] Recognising their inherent right to pursue their hopes, visions, aspirations and their right to self-determination"*. The Governor's executive powers in the territory are established in the Constitution and vested by Her Majesty the Queen. The Constitution provides for fundamental freedoms and non-discrimination. Although not explicitly providing for the right to vote, the Constitution stipulates a democratic structure of government and establishes the functions of the electoral commission.

Following the population displacement after the volcanic eruption, one multi-member constituency was established, with each voter having nine votes (on a single ballot paper). The 2008 Elections Act establishes that the nine persons who receive the highest number of votes, and not less than six percent of the total votes cast, are elected.² However, now that the population is seen as more settled, there appears to be **increasing criticism of the system** for reducing the immediate connection between constituents and their representative(s). It was commented upon that there is an **increased burden on candidates** as campaigning areas are larger and therefore more demanding, especially given the importance of personal contact emphasised as a feature of political life in Montserrat. One candidate remarked *"by encouraging voting for all nine, we might vote out the one we most want."*

Many people interviewed referred to the need to update the legal framework for elections, which is composed of the **2010 Constitution**, the **2008 Elections Act** and the **2012 Electoral Commission Act**. The Elections Act is silent on various key aspects of an election, including **campaign regulation** and **transparency requirements** (such as polling stations displaying results). This leaves room for **varied implementation** and **potential vulnerability to malpractice**. The Electoral Commission Act does not sufficiently detail **transparency requirements** or **Commission functioning**. There is also **no legislative provision for political parties**, thus there is **not sufficient legal provision of respect, protection and fulfilment of freedom of association**.³

RECOMMENDATION 1

A revision of the legal framework for elections, including the electoral system, is undertaken based on an inclusive consultative process and Montserrat's obligations under international law related to elections. This take place promptly and well in advance of the next elections to allow time for debate, research, agreement and implementation.

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;"

2. Elections Act, article 6(1).

3. The Constitution of Montserrat refers to political parties when limiting who can be in the Public Service Commission (section 82) and gives as interpretation of "political party" as "an organisation that sponsors or supports, or that at any time sponsored or otherwise supported, a candidate for election to the Legislative Assembly" (section 107). However there is no provision for their establishment or functioning.

4. Constitution of Montserrat, section 78(2).

5. Constitution of Montserrat, sections 114(1) and 96 respectively. Also the Electoral Act, articles 13 and 14.

6. The Constitution establishes that the Electoral Commission “shall not be subject to the direction or control of any other person or authority” (section 78(9)), and the Electoral Commission Act stipulates that “the Commission shall act impartially and independently of any political or governmental influence” (The Electoral Commission Act, article 4(3)).

7. The UN Human Rights Committee, the ICCPR treaty monitoring body, has noted that “An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant”. General Comment 25, paragraph 20.

8. Constitution of Montserrat, section 78. The Governor has the discretion to remove the Chairperson and members from office for “inability to discharge the functions of his or her office”.

9. Electoral Commission Act, article 7(1).

10. Elections Act, article 9.

11. Elections Act articles 74(1) and 19(1). The 2008 Elections Act uses the term “Governor in Council”, however this is superseded by 2010 Constitution of Montserrat which in section 32(1) states “There shall be a Cabinet in and for Montserrat which shall consist of a Premier, three other Ministers and two ex officio members, namely the Attorney-General and the Financial Secretary.”

RECOMMENDATION 2

Legal provision be made for the establishment of political parties. Consideration be given to establishing a registration mechanism, transparency measures, internal democracy requirements and gender-reporting.

ELECTION ADMINISTRATION

The Constitutionally established Electoral Commission (EC) is composed of a Chairperson and three members⁴. This new structure, established in the 2010 Constitution, **is a positive development in broadening authority beyond one person**. By involving the opposition and civil society it **reduces the risk of perceived or actual bias**. Following the passing of the 2012 Electoral Commission Act, the Chairperson and Members were appointed, therefore this new organisation was under almost immediate operational pressure to deliver the 2014 elections.

The Electoral Commission’s constitutionally-provided remit is broad. For example the power to review and report on the operation of the Constitution to the Legislative Assembly, as well as recommending appropriate levels of remuneration and allowances for the Speaker and elected members of the Legislative Assembly.⁵

The legislation makes general reference to the independence of the EC.⁶ However legislatively stipulated structural arrangements mean that it has strong links with the executive branch of Government and the Governor (as head of the executive). **In the future, this could potentially compromise the actual or perceived independent functioning of the election administration.**⁷ In particular, the Chairperson and the three Members are all appointed and removable by the Governor.⁸ The Governor has sole discretion for appointment of the Chairperson, also one Member (which should be based on consultation with civil society), with the two remaining Members appointed “in accordance with the advice of the Premier” for one, and the Leader of the Opposition for the other. **No qualifying criteria are established for the positions, nor grounds for removal from office**. Incompatible additional roles and functions need to be avoided to protect the reputation and neutral functioning of the institution and the checks on the electoral administration. The long absence from Montserrat of one of the commissioners before the election was very evident.

Political independence of the election administration is again hampered by the appointment mechanism of other staff. The EC’s staff are appointed with the consent of the Deputy Governor (after consultation with the Commission).⁹ Returning Officer appointments are with the consent of the Governor upon the EC’s recommendation, and can at any time be revoked by the Governor (without any consultation required).¹⁰ The Governor in Cabinet, i.e. the executive branch of government, has general power to make regulations to give effect to the Elections Act, and there is no requirement for this to be based on consultation with the EC.¹¹ The EC is required to report to the Governor, who then has three months to lay the reports before the Legislative Assembly.

Nevertheless, regardless of its appointment mechanisms, it is important to emphasise the **Election Office implemented its responsibilities effectively and commanded widespread confidence**. People interviewed consistently referred to the **approachability, willingness, impartiality, dedication and**



Observers at a PDM rally in St John's

competence of the leadership and staff. Extensive efforts were made with training, to prepare candidates and party agents, to reach out to all stakeholders through the media, and to provide voter education.

On the whole **the 2014 elections were successfully executed** due in part to the knowledge and expertise of the Chair of the Election Commission/Election Supervisor and the Returning Officer/Member of the Election Commission. Both of whom have many years of experience. It was clear that they engendered considerable trust which stakeholders and interlocutors placed in them. However, the **effectiveness and trust of Election Commission should be legally entrenched within the institution rather than any one individual.** This is for the simple reason that they may not be willing to participate in future elections. Therefore, **the full establishment and development of the institution remains.** In particular, the need for **greater transparency**, for which there is a general legal requirement.¹² For example, there is need for a systematic record of Commission decisions made public via an official Electoral Commission website and other channels. There is also a need to build all staff capacity in-between election periods.

RECOMMENDATION 3

Legal provision for the Electoral Commission be strengthened to promote the full establishment of an independent institution. Including through specification of Chairperson and Members' qualifying criteria and responsibilities, greater structural and operational independence, more specific transparency requirements, and an obligation of public reporting.

RECOMMENDATION 4

To promote transparency, by measures such as the Electoral Commission holding regular meetings, the decisions from which are immediately made public, and an organisational website established that contains all election-related legislation and other information.

12. "The Commission shall conduct its affairs in a transparent manner, consistent with good election management practice." Electoral Commission Act, article 4(4).

13. In addition the law precludes from voting persons "of unsound mind so found under any law", who have been convicted of election offences, and also persons "sentenced by any court in Her Majesty's dominions or in any territory under Her Majesty's protection to death, penal servitude, or imprisonment for a term exceeding twelve months, and has not either suffered the punishment to which he was sentenced or such other punishment as by competent authority may have been substituted for the same or received a free pardon from Her Majesty." Electoral Act articles 12(1)(b), 12(1)(e) and 12(2) respectively.

14. The Electoral Act, article 12.

VOTER REGISTRATION

Voter registration, which should be carried out every five years, took place this year in **less than ideal circumstances**, with little time allotted before the general election for this complex process. The base list from the last election was very out of date due to significant population changes, and legal criteria left room for interpretation. It has to be stressed that considerable efforts were made to compile an 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.** Such errors were not attributed to bias on the part of the electoral administration but rather to capacity issues.

The Elections Act defines voter eligibility, stipulating that registrants need *inter alia*¹³ to be 18 years of age, a Commonwealth citizen, and residing/domiciled in Montserrat.¹⁴ **The extension to Commonwealth citizens goes beyond requirements of international law**, which stipulate that electoral rights are "citizen" rights as



Polling at the St Peter's Community Centre on election day

15. See for example the internationally widely respected Venice Commission's Code of Good Practice in Electoral Matters "a nationality requirement may apply; however, it would be advisable for foreigners to be allowed to vote in local elections after a certain period of residence." Section I, 1.1(b). The Venice Commission, formally called the European Commission for Democracy Through Law, has 59 Member States from 4 continents.

16. Exception is made for a person who is out of Montserrat at the time of registration undertaking a recognized full time course of study or training. Electoral Act, article 12(1)(e).

17. For example <http://www.themontserratreporter.com/a-note-on-domicile-from-the-electoral-commission/>

18. For those with Montserratian origin who take up a "domicile of choice" elsewhere and then return, domicile of origin appears to apply meaning that there is reduced burden on demonstration of origin of choice.

19. The Electoral Act articles 13(2) and 14.

20. The preliminary list was publicly available in 24 locations for 13 days ending on 9 August providing opportunity for corrections, claims and objections. <http://www.gov.ms/wp-content/uploads/2014/07/ELECTORAL-COMMISSION-NOTICE.pdf>

21. For the 2009 election reportedly no enumeration was undertaken thus there was a reliance on continuous registration.

22. The final list was available at the office of the Electoral Commission.

23. Approximately 350 objections had been made to the preliminary list, 85 claims and a few corrections for minor changes. In addition the Election Office initiated changes due to the shortcomings of the preliminary list. All figures from meetings with Election Office staff.

24. Elections Act, article 18(1).

opposed to wider human rights. However it is often considered good practice to include non-citizen residents in local elections.¹⁵ This however did not extend to US citizens, a number of whom expressed dissatisfaction that they could not vote.

The law specifies that a registrant has to have "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".¹⁶ The "domicile" requirement provides for broader enfranchisement than a criterion of "residency". However the term "domicile" is not sufficiently legally defined in the body of election legislation. As such, the EC had to seek advice from the Attorney General on interpretation and then take decisions for individual cases. Although the Attorney General could provide sufficient case law, **there remained a lack of clarity and inconsistency**, which resulted in additional **undue pressure on the Election Office** to explain the process to the public and to judge individual cases.

The Election Office, through its communications in the media stated¹⁷ that for the purposes of elections there is "domicile of origin" (from parents at birth) and "domicile of choice" determined by the country a person chooses to reside in. Domicile of choice in Montserrat requires a person to be ordinarily resident in the territory with the intention of remaining in Montserrat indefinitely, which was determined by the EC by consideration of "a wide range of evidence" such as a change of nationality, religion, name, the purchase of land and graves, and the settlement of children.¹⁸ The EC stated that "No one piece of evidence is adequate in deciding on domicile of choice. The Electoral Commission makes every effort however not to disfranchise anyone who has the right to vote according to the law." The lack of a pre-determined list of domiciled residents or more explicit criteria **put considerable responsibility on the Commission**. A few interlocutors **complained of apparently varied decision-making that was not clear which could have resulted in undue disenfranchisement**.

The Electoral Act requires that enumeration is undertaken between the 1 June to 31 August and a preliminary list of voters prepared. There is also the provision for continuous registration on individuals' initiatives.¹⁹ Given the obligatory election date, due to the expiry of the term of the Legislative Assembly, the **EC made efforts to expedite the voter registration process** so that the list would be ready for the announcement of the election on 25 August. Thus after widespread enumeration was undertaken, but without first conducting a full internal check of entries, the EC publicised the preliminary list for nearly two weeks until 9 August.²⁰

Considerable changes to the preliminary list were then needed as the enumeration exercise alone had not been sufficient, given that the baseline list from the previous election was problematic²¹ and very outdated following population changes. The list was muddled by the inconsistent use of "known names" and official names, and the further challenge of cross-checking "known names" with the death registry. The large number of subsequent changes to entries, undertaken to protect the integrity of the electoral process, resulted in **some voter and candidate frustration that names on the preliminary list were allegedly erroneously removed**. Interlocutors referred to **misunderstandings**, with cases of enumerators misinforming registrants that they were eligible, with people on the preliminary list assuming they would be registered and only by chance finding out otherwise. Despite the Election Office's outreach efforts, information on the final list was not fully public with for example final lists not available at post offices etc. for easy checking.²² The total number of registrants went from over 4,000 entries on the provisional list to **3,878** voters on the final list which closed a week before the election.²³

Following application to the EC's Registration Officer, appeals can be made to a High Court of Justice.²⁴ During this election no petitions were lodged and reportedly none have been submitted in previous years in regards to registration.



Final training for the count and tabulation at the Montserrat Cultural Centre

RECOMMENDATION 5

The system of voter registration is reformed to provide greater clarity on eligibility, more realistic time frames, a more effective system of voter enumeration and stronger public information.

CANDIDATE REGISTRATION

Members of the Legislative Assembly are constitutionally required to be 21, a registered voter, 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."²⁵ There is a further requirement to be "born of a father or mother who at the time of the birth was a Montserratian"²⁶ This additional requirement of heritage is **excessively restrictive of the right to stand as it establishes two tiers of citizenship**²⁷, and may raise issues of compatibility with the Constitution which gives protection from discrimination.²⁸

The Constitution also stipulates that "no person shall be qualified to be elected" if he/she "holds or is acting in any public office, in the office of a judge of the High Court or of the Court of Appeal, or in the office of Magistrate"²⁹ This appears to be interpreted as requiring, not just elected representatives but all persons submitting themselves for candidacy, not to hold a public office position. Interlocutors reported that this is **problematic as potential candidates would lose income from having to resign from public office thus deterring many from running**, including those with extensive relevant professional experience. As the Montserrat public service is very large, this restriction on nomination affects **972 people (i.e. 25 percent of registered voters)**. Thus this requirement may be regarded as **unduly limiting the right to stand**³⁰ and **prohibitive of democratic functioning**. Furthermore, given the small island setting, such resignations may result in loss of necessary skill.

Candidate nomination forms do not include any opportunity for identification of political party affiliation, and similarly the official notification of elections lists candidates' names but not their party association. This **compromises individuals' rights to association and voters' right to information**.

In total **31** candidate nominations were submitted, all of which were accepted and no subsequent challenges were made. **MCAP** and the **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. The total of 31 candidates is the most there has been under the current electoral system, which **contributed to a sense of political competition and interest in the election**.

RECOMMENDATION 6

The criteria for candidate nomination be widened by removing the requirement to be born of a parent who at the time of birth was Montserratian, and reducing or removing the overly-restrictive limitation on civil servants running for office.

25. Constitution of Montserrat, section 51(3)(c).

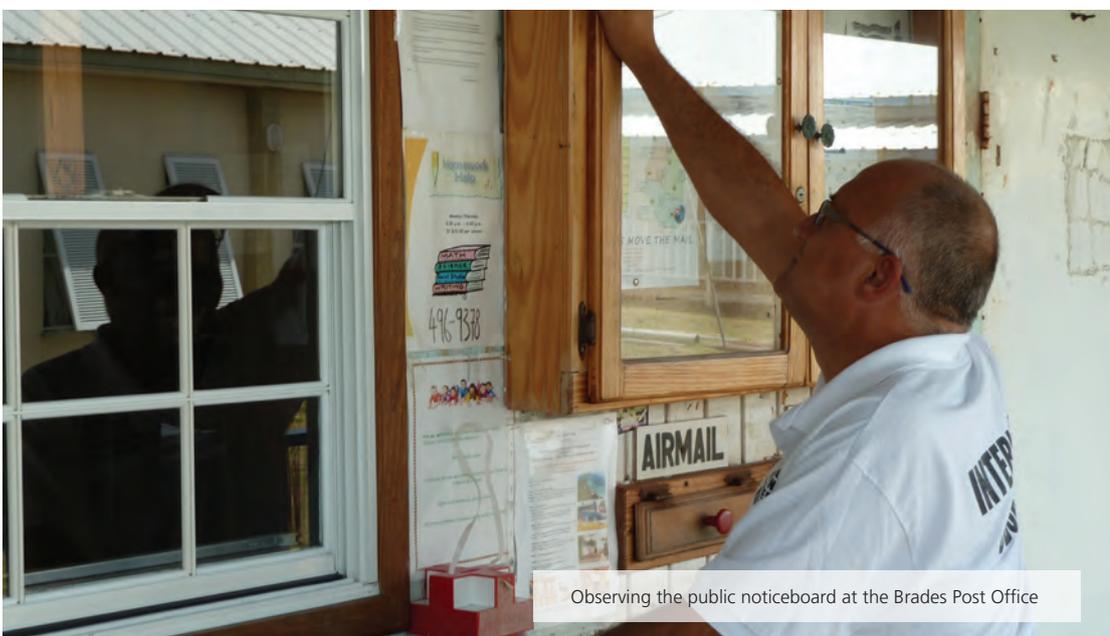
26. Constitution of Montserrat, section 51(2)(b).

27. 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."

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29. Constitution of Montserrat, section 52(1)(b).

30. The UN Human Rights Committee, the ICCPR treaty monitoring body, has noted that "if there are reasonable grounds for regarding certain elective offices as incompatible with tenure of specific positions (e.g. the judiciary, high-ranking military office, 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.



Observing the public noticeboard at the Brades Post Office

31. Reportedly only MCAP had requested display.

32. Listenership figures are not available, but reportedly nearly everyone listens at some point during the day. In case of any further hurricane or volcanic emergency, people are instructed to listen to Radio Montserrat for information and instruction.

33. Radio Montserrat is not a statutory body but is a department of the civil service.

34. Text is pre-screened by Radio Montserrat to check for libel and defamation. The text of one candidate was referred to the Attorney General and then returned to the candidate for adjustment before airing.

CAMPAIGN AND THE MEDIA

There is **no legal regulation of the campaign** although a variety of election offences are stipulated providing some limits to conduct. However the law and regulatory **framework are silent on key matters** such as the holding of public rallies, equity in the media, use and misuse of state resources, complaints, a campaign silence period and campaign finance.

The high number of candidates registered contributed to a **vibrant campaign** with rallies, door-to-door activities, posters and printed information. The campaign was peaceful, for example supporters of opponents were seen comfortably at each other's rallies. **The fundamental freedoms of movement, assembly and expression were fully respected.**

Some interlocutors regretted that for the first time in Montserrat there was some **defacing of candidates' posters** (photo on page 9). Campaigning was characterised as being more based on individual standing, power-bases and connections than political positions. No debates were held that might have enhanced issue-based discussion and therefore greater information for voters. MCAP, PDM and the AIC produced manifestos approximately half way through the campaign period. None of the independent candidates had manifestos or web sites, although three had Facebook pages. There was **no evidence of misuse of state resources**, with one isolated exception of campaign material for the incumbent party in the display box of the public library.³¹

There are a few media outlets on the island. Radio Montserrat is by far the most prevalent; there is also a local cable television channel and one newspaper, the Montserrat Reporter, which comes out intermittently. Radio Montserrat has 100 percent penetration and is extensively listened to.³² It is government-owned but is committed to being a public broadcaster.³³

Radio Montserrat, the main media outlet used for campaigning, reported informal policies for its campaign coverage. No free airtime was given, but all candidates were able to purchase time at a commercial rate. The station then attempted to allocate prime slots on a rotational basis and aired a disclaimer before and after each slot. Candidates were also invited to talk shows etc.

All 31 candidates bought airtime, with no problems reported³⁴ and no complaints lodged to the station. Radio Montserrat report that MCAP and PDM bought approximately equal quantities of airtime (45 and 46 hours respectively), while the Alliance bought far less (4 hours) and the remaining 10 independent candidates bought a combined total of 32 hours. Radio Montserrat reports that candidates were invited to programmes (such as the Breakfast Show and Cultural Show), with such free airtime amounting to 8 hours for MCAP, 6 hours for PDM, 3 hours for the Alliance, and 25 hours in total for the remaining independent candidates.

Some interlocutors referred to disproportionate coverage given to MCAP, however their purchased air-time was not disproportionate, although they did have some additional coverage through interviews. No analysis was undertaken of news coverage and tone, although some additional MDAC coverage would be expected given their then-governmental role. Candidates interviewed were **generally satisfied with the media coverage** given to them and voters had access to a wide variety of viewpoints and information. A few interlocutors commented on the lack of free airtime making it harder to campaign without financial backing.

RECOMMENDATION 7

Regulation of the campaign be established, including on matters such as the holding of public rallies, equity in the media (particularly state media), and the use and misuse of state resources. In addition consideration could be given to regulations regarding campaign finance.



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 percent voter turnout**, which, is considerably higher than in many other countries and gives a strong mandate to the new Legislative Assembly and 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. **Voters needing assistance**, of which there appeared to be a relatively high number, **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.** The EC Chairperson was **pragmatic** in encouraging candidates to choose a colour background according to their party or independent status for their photo on the ballot. All the candidates agreed, but given the **lack of obligation** in this regard, this could be **problematic in future elections risking confusion for voters.**

The ballot design is further compromised by the use of a unique number on the back and counterfoil (upon which a voter's individual number is also recorded).³⁵ Thus although **secrecy of the ballot is generally provided for in law, it is weakened by the legally-mandated potential to trace each marked ballot back to the voter. Some interlocutors reported concern that this could put voters off participating.**

The requirement for polling staff to handle marked (folded) ballots in order to check initials and numbers and to remove the counterfoil³⁶, is contrary to what is generally accepted good practice as it increases the risk of allegations of polling staff being able to see how a person has voted and mishandling ballots.³⁷ Similarly the practice during the count of requiring the Returning Officer to mark the front of any ballot objected to during the count unnecessarily risks mismarks or accusations thereof.³⁸

The **preclusion in the law of observers (national or international) is contrary to authoritative interpretation of ICCPR commitments** that state *"There should be independent scrutiny of the voting and counting process."*³⁹ The EC Chairperson was pragmatic in giving permission for CPA BIMR observer presence in polling and counting stations, despite the preclusion in law.⁴⁰

RECOMMENDATION 8

The ballot design and process be legally amended to include provision for political parties, to remove traceability, and to remove the need for polling staff to handle ballot papers.

35. Elections Act, articles 32 and 40(1).

36. Elections Act, article 40(3).

37. The Venice Commission's Code of Good Practice in Electoral Matters notes *"The signing and stamping of ballot papers should not take place at the point when the paper is presented to the voter, because the signatory or the person affixing the stamp might mark the paper so that the voter could be identified when it came to counting the votes, which would violate the secrecy of the ballot... The voter should collect his or her ballot paper and no one else should touch it from that point on."* Explanatory report paragraphs 34 and 35.

38. Elections Act, article 46(5).

39. ICCPR General Comment 25, paragraph 20. The Convention Against Corruption also states that *"Each State Party shall take appropriate measures... to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption"*. Convention Against Corruption, article 13.

40. The Elections Act, articles 39(1) and 44(1).



PDM and AIC campaign boards in Brades - AIC's poster has been marked.

41. <http://www.elections.ms>

42. Elections Act, article 40(3). The Elections Act article 46(2) (b) specifies that ballots be rejected if they have not been marked for a candidate, or for too many, or if they contain any marking that would identify the voter. No explicit reference is made to use of a black lead pencil or a cross.

43. Elections Act, section 6(1).

44. Article 23 of the Elections Act notes that for the purposes of calculating deposit forfeit, a candidate is required to "exceed one-eighth of the total number of votes polled", the "number of the ballot papers (other than rejected ballot papers) [are] counted." It is clarified that this is "For the purposes of this section".

45. <http://www.gov.ms/2009/09/10/2009-general-election-final-results/> & <http://zjb.gov.ms/wp-content/uploads/2014/09/Montserrat-2009-elections-results-table.pdf>

46. Article 23 of the Elections Act notes that for the purposes of calculating deposit forfeit, a candidate is required to "exceed one-eighth of the total number of votes polled", the "number of the ballot papers (other than rejected ballot papers) [are] counted." It is clarified that this is "For the purposes of this section".

COUNTING AND THE RESULTS PROCESS

Counting was exemplary, with extremely high levels of checks and full real-time transparency. It was

undertaken at a central location, the Cultural Centre, with a fresh set of specialised staff. For each division (each containing two polling stations) an Assistant Returning Officer examined the ballot, showing it to agents and calling the votes. Two manual tally clerks each separately recorded the validity of each ballot and the specific votes given, as did an electronic tally clerk. After every ten ballot papers, the summations of each of the three clerks were reconciled, cross-checked, and then submitted to a central control centre. The running totals were instantaneously displayed on two screens outside the building for the public and shared live on an official website, with a breakdown by division (each consisting of two polling stations).⁴¹ Thus the EC **went well beyond the requirements of the law**, which lacks reference to the transparency of polling station results. **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,**⁴² and is thus **excessively restrictive**, which may result in votes being unnecessarily discarded. The EC were also **strict with their implementation**, insisting that votes be written in pencil in the box provided with two separate lines that cross. There is **no data available on the number of rejected votes**, as distinct from ballots (as each voter has up to nine votes on a single ballot paper). Encouragingly only 1.8 percent of ballot papers were rejected (invalid), which **reflects well on the Election Office's efforts** to publicise how to validly mark a ballot paper and its **extra efforts to inform candidates and agents on criteria for ballot and vote validity.**

Successful candidates are required to receive the highest number of votes, and not less than six percent of the "total votes cast".⁴³ Although the law refers to "votes", this is presumed to refer to ballots, as given that each voter has up to nine votes (on a single ballot paper) reaching six percent of all votes cast is not practical.⁴⁴ For example only the top three candidates in both the 2014 and the 2009 elections obtained six percent of votes.⁴⁵ The legal and **regulatory framework also fails to elaborate** whether "total votes cast" include rejected (invalid) ballots⁴⁶, leaving this potentially critical calculation open to varied implementation and the election administration vulnerable to accusations of selective application. The EC informed the Mission that their practice is to calculate on the basis of ballots, including rejected ballots.

There was a clear change in power, with the new **PDM party winning seven seats and MCAP winning two.** According to the official website, the ninth candidate secured 1,098 votes and thus won the seat (for PDM), while the tenth candidate (for MCAP), who was unsuccessful secured 1,070 votes. Thus the margin of victory was 28 votes, which is higher than the numbers reported to the EOM by various parties and candidates of allegedly unduly disenfranchised voters.

RECOMMENDATION 9

Counting procedures be legally elaborated, with wider inclusion of votes where the intention of the voter is clear, requirements for polling station results transparency and greater specification of calculation methodology.



Sealing the ballot box at the Brades Primary School polling station

COMPLAINTS AND APPEALS

The law does not provide for immediate relief through a complaints mechanism at the Electoral Commission. No requirement is made for the EC to respond to complaints, to do so within a certain time, or to provide information to stakeholders on how to complain.⁴⁷ The lack of system resulted in at least one complaint being submitted to the Governor, rather than the EC, about a voter registration issue. The mission also received one report of a complaint lodged in writing to the EC approximately two weeks before election day that was not responded to.

Explicit provision is made for petitions to be filed regarding voter registration and “within 21 days after the return made by the returning officer”.⁴⁸ However **no specific mechanism** is established for candidate nomination, meaning that petitions regarding qualification criteria risk being deferred till after an election, thereby **delaying justice and prolonging the election process**. There are also no time limits given for dealing with cases, which again **risks delayed arbitration thereby affecting individuals’ right to remedy and potentially stalling the formation of the Legislative Assembly and the Government**.⁴⁹

In practice interlocutors had the expectation that the Eastern Caribbean Supreme Court (who have jurisdiction of the High Court⁵⁰) would expedite election-related cases given the national interest. **However this may not be applied to cases of regarding voter registration.**

RECOMMENDATION 10

Legal provision be made for the participation in the election of neutral observers to enhance opportunities for transparency on election day and at other stages in the electoral process.

RECOMMENDATION 11

The law specify an administrative complaints mechanism at the Electoral Commission and establish time limits for dealing with petitions to facilitate swift access to remedy at different key stages of the process and to prevent delays in the formation of the Legislative Assembly.

47. This is not consistent with the UN Human Rights Committee, ICCPR General Comment 31, paragraph 15 which requires States “to ensure that individuals have accessible and effective remedies... Administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies.”

48. Unless it alleges corrupt payment/reward practices since a candidate’s return in which case up to 28 days after the alleged offence are provided for. Elections Act, article 53(1) (a).

49. The Venice Commission’s Code of Good Practice in Electoral Matters notes “Time-limits for lodging and deciding appeals must be short (three to five days for each at first instance).” Section II,3.3(g).

50. Decisions may then be appealed to the Eastern Caribbean Supreme Court and the Privy Council.



The EOM Team at the closing press conference

51. The UN Human Rights Commission in General Comment 25 state "If conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence." "Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote."

THE PARTICIPATION OF WOMEN AND VULNERABLE GROUPS

Two women were elected to the Legislative Assembly, which is a marked improvement, as the previous legislature had no elected women representatives. Amongst the 31 candidates for these

elections, five 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. They refer to confronting "the dearth of women in political leadership by actively seeking out and engaging women in the political process at every level" and publicly stated that they would be the first party to have a female Premier.

The legislation makes **no provision for mobile or postal voting**, thus those homebound or unable to leave nursing homes etc. were not able to vote. While the law does not preclude voting by prisoners on remand⁵¹, no provisions were made for their participation.

RECOMMENDATION 12

Consideration be given to measures to promote the participation of women. For example in requiring parties to report on women in party leadership roles and as candidates and to have policies on women's political participation. Public media could also give enhanced airtime to women candidates.

RECOMMENDATION 13

Opportunity be given to prisoners on remand to cast their ballots. Consideration be given to amending the legislation to extended the opportunity to vote to home or hospital-bound voters.

ACKNOWLEDGEMENTS

The Mission would like to thank His Excellency the Governor for his invitation and for the support of his good offices. We would like to thank the Government and Opposition for supporting their invitation and the Electoral Office for their cordiality and cooperation. During our very brief stay in Montserrat the Mission was very well received and overwhelmed by the warm welcome of the people of Montserrat.



Counting of the votes at the Cultural Centre

RECOMMENDATIONS

1. A revision of the legal framework for elections, including the electoral system, is undertaken based on an inclusive consultative process and Montserrat's obligations under international law related to elections. This should take place promptly and well in advance of the next elections to allow time for debate, research, agreement and implementation.
2. Legal provision be made for the establishment of political parties. Consideration be given to establishing a registration mechanism, transparency measures, internal democracy requirements, and gender-reporting.
3. Legal provision for the Electoral Commission be strengthened to promote the full establishment of an independent institution. Including through specification of Chairperson and Members' qualifying criteria and responsibilities, greater structural and operational independence, more specific transparency requirements, and an obligation of public reporting.
4. To promote transparency, by measures such as the Electoral Commission holding regular meetings, the decisions from which are immediately made public, and an organisational website established that contains all election-related legislation and other information.
5. The system of voter registration is reformed to provide greater clarity on eligibility, more realistic time frames, a more effective system of voter enumeration and stronger public information.
6. The criteria for candidate nomination be widened by removing the requirement to be born of a parent who at the time of birth was Montserratian, and reducing or removing the overly-restrictive limitation on civil servants running for office.
7. Regulation of the campaign be established, including on matters such as the holding of public rallies, equity in the media (particularly state media), and the use and misuse of state resources. In addition consideration could be given to regulations regarding campaign finance.
8. The ballot design and process be legally amended to include provision for political parties, to remove traceability, and to remove the need for polling staff to handle ballot papers.
9. Counting procedures be legally elaborated, with wider inclusion of votes where the intention of the voter is clear, requirements for polling station results transparency, and greater specification of calculation methodology.
10. Legal provision be made for the participation in the election of neutral observers to enhance opportunities for transparency on election day and at other stages in the electoral process.
11. The law specify an administrative complaints mechanism at the Electoral Commission and establish time limits for dealing with petitions to facilitate swift access to remedy at different key stages of the process and to prevent delays in the formation of the Legislative Assembly.
12. Consideration be given to measures to promote the participation of women. For example in requiring parties to report on women in party leadership roles and as candidates and to have policies on women's political participation. Public media could also give enhanced airtime to women candidates.
13. Opportunity be given to prisoners on remand to cast their ballots. Consideration be given to amending the legislation to extended the opportunity to vote to home or hospital-bound voters.

CONTACT US

Members of the Election Observer Mission would welcome feedback to this report and its findings.

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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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