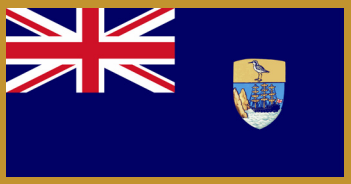
CPA COMMONWEALTH PARLIAMENTARY ASSOCIATION
BRITISH ISLANDS & MEDITERRANEAN REGION



ST HELENA GENERAL ELECTION

OCTOBER 2021

CPA BIMR ELECTION EXPERT MISSION

FINAL REPORT

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EXECUTIVE SUMMARY

- At the invitation of the Governor of St Helena, the Commonwealth Parliamentary Association British Islands and Mediterranean Region (CPA BIMR) conducted a virtual Election Expert Mission to the St Helena General Elections in October 2021. Due to the COVID-19 pandemic, the team of experts conducted the Mission virtually, carrying out research online, as well as undertaking interviews with a wide range of stakeholders using digital meeting platforms.

- Overall, the legal framework in St Helena is conducive to the holding of democratic elections. Parliamentary elections are regulated primarily by the 2009 Constitution of St Helena and the 2009 Elections Ordinance.

- Many stakeholders expressed confidence in the Returning Officer. Polling officials, including Presiding Officers and Assistants, were largely assigned to polling stations within their district in order to enable them to support identification of voters and each polling station had at least one experienced staff member. Although polling staff were provided a manual and explanatory papers, including a copy of the 2009 Elections Ordinance, a formal training session only took place the day before Election Day, with some polling staff reporting this to be limited in scope.

- The Mission identified low levels of registration amongst persons with disabilities and young people, particularly 17-year-olds newly eligible to vote. As the deadline to register to vote was almost seven weeks ahead of Nomination Day, those St Helenians that felt encouraged to vote once the candidate list was published were not able to do so, since the deadline had already passed. Additionally, the use of the Register of Electors for jury service was identified by many stakeholders as a deterrent to registering to vote.

- Persons serving prison sentences longer than 12 months are not eligible to vote. This constitutes a blanket ban as restrictions on voting are not considered on a case-by-case basis.

- There is no legislation covering the funding of election campaigns in St Helena, which is at odds with international norms. Candidates in St Helena are free to spend as much as they wish and there are no reporting requirements on the source of funding for their campaign. There is a similar lack of regulation around the formation and recognition of political parties, even though St Helena had no political parties at the time of the election.

- Election-related complaints can be addressed to the courts, thus providing effective remedy. Although stakeholders raise complaints with the Returning Officer informally, there is no official complaints mechanism within the election administration or any other independent institution apart from the judiciary.

- The CPA BIMR Election Expert Mission offers 12 recommendations in this report to enhance the conduct of elections in St Helena and to bring it more fully into line with international obligations and standards for democratic elections.

INTRODUCTION TO MISSION

At the invitation of the Governor of St Helena, Dr Philip Rushbrook, the Commonwealth Parliamentary Association British Islands and Mediterranean Region (CPA BIMR) conducted a virtual Election Expert Mission (EEM) to the St Helena General Elections in October 2021.

Due to the COVID-19 pandemic, the team of experts conducted the Mission virtually between 4 – 15 October, carrying out research online, as well as undertaking interviews with a wide range of stakeholders using digital meeting platforms. The Mission was guided by the Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers.

The Mission was composed of:

- Dr Stefan Szwed – Legal & Political Analyst (Poland)
- Dr Alexander Folkes – Election Administration/Campaign/Media Analyst (UK);
- Ms Scherrie Griffin – CPA BIMR Short Term Observer (British Virgin Islands);
- Ms Felicity Herrmann – CPA BIMR Election Coordinator (Germany);
- Ms Rahel Kibru – CPA BIMR Election Administrator (UK).

This was the first time that CPA BIMR was invited to observe elections in St Helena. The Mission conducted an independent assessment of the St Helena election against international legal standards, commitments and obligations as well as domestic laws. Its assessment encompassed the legal framework, election administration, political campaign, media, and opportunities for complaints and appeals. The Mission also considered wider issues such as gender equality and participation of persons with disabilities. The Mission met key stakeholders, including election officials, candidates, the Governor, Attorney General, Chief of Police, Prison Manager and a range of civil society groups.

The Mission acknowledges its limitations, in particular the inability of members to visit the island in person and to observe the proceedings on Election Day. Despite this, the Mission has striven to examine the wider electoral process to the best of its abilities.

This report offers recommendations which it is hoped will be given due consideration by all the election stakeholders, particularly the Legislative Council, for the continued improvement of future elections in the St Helena.

POLITICAL BACKGROUND

St Helena is part of the British Overseas Territory in the South Atlantic that also includes Ascension and Tristan da Cunha. The Governor, appointed by Her Majesty the Queen, has the responsibility of appointing ex-officio members of the Executive Council of St Helena, namely the Chief Secretary, the Financial Secretary, and the Attorney General.

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

The island of St Helena spans 47 square miles and is inhabited by fewer than 4,500 people, of whom three-quarters are of voting age.[1] The island's status, remote location, and modest population and economy are factors that according to many Mission interlocutors underpin its unique political and electoral systems. A highly anticipated fibre optic cable will deliver high-speed internet to St Helena in late 2022; many expect it will be an important factor in further developing the island's economy.

The unicameral legislature, the Legislative Council, comprises 12 members directly elected for four-year terms, as well as a Speaker, Deputy Speaker and the Attorney General as non-elected *ex officio* members. The members of the Legislative Council elect as Speaker and Deputy Speaker persons who are not members but are not disqualified from membership of the Legislative Council. Legislation enacted by the Legislative Council must be ratified by Her Majesty's Government before it becomes law. The Executive Council presided by the Governor formulates policy.

After voters rejected changes in several referendums, a new Governance Review was launched on a request by the Legislative Committee and Executive Committee in St Helena in 2019. This Review led to the establishment of a Governance Commission, which proposed alternatives aimed at facilitating more effective policymaking and implementation, promoting political accountability, and providing a greater sense of local ownership. A consultative poll on these proposals took place in March 2021, in which the electorate was invited to answer two questions:

1. whether or not they favoured a change of the system of governance;
2. in case a majority favoured change, whether they supported:
    a. a revised committee system;[2]
    b. a ministerial system of governance.[3]

[1] In July 2021, St Helena Government recorded a total on-island population of 4,385. The St Helenian on-island population was 4,127. See: https://www.sainthelena.gov.sh/st-helena/statistics/

[2] The revised committee system would maintain the structure and membership of the Legislative Council and Executive Council, but reduce the number of elected members on Council Committees (from the Chair plus five elected members to the Chair plus one or two members). Committee Chairs would have more direct responsibility for the delivery of policy and financial management.

[3] The ministerial system envisioned a significant change in the membership of the Legislative Council and Executive Council. The Financial Secretary and Chief Secretary would no longer be *ex officio* Members of the Legislative Council. Instead of electing five Members to join the Executive Council, Legislative Council Members would elect a Chief Minister. The Chief Minister and four Ministers, selected by the Chief Minister from elected Legislative Council Members, would form the Executive Council and each take responsibility for one of the five Ministries. The Governor would continue chairing Executive Council meetings. The remaining seven elected Members would serve as backbencher legislators and become the first port

An estimated tenth of the eligible population participated, with a majority favouring change. Of those who participated, 55.1% opted for a new ministerial system, rather than a revised committee system. Once the change sanctioned by voters was approved by the Privy Council in July, the Governor issued a proclamation confirming that changes would come into effect at the commencement of the new legislature after the 2021 election. In late August the Acting Governor called an election for 13 October 2021.

COVID-19 PANDEMIC

St Helena has not experienced community transmission of COVID-19. This is largely due to the extremely isolated nature of the territory and the measures taken to further isolate it from possible infection. The weekly flight from South Africa was halted and marine landings had significant restrictions. At time of the election, all arrivals were required to isolate for ten days, although transit time for ship-borne arrivals was counted towards this period and arrivals could quarantine at home. More than 90% of the adult population was fully vaccinated.

COVID-19 had a limited direct impact on the election. No travellers arrived on the island less than 10 days before the election which meant that no person would be in quarantine on Election Day. It was unclear to observers how many qualified voters were unable to return to St Helena either by the registration deadline or for Election Day itself, or what procedures would be followed if a qualified elector was in quarantine on Election Day. The time limit for voters to be overseas before their names are removed from the voter list was not extended due to the COVID-19 pandemic.

Face masks and social distancing were not required or utilised on the island and there were no COVID-19 security measures in place at polling stations.

LEGAL FRAMEWORK

The legal framework for elections includes the 2009 Constitution, the 2009 Elections Ordinance, as well as secondary legislation including:

- the 2009 Elections Regulations,
- the 2009 Registration of Electors Regulations,
- the 2013 Electoral Districts Regulations,
- and the 2019 Provisions Made by Governor for Enabling Public Officers to be Qualified to be Elected.

Other relevant laws include the 2011 Immigration Ordinance and the 1989 Communications Ordinance. The 2014 Media Standards Code of Practice is also applicable.

In July 2020, the Sub-Committee of the Social and Community Development Committee issued its 'Report on Review of the 2009 Elections Ordinance', which examined aspects of the legal

of call for a constituency allocated to them. Council Committees would be abolished and two new Scrutiny Committees established.

framework with a view to improving the election process. The Sub-Committee's recommendations were not implemented before the 13 October election.[4]

The 2020 'Report on Review of the Elections Ordinance' is a welcome initiative to help further improve the quality of elections and safeguard their integrity.[5] Recommendations and the way they are implemented should be compliant with the latest relevant international standards for democratic elections. In accordance with international good practice, changes to the law should be made well in advance of the next elections.[6]

Although international instruments are not automatically applicable to British Overseas Territories and Crown Dependencies, international human rights law creates obligations in relation to the conduct of elections in St Helena.[7] Several international human rights instruments have been extended to the island, including:

- the 1966 International Covenant on Civic and Political Rights;
- 1953 European Convention of Human Rights;
- 1965 International Convention on the Elimination of All Forms of Racial Discrimination;
- 1979 Convention on the Elimination of All Forms of Discrimination against Women;
- and the 2005 UN Convention against Corruption.

Among instruments that do not extend to St Helena is the 2008 United Nations Convention on the Rights of Persons with Disabilities.

Recommendation 1: Extension of the United Nations Convention on the Rights of Persons with Disabilities should be pursued without delay.

The 2017 UK national report under the Universal Periodic Review of the UN Human Rights Council welcomes the adoptions of new constitutions in several Overseas Territories, including in St Helena, which contain fundamental rights chapters to ensure "greater compliance with the European Convention of Human Rights and International Covenant on Civic and Political Rights".[8]

Overall, the legal framework in St Helena is conducive to the holding of democratic elections. Although access to fundamental freedoms is protected in the Constitution, the enjoyment of these rights is not always safeguarded in the legislation. For instance, although the right of association is enshrined in the Constitution, there are no regulations in place pertaining to the establishment and functioning of political parties. Even though most interlocutors agreed that St Helena's

[4] Recommendations include those concerning the timeline for voter registration, widening of franchise, provisions for a secret ballot or introduction of postal voting. The Sub-Committee also spoke out against some other proposals that have been debated publicly in the recent past, including concerning the introduction of early voting, electronic counting machines or increasing the stringency of criteria for standing for elections.

[5] Sub-Committee of the Social and Community Development Committee (July 2020) 'Report on Review of the Elections Ordinance', with Supplemental Note March 2021. Available on: https://www.sainthelena.gov.sh/wp-content/uploads/2021/05/Report-on-Review-of-The-Elections-Ordinance-24-March-2021.pdf

[6] See European Commission for Democracy through Law (Venice Commission) 2002 Code of Good Practice in Electoral Matters Section II Art 2 which states that fundamental elements of the law should not be changed less than a year before the election.

[7] UN ICCPR Committee (2015) CCPR/C/GBR/CO/7 noted with concern that human rights instruments applicable to the UK are not directly applicable to the British Overseas Territories.

[8] See the UN Human Rights Council Working Group on the Universal Periodic Review Thirteenth session Geneva, 21 May–4 June 2012 National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21* United Kingdom of Great Britain and Northern Ireland (A/HRC/WG.6/13/GBR/1).

political system would not benefit from the formation of political parties at present, the absence of clear rules could be a factor inhibiting their formation.

ELECTION ADMINISTRATION

Elections in St Helena are administered by a Returning Officer. A separate position of Registration Officer is also established in the law. Whilst the roles are distinct in the law, it is long-standing practice to combine Returning Officer and Registration Officer roles into a single job. The Returning / Registration Officer is appointed by the Governor and is a permanent position within the civil service, although it is combined with other duties.[9] There is no other authority on election-related matters such as an election ombudsperson or electoral commission. The Returning Officer provides expert advice on electoral policy matters. The Returning Officer is assisted by two Assistant Returning Officers. Overall, many interlocutors expressed confidence in the current incumbent.

Each of the eight polling stations had a Presiding Officer and Assistant Presiding Officer appointed by the Returning Officer. The majority of these persons are either current or former government employees. Each polling station had at least one official who had undertaken the role before.[10] Staff were assigned, where possible, to polling stations in the district in which they lived in order both to enable them to vote more easily and to assist with the identification of voters. Each received a manual and other explanatory papers, but formal training took place only the day before Election Day and was reported to be limited in scope. The count took place on the evening of Election Day and, with the exception of the Returning Officer and Assistant Returning Officers, was conducted by staff who had not been working in polling stations.

Some interlocutors expressed concerns about the potential to appoint polling day staff who had family connections to candidates. The Mission noted that in St Helena it is virtually impossible to appoint people to sensitive positions without any connections to candidates. In addition, action was taken to release two potential election workers who had close familial ties to candidates from duty before Election Day. The ratification of appointments by an independent body might assist with confidence in the process.

Recommendation 2: Consideration should be given to establishing an independent Electoral Commission or Commissioner, appointed by an independent body such as the Judicial Appointments Commission, to supervise the electoral process and to ensure it is conducted fairly and impartially. Such a person or body could also receive and adjudicate on electoral complaints and provide expert advice on all aspects of electoral reform.

[9] The incumbent is also Head of the Administrative Support Service for the St Helena Government which takes up the bulk of the incumbent's working hours outside of election periods.

[10] 6 out of 16 Presiding or Assistant Presiding Officers were new to their role at this election.

BOUNDARY DELIMITATION

The 2009 Constitution provides for universal suffrage and a single voter roll for a single constituency. However, the legislature may establish multiple constituencies with separate voter rolls for electoral purposes.[11] The 2009 Elections Ordinance prescribes that the Governor in Council may make regulations providing for:

- the division of St Helena into electoral constituencies;
- the number of members of the Legislative Council to be elected by each constituency;
- a further division of a constituency into electoral districts for the purpose of determining where polling stations are to be established.

Since the 2013 election, the island votes in a single electoral constituency.[12] However, the 2013 Electoral Districts Regulations subdivide the constituency into eight electoral districts.[13] Voters may register in any district, but they may vote only in the district in which they are registered. Each district has one polling station only.

The 2021 governance reform prescribes that each of the seven Legislative Council Members without ministerial portfolio be assigned responsibility for a single district, with one Member taking responsibility for two districts. Some interlocutors expressed apprehensiveness about this provision, citing as their key concerns the discrepancy in the size of the population in different districts and that voters are unable to choose which of the elected members represents their district, which they fear may diminish accountability.[14]

THE RIGHT TO VOTE

The right to vote is established in the 2009 Constitution and the 2009 Elections Ordinance which give effect to the right to vote and establish eligibility criteria for the registration of electors.[15]

Persons aged 17 or older on the day of making an application[16] who hold St Helenian status[17] and are present and ordinarily resident in St Helena are eligible to register and vote. Only persons absent from the island for specifically defined reasons, for no longer than 30 months or an aggregate of up to 625 days in the preceding 30 months, are exempt from the requirement to be

[11] The Legislature is defined as Her Majesty and the Legislative Council as per section 47 of the Constitution.

[12] In the past, St Helena was divided into several electoral constituencies, e.g. eight in the 1997 and 2001 elections, or two in the 2005 and 2009 elections. Unequal numbers of candidates and a low number of votes per candidates elected have been cited as reasons to move to a single constituency model.

[13] Districts laid out in the schedule include: Jamestown, Alarm Forest, Longwood, Levelwood, Sandy Bay, Half Tree Hollow, St Paul's and Blue Hill.

[14] Levels of voter registration vary significantly among the eight districts – turnout figures during the 13 October election also differed.

[15] The 2009 Registration of Electors Regulations outline procedures for practical implementation of the system of voter registration.

[16] The law specifically allows persons aged 17 and above to register, rather than to vote. Please note that the Report on Review of the Elections Ordinance recommended that voting age be lowered to 16. The Report also noted although the default position is that electors register to vote in the district where they live, the law allows for electors to register in any of the districts.

[17] St Helenian status is defined in the 2011 Immigration Ordinance. There is no definition of homelessness, but persons must have an address to register to vote.

present at the time of making the application.[18] As of 1 July 2020, spouses of persons with St Helenian status are no longer eligible to vote. A limited public debate is ongoing about the desired stringency of rules that limit the right to vote to persons with St Helenian status, as well as eligibility criteria for the St Helenian status.[19]

The 2009 Elections Ordinance states that persons who express allegiance or adherence to a foreign state are barred from registering to vote.[20] However, 'allegiance or adherence' is not defined, which permits for arbitrary application, thus running counter to international good practice.[21] The Elections Ordinance also bars from voting anyone certified to be incapable by reason of mental disorder.[22] However, any restrictions of voting rights of persons who are mentally incapacitated, even when supported by a court decision, are contrary to international obligations.[23]

Those serving a prison sentence or cumulative sentences longer than 12 months in any part of the Commonwealth are denied the right to vote.[24] Blanket restrictions, rather than individualised decisions forming part of the sentence, as well as a lack of provisions that deprive of suffrage rights only those persons sentenced for serious crimes contravenes international standards.[25] Finally, voters who have previously committed electoral offenses are stripped of the right to vote for seven years after the date of conviction, which contravenes international standards.

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[18] Exceptions are made for persons who are ordinarily resident on the island, but are away temporarily for the purpose of (their or their spouse or life partner's) employment, education or training, or the purpose of medical treatment (of the above as well as a dependent person).

[19] Eligibility limitations based on length of residency are unreasonable, discriminatory and are not in line with international standards for democratic elections. Paragraph 15 of the 1996 UNHRC General Comment No. 25 states that "any restrictions on the right to stand… must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as [among others] residence…".

[20] See Section 4 paragraph 3(a) of the 2009 Elections Ordinance.

[21] Paragraph 4 of the 1996 UNHRC General Comment No. 25 states that "the exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable." See also ECtHR judgment in *Seyidzade v. Azerbaijan*.

[22] See Section 4 paragraph 3(b) of the 2009 Elections Ordinance.

[23] See articles 12 and 29 of the 2006 Convention on the Rights of Persons with Disabilities (CRPD). See also paragraph 9.4 of the CRPD Committee's Communication No. 4/2011 (*Zsolt Bujdosó and others v. Hungary*) which stated that "Article 29 does not foresee any reasonable restriction, nor does it allow any exception for any group of persons with disabilities. Therefore, an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability". Paragraph 48 of the CRPD Committee's 2014 General Comment No. 1 to Article 12 of the CRPD states that "a person's decision-making ability cannot be a justification for any exclusion of persons with disabilities from exercising their political rights, including the right to vote [and] the right to stand for election".

[24] Paragraph 14 of the UN Human Rights Council General Comment No. 25 states that grounds for deprivation of voting rights should be "objective and reasonable".

[25] The blanket removal of voting rights of prisoners serving a custodial sentence was repealed in 2018, thus making UK compliant with the judgements by the European Court of Human Rights (ECtHR) and recommendations or other bodies (e.g. OSCE Office of Democratic Institutions and Human Rights). See the 2018 Resolution on the Execution of ECtHR judgment in the case of *Hirst v. the UK*.

Recommendation 3: To allow for broader electoral participation on an equal basis, voting rights should be reviewed in line with international standards and good practices, including:

a) Any discrimination against persons with disabilities should be abolished;
b) The blanket ban on the right to vote for citizens serving prison sentences exceeding 12 months should be reviewed and/or include a distinction between the different types of offences;
c) The blanket ban on the right to vote for citizens who committed electoral offenses during the previous seven years should be reviewed.

VOTER REGISTRATION

A person can apply to be added to the register at any time, but the register may not be updated between the publication of the writ of election and election day, as well as during the period between the publication of the Provisional and the final Register of Electors.[26]

Although the law prescribes that in addition to the existing roll, the records of births, death and marriages be consulted in preparation of the provisional voter list, in practice records are consulted solely with the aim of removing ineligible voters. Registered electors who spent more than 30 months or more than an aggregate of 625 days in the preceding 30 months absent from the island are removed from the register.[27] Whilst immigration and emigration records may be consulted, enforcement of this provision often relies on the personal knowledge of election officials.

The last date to register for the 13 October election was 12 August 2021. The Register of Electors was published on 27 August 2021 and is available on the St Helena Government website.[28]

Many interlocutors expressed frustration at the fact that persons wishing to register at a later date, especially once the campaign was underway, were unable to do so.[29] The announcement of the list of candidates motivated some people to consider registering for the first time. There appears to be no logistical reason why the Register of Electors should not remain open to new applicants for some time after the election has been called and the list of candidates announced. Whilst there are formal registration processes to be accomplished, these should not outweigh the right of potential electors to join the voter list.

Recommendation 4: The last date to register to vote in an election or referendum should be brought closer to polling day. If possible, a deadline within the period of the campaign (i.e. after Nomination Day) should be considered.

[26] The 2009 Elections Ordinance states that a Provisional Register of Electors must be compiled on or before 1 May annually. The Provisional Register of Electors must be published in the Gazette on or before 10 May.

[27] See the *Electoral Justice* section, page 21 of this report.

[28] See: https://www.sainthelena.gov.sh/wp-content/uploads/2021/08/EX-GAZ-No-94-Register-of-Electors-August-2021.pdf

[29] The law also does not allow for contestants to motivate potential voters to participate, rather than merely attract voters who are already registered.

The total number of persons registered for the 2021 election was 2,162, out of an estimated population of St Helenians over the age of 17 of some 3,500 (according to the 2021 census).[30] This figure includes people that are not entitled to register, including those sentenced to a term of imprisonment of more than 12 months and those individually judged not to possess the mental capacity (sic) to vote. The estimated registration rate is therefore approximately 60%. According to the Elections Ordinance, after the last date for registration, the provisional list must be on public display for a period of seven days and a further ten days is allowed for any appeals against the register to be heard by a magistrate.[31]

No appeals against removal from the register were made in 2021. The Mission was informed that the voter list had been contracting by around 100 people each year due to emigration and a death rate that exceeds the birth rate. However, in the last months before the voter list closed for this election around 100 people had applied to join the register.

The Mission noted that low levels of registration do not appear to be even across demographic groups:

- The Mission was informed that 78 of 251 persons with disabilities known to one of the representative organisations on the island were on the electoral register;
- Younger people appear to be significantly less likely to be registered.[32]

Almost all interlocutors mentioned that low levels of registration could be ascribed at least in part to the use of the voter list as the basis for drawing a trial jury. Despite the very small number of jury trials, many felt people did not want to risk being called to exercise judgement on their neighbours. The Mission is not in a position to conclude whether a desire to avoid being called for jury service is a key reason for the low levels of registration of voters. However, the vast majority of interlocutors recommended to decouple the two lists and to compile the list of potential jurors from other sources.

A further reason suggested by interlocutors was apathy, typically caused by a lack of confidence in the political system and a perceived inability of elected Councillors to deliver on promises. A lack of confidence in the political system was particularly noted among younger interlocutors, many of whom did not see an immediate future for themselves on the island. The switch to a ministerial system is said, at least in part, to be an attempt to address some of these arguments.

In addition, whilst generic voter education materials were provided about voter registration, a number of interlocutors stated that either limited or no efforts were made to target groups with low levels of registration including younger people, people with disabilities, prisoners and those living in care homes.

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[30] In July 2021, St Helena Government recorded a total on-island population of 4,385. The St Helenian on-island population was 4,127 (statistics available from the St Helena Government website at https://www.sainthelena.gov.sh/st-helena/statistics/). See also St Helena Government page on 'St Helenian Status' at https://www.sainthelena.gov.sh/public-services/immigration/st-helenian-status/

[31] The provisional register was published on 17 August on the St Helena Government website at https://www.sainthelena.gov.sh/wp-content/uploads/2021/08/EX-GAZ-92-Proposed-Amendments-Register-of-Electors.pdf

[32] As noted by the Sub-Committee in their Report (Report on the Review of the Elections Ordinance, July 2020): "In the recollection of the Registration Officer, from some 33 or so people that would have been 17 years of age and eligible to register only a small number, less than ten, entered onto the register to take advantage of the increased franchise." The Report is available online at https://www.sainthelena.gov.sh/wp-content/uploads/2021/05/Report-on-Review-of-The-Elections-Ordinance-24-March-2021.pdf

The mission received anecdotal evidence that persons who had been off the island for more than two and a half years and had been removed from the register were unaware that they had to apply to re-join it. Individuals serving a sentence of imprisonment of more than 12 months were also removed from the electoral register. More effective voter education programmes are necessary to support increased levels of voter registration.

Recommendation 5: Urgent action should be taken to address the low level of registration of eligible voters. Measures could include:

a) identifying jurors using an alternative source in place of the electoral register;

b) more effective voter education programmes to encourage registration amongst any under-represented groups.

THE RIGHT TO STAND FOR ELECTION

According to the 2009 Elections Ordinance, to be eligible to stand in an election to the Legislative Council a person must be a registered voter aged 21 and over.[33] Section 49 of the 2009 Constitution defines categories of persons disqualified from the right to stand. They include:

- persons who owe allegiance to a foreign state;
- those declared bankrupt;
- those who are mentally incapacitated;
- those under a prison sentence (or cumulative sentences) longer than 12 months;
- those found guilty of electoral offences during the previous seven years.

Such limitations unfairly restrict the right to stand and contravene international standards for democratic elections.[34] In particular, rules on the expression of allegiance or adherence to a foreign state are not clearly defined and thus run counter to international standards that among other things prescribe that citizens' rights "may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable".[35] Barring anyone from standing based on mental incapacity, even when decided on individual basis by a court, is contrary to international obligations.[36] In addition, blanket restrictions, rather than individualised decisions forming part of the sentence, as well as a lack of provisions that deprive of suffrage rights only those persons sentenced for serious crimes, contravenes international standards for democratic

[33] The Report on Review of the Elections Ordinance recommended that consideration be given to lowering the age at which persons become eligible to stand.

[34] See footnotes 19-23 above.

[35] See Paragraph 4 of the 1996 UNHRC General Comment No. 25 which states that "the exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable."

[36] See articles 12 and 29 of the 2006 Convention on the Rights of Persons with Disabilities (CRPD). See also paragraph 9.4 of the CRPD Committee's Communication No. 4/2011 (*Zsolt Bujdosó and others v. Hungary*) which stated that "Article 29 does not foresee any reasonable restriction, nor does it allow any exception for any group of persons with disabilities. Therefore, an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability". Paragraph 48 of the CRPD Committee's 2014 General Comment No. 1 to Article 12 of the CRPD states that "a person's decision-making ability cannot be a justification for any exclusion of persons with disabilities from exercising their political rights, including the right to vote [and] the right to stand for election".

elections.[37] Finally, banning those who have previously committed electoral offenses from the right to stand for seven years after the date of conviction also contravenes international standards.

Recommendation 6: To allow for broader electoral participation on an equal basis, candidature rights should be reviewed in line with international standards and good practices, including:

a) Any discrimination against persons with disabilities should be abolished;
b) The blanket ban on the right to stand for all prisoners sentenced to imprisonment exceeding 12 months ought to be reviewed and/or include a distinction between the different types of offences;
c) The blanket ban on the right to stand for citizens who committed electoral offenses during the previous seven years should be reviewed;
d) Rules on the expression of allegiance or adherence to a foreign state should be clearly defined in the law to safeguard against arbitrary interpretation.

Anyone working in the administration of elections or registration of voters as well as judges and judicial officers are prohibited from standing as candidates. Public servants, who make up approximately half of the island's workforce, are ineligible to stand, unless they are granted dispensation by the Governor. Such dispensation is routinely granted. Special schemes are in place to facilitate the professional transition between public service and elected office.[38] Other regulations list further professions incompatible with standing for elected office. For instance, the 2014 Media Standards Code of Practice prescribes that broadcast presenters and journalists should take leave if they contest an election.[39]

CANDIDATE REGISTRATION

The nomination period for the election opened on 1 September with the publication of the writ of election and closed at noon on 29 September. A total of 29 candidates were nominated for the 2021 election and no applicants were denied registration. [40] This was reported to the Mission as a historic high.[41] Possible reasons for this increase include higher proposed salaries for elected members and the introduction of a ministerial system with more substantial roles for elected members. [42] The Mission was informed that this election involved more candidates from private sector backgrounds than previous elections.

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[37] The blanket removal of voting rights of prisoners serving a custodial sentence was repealed in 2018, thus making the UK compliant with the judgements by the European Court of Human Rights (ECtHR) and recommendations or other bodies (e.g. OSCE Office of Democratic Institutions and Human Rights). See the 2018 Resolution on the Execution of ECtHR judgment in the case of *Hirst v. the UK*.

[38] See the 2019 Provision Made by Governor for Enabling Public Officers to be Qualified to be Elected.

[39] The Media Standards Code of Practice is available at https://www.sainthelena.gov.sh/wp-content/uploads/2012/08/St-Helena-Media-Commission-2014.pdf. See also the 2011 Media Standards Ordinance, p. 25.

[40] Available at https://www.sainthelena.gov.sh/wp-content/uploads/2021/09/EX-GAZ-103-List-of-Duly-Nominated-Candidates.pdf

[41] There were 20 candidates in 2013 and 17 candidates in 2017.

[42] It is proposed that the Chief Minister will receive a salary of £50,000 per annum, other ministers £35,000 p.a. and non-ministers £20,000 p.a.

Nominations must be endorsed by two sponsors, whose signatures must be attested by the Returning Officer or a Justice of Peace, as well as five supporters, whose signatures must be witnessed.[43] Both sponsors and supporters, but not witnesses, must be registered as voters.[44]

Most interlocutors described the nomination procedure as uncomplicated. Some candidates noted concerns with the nomination form. For instance, candidates were required to be sponsored by two registered voters and supported by five others on their nomination forms. However, candidates were not provided with an updated version of the Register of Electors until after their nomination, which made it more difficult for them to check the voter status of a potential sponsor ahead of Nomination Day.

There was also a lack of clarity in initial public information as to whether the persons who witnessed the signatures of supporters had to be registered voters as well. A clarification was published online and in a newspaper the following week.[45]

The Mission was informed that an earlier guidance restricted all civil servants from any form of activity in support of candidates, including signing candidates' nominations. However, new official guidance issued to civil servants indicated that Directors and members of Senior Management Teams (together numbering fewer than 60 people) could sponsor and sign in support of candidates' nominations but not undertake any campaigning activity. Elections staff and members of the police force could not take any role in support of a candidate. Other government employees had no restrictions.

One candidate's nomination was delayed while their nomination paper was referred to the Attorney General. A sponsor, listed on the electoral register under their maiden name, had signed the form under their married name. The nomination was accepted.

Candidates may withdraw only until the last day of nominations. Candidates have the right to inspect the nomination applications submitted by other candidates on the final day of nominations. The Returning Officer's decision to allow objections to a nomination is subject to appeal. If a candidate objects to another candidate's nomination, and the Returning Officer agrees with the objection, the candidate affected may appeal the decision in court via an election petition. The names of registered candidates must be published in the Gazette.

There are no registered parties on St Helena and all candidates officially stood as independents. One candidate described themselves in their election literature as a Green candidate in 'a party of one'. A number of candidates were reportedly linked to the Unified Saints, a community organisation not formally recognised as an association. The Mission identified no barriers to the formation of a political party, but there are no legal regulations that would facilitate formal recognition of parties or enable their active participation in elections, for example, by allowing party names to be listed on ballot papers.

[43] Any person may act as sponsor or supporter for the number of candidates equal to the number of seats being elected (12 in the case of a general election).

[44] In the same constituency, if applicable – there is only one constituency for the 2021 elections.

[45] Available on the St Helena Government website at https://www.sainthelena.gov.sh/2021/news/general-election-2021-important-information-for-candidates-changes-to-witness-requirements/.

ELECTION CAMPAIGN

The nominations period lasted for four weeks, from 1 to 29 September, and the official campaign period approximately two weeks, from Nomination Day on 29 September until Election Day on 13 October 2021.

There was no legal impediment to campaigning activity during the nominations period or before the election was officially called, nor are there any restrictions on campaigning on Election Day other than within the boundaries of a polling station. The Mission was informed by interlocutors that campaign activity was largely limited to the last two weeks before election day. One interlocutor expressed the view that a longer active campaign period would alienate potential voters.

Most candidates reported campaigning in similar ways, such as via appearance in the media, by putting up posters around the island, and through one-to-one interaction with voters. Some reported the use of social media, particularly Facebook, but the lack of connectivity and internet penetration restricted its effectiveness and use. Very few candidates reported door-to-door visits. A number of candidates advertised 'drop-in' sessions where they would make themselves available to voters with questions; this was reported to the Mission as being a new aspect to Island elections.

Most interlocutors described the election campaign as vibrant, with candidates considered more active than during previous elections. Candidates described a level playing field with widespread use of available campaigning means.

The two weekly newspapers enabled candidates to publish the equivalent of half a page of material free of charge during the campaign. Additional space was available for purchase at £50 per page for each paper and a significant number of candidates used this opportunity to advertise during one or both weeks of the campaign. Material published by candidates was clearly identifiable even though there was no legal requirement for this or for material published online. The content ranged from slogans and photos to detailed manifestos.

Each radio station offered every candidate the opportunity for a half-hour interview but not all candidates took up these offers.[46] The interviews were then re-broadcast during the election period. The interview style was described as light touch rather than interrogatory, with questions provided to the candidates in advance.

One of the media groups offered candidates the chance to purchase an advertising package including newspaper advertisement and radio 'jingle'. A limited number of candidates took up this offer. Each radio station also offered packages to advertise public meetings and the cost was reported to be approximately £8 per day for a short advert.

A week before election day a hustings event was organised by the Chevening Alumni at which most candidates were present and asked questions by students from the island's secondary school. Some candidates stated that they did not receive an invitation and that the hustings clashed with other events. The hustings was broadcast by one of the radio stations and on the island's TV channel. Due to the number of candidates, this event was split into three sessions.

[46] At the time of interviews, seven of the 29 candidates had reportedly not taken up the offer of free airtime.

In campaign materials seen by the Mission, candidates did not seek to criticise their opponents and preferred to promote what they saw as the positive virtues of their own campaigns. Interlocutors stated that there were no campaign materials specifically targeted at under-represented sections of the population such as women and younger voters. There were no reported instances of hate speech or campaign violence.

The Elections Ordinance 2009 contains a prohibition against deliberate disinformation.[47] The Mission received some reports of candidates criticising former Councillors, along with a claim that such criticism breached this prohibition. It is unclear to the Mission how such breaches – if they happened – might be investigated, and whether such laws infringe on the rights to free speech.

CAMPAIGN FINANCE

There are no specific campaign finance laws in St Helena. Candidates are free to spend as much as they wish on campaigns with no restrictions on the sources of such funding or reporting or audit requirements. The St Helena Government does not offer funding for political or campaign activities.

Most candidates reported undertaking broadly similar campaign activities and, with one exception, all interlocutors reported funding their election campaign wholly from personal resources. One candidate had received some funding from a friend who was a citizen of another country. The most expensive electoral campaign was estimated to have cost around £500. It should be noted that such an expenditure would be considerable for lower income earners. Nevertheless, the level of campaigning, small number of voters, and predominance of face-to-face campaign activity suggest it is unlikely that any candidate was effectively disadvantaged due to limited financial means.

Although political donations remain rare in St Helena, the lack of campaign finance laws presents a risk. Campaign finance laws would provide transparency for electors and others, in line with international standards. In order to provide confidence to voters and others and to protect against problems in future elections, it is recommended that some campaign finance regulations be given consideration and that these should cover third-party campaigning and in-kind donations.

Recommendation 7: To build transparency around electoral finance, regulations should be introduced governing the sources of electoral finance, campaign spending limits, and reporting requirements for candidates and third parties, as well as regulations for parties or political groupings should they emerge in St Helenian politics.

[47] See 2009 Elections Ordinance, Part VI Offences, Section 25, paragraph 1(c) (d).

MEDIA AND SOCIAL MEDIA

St Helena has two radio stations and two weekly newspapers. There is also a TV system broadcasting a large number of channels from South Africa with one channel broadcasting locally sourced content.

The Saints FM radio station does not receive state funding. SAMS Radio receives some government funding tied to a requirement for certain broadcast types and levels. There are no audited listening figures for the radio stations and the Mission was unable to monitor significant periods of the output of either station.

The Independent newspaper is linked to Saints FM radio and does not receive state funding. It prints around 1,000 copies each week which are available for purchase around the island. The paper is made available online the afternoon of publication. The Sentinel newspaper is linked to SAMS radio and does not receive state funding. It prints around 650 copies each week with similar distribution. It has, in the past, been available online but the website is currently undergoing construction.

Neither paper carried significant editorial content or reporting about the elections, nor did they attempt to interview the candidates. Each prints letters to the editor and the Mission detected one letter from a candidate.

The media in St Helena is regulated by two key pieces of legislation, namely the Media Standards Ordinance 2011 and Media Standards Code of Practice 2014. They are overseen by a panel headed by the Chief Magistrate and has between two and four other members. Representatives of the media on the island do not currently hold a seat on the panel. One of the regulatory objectives of the Media Standards Ordinance 2011 is "ensuring compliance with any international obligations of St. Helena relating to Media Services".[48] Periodic reviews of the Ordinance and Code of Practice to ensure compliance with best international standards would be beneficial.

None of the interlocutors felt their output was constrained by regulation. One media interlocutor was unaware of the process for complaints or regulation. Past complaints did not relate to elections and were largely resolved through negotiation with the complainant; the most likely form of restitution was a requirement to apologise and broadcast a correction.[49] Such a resolution may be ineffective for an election-related complaint during the short campaign period.

In effect, all media reported self-regulating to some extent. Interlocutors in the media expected that output perceived within the small community as aggressive or intrusive would likely risk reputational damage or reduced readership or listener numbers.

The requirement for impartiality in factual media output under S5(1)(c) of the Media Standards Ordinance 2011 has led to candidates who are journalists being removed from journalistic duties. One candidate in the 2021 election was a journalist who took leave from his role during the campaign. Other interlocutors, however, reported concerns that one of the radio station

[48] See Media Standards Ordinance 2011, p.4, S5(1)(f), available at https://www.sainthelena.gov.sh/wp-content/uploads/2017/11/Media-Standards-Ordinance.pdf

[49] Potential sanctions for violation could also include a reference to the Attorney General for consideration of criminal proceedings or a recommendation to the Governor that a broadcasting licence be revoked or restricted. *Ibid.* S9(1)(c iv) and (a).

presenters who also conducted candidate interviews had acted as sponsor for one of the candidates.

PARTICIPATION OF WOMEN

The UN Convention on the Elimination of All Forms of Discrimination against Women was extended to St Helena in 2017, although some rights have not been transposed into legislation. No special measures are in place to encourage greater representation of women, as provided for in Article 4. Article 7 obliges parties to take measures to "eliminate discrimination against women in political and public life of the country" and ensure that women "hold public office and perform all public functions at all levels of government".

Women enjoy some representation in political and public life though few top political posts on the island are held by women.[50] The number of women standing in elections has increased across recent electoral cycles. Nine out of 29 candidates in this election were women (or 31%). Three out of 12 members of the outgoing Legislative Council were women (or 25%), but in this election the number of elected women increased to five, amounting to over 41% of the new Council's composition. This is above the target threshold of 30 percent set out by the Beijing Platform for Action, but below parity.

Several interlocutors thought that the organisational culture and irregular schedules of the Legislative Council may discourage some women from standing for election.

Women are well represented in the administration of the elections. The Returning Officer (who doubles as Registration Officer), the Assistant Returning Officer as well as the majority of presiding officers, assistant presiding officers and clerks were women.

Recommendation 8: In order to promote equal participation of women and men, greater efforts are needed to sustain the positive gains with regard to women's participation in elections and their greater representation in political and public life. Consideration could be given to introducing special measures to encourage a higher number of women candidates.

PARTICIPATION OF PERSONS WITH DISABILITIES

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) has not been extended to St Helena. Article 29 provides for the participation in political and public life of persons with disabilities, and Article 21 requires signatories to take all appropriate measures to ensure access to fundamental freedoms by those concerned.

The 2009 Elections Ordinance bars from voting anyone certified to be incapable by reason of mental disorder of managing and administering their property and affairs. The 2009 Constitution explicitly limits the right to stand of anyone mentally ill within the meaning of the law.

[50] For instance, the Chief Secretary is a woman, as is the CEO of the Equality and Human Rights Commission.

St Helena aims to include persons with disabilities in elections unless they are explicitly deemed incapable. This approach follows the judgements of the European Court of Human Rights, which require that any limitations be based on individual decision. However, these judgements are inconsistent with paragraph 9.4 of the CRPD Committee's Communication No. 4/2011 (*Zsolt Bujdosó and others v. Hungary*) which states that:

> "An exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability".[51]

The Mission was informed that all but one of the eight polling stations were accessible to persons with limited mobility, but some civil society interlocutors contended that in several cases access was impeded by other factors, such as narrow alleyways or a lack of designated parking spaces. Importantly, the chamber of the Legislative Council is not accessible, which may discourage persons with limited mobility from standing for election. No special measures are in place to encourage the participation of persons with disabilities.

Voters with visual impairment are not offered special facilities such as braille templates or magnifying frames or lenses which hinders in-person independent participation.[52] Some interlocutors also contended that the density of the ballot design, the absence of photos, the fact that candidates may have similar or the same names, or that they may be commonly known by nicknames, presents a challenge to some illiterate and other voters.[53] As there is limited space on ballot papers, additional candidate information could be displayed on posters inside polling stations.

In accordance with the law, voters requiring assistance may be aided only by the Presiding Officer, rather than a trusted person identified by them. Although polling stations cease processing other voters whilst assisted voting is ongoing, several interlocutors remarked that, because voters must share their voting choice with the Presiding Officer, the system violates their right to secrecy.[54] There are provisions for voting by proxy, but these are an inadequate substitute for accommodating voters with special needs.

Recommendation 9: Measures and equipment should be introduced to facilitate the independent participation of persons with disabilities, including but not limited to:

a) A review of the ballot paper design to ensure accessibility;
b) The provision of equipment for voters with visual impairments;
c) A revision of the provisions for assisted voting, with a view to allow voters to be aided by another voter of their choice.

[51] Paragraph 48 of the CRPD Committee's 2014 General Comment No. 1 to Article 12 of the CRPD states that "a person's decision-making ability cannot be a justification for any exclusion of persons with disabilities from exercising their political rights, including the right to vote [and] the right to stand for election".

[52] According to civil society interlocutors, braille is not taught on the island and thus generally not used by people with impaired vision.

[53] At 97%, the literacy rate is moderate in international context.

[54] The practice of closing the polling stations to other voters when providing assistance is said to slow down the voting process. When turnout is high, this may inadvertently cause delays that could result in a disenfranchisement of voters arriving at the end of the day.

ELECTION DAY

The Mission was unable to be physically present in St Helena for the election due to COVID-19 travel restrictions. As the Mission did not attend or observe polling day activities, recommendations and comments in this area are therefore limited.

There is no prohibition on campaigning during election day except within the boundaries of polling stations. Candidates are prohibited from offering transportation to polling stations. Presiding Officers were instructed to remove any campaign materials that had been placed within the boundaries of their polling station before voting began. The Mission was told that two candidates attended polling stations wearing campaign T-shirts and were asked by the Returning Officer to cover up the slogans.

Each candidate is allowed to nominate polling agents with one allowed to be present at any time at each polling station. Such agents must be nominated 48 hours before polls open. Of 29 candidates, 17 did not nominate any polling agents and 41 polling agents were nominated in total. Candidates may also nominate up to 2 counting agents. In total, 50 counting agents were nominated.

The police organised a roving patrol on Election Day. There is no provision in the law prohibiting the presence of police officers in polling stations although, in practice, they would only be present to cast their votes or at the invitation of the Presiding Officer in cases of disruption. The law provides that the instruction of the Presiding Officer is sufficient authority to remove a person from a polling station.

Polling station in Alarm Forest

At the time that voting is due to end (7pm), voters who have been issued a ballot paper are entitled to complete the process of casting their vote. Any other person, including anyone in line at the polling station, is not permitted to be issued with a ballot paper and may not vote.

The Mission was informed that a small number of people were denied the right to vote on election day. This included one former prisoner who had been removed from the register following a sentence for a term exceeding 12 months and who had not re-registered following release.

A unique number is printed on the back of each ballot paper, as well as on the counterfoil. When issuing a ballot paper, polling station staff write the voter's registration number on the counterfoil.[55] Several interlocutors queried this practice, as it makes it possible to trace how a voter has voted. The practice exists so that, if a court has found that a vote was cast illegally following a legal challenge, an order can be made that the ballot paper is found, removed and the election result adjusted accordingly. However, the Mission is not aware of any such legal case, and such traceability endangers the principle of a secret ballot, particularly in smaller jurisdictions like St Helena with a small number of voters.

Recommendation 10: The practice of writing voter numbers on ballot counter-foils should be replaced with other safeguards to protect the secrecy of the vote.

Voters who were absent from St Helena on election day or by reason of illness or physical incapacity could not come to the polling station in person could apply up to 48 hours before the start of polling for their ballot to be cast by a proxy.[56] The proxy had to be another voter registered in the same district. Each elector could serve as proxy for one voter only.

Some interlocutors voiced concerns that voting by proxy is the only alternative method of voting, and that voting by proxy does not ensure the secrecy of the vote nor safeguard against exertion of undue influence over voters. Several felt that postal voting could facilitate greater opportunities for participation of voters unable to cast their ballots in person, although only postal voting from St Helena itself would be feasible because international postage is prone to delays. Mobile voting represents another potential alternative.

The 2009 Elections Ordinance does not provide for domestic electoral observation. Creating a framework for such activities may help to engender trust in the system.

The margin between the lowest polling elected candidate and the highest polling unsuccessful candidate was six votes. The Mission was informed that no recount was requested, but that it would have been granted had the losing candidate requested it.

ELECTORAL JUSTICE

The law provides an extensive regulation of electoral offences, including penalties which in most cases are capped at a fine of £1,000 and/or imprisonment of up to 12 months. More serious offences entail fines up to £2,000 and longer sentences up to 18 months. Offences regulated by the 2009 Elections Ordinance include among others:

- violation of the secrecy of the vote;
- 'personation' (i.e. voting for someone else, other than as a delegated proxy); undue inducement (with goods or services);
- vote-buying;
- and pressure or intimidation of voters.

[55] Under the Elections Regulations 2009 S8(2)(c)

[56] A total of 47 proxy vote applications were received ahead of the election, of which one was rejected (it arrived past the deadline). The grounds for these applications included: electors being overseas (27); illness (13); physical incapacity (6).

The law provides for a system of electoral complaints and appeals ('election petitions') on a list of grounds, including offences that may have reasonably affected the results, corrupt practices that nullified the election, disqualification of a candidate or election of a candidate. It furthermore outlines who has the right to submit a petition, including voters or persons entitled to vote; persons claiming the right to stand; candidates; and the Attorney General. In most cases, a petition must be made no later than 14 days after the official announcement of results. Petitions alleging corrupt practices such as vote-buying may be made up to 28 days after the alleged act took place. A petition is subject to a £50 deposit applied towards the cost of the proceedings. Heeding the demand of transparency, all proceedings are tried in an open court. The Chief Justice may make rules for the regulation of the practice, procedure and costs of election petitions and related trials.

Objections pertaining to the Register of Electors can be made by any person eligible to be on the register. They must be raised in writing to the Registration Officer within 14 days of the date on which the Provisional Register of Electors is published. Objections may also be raised by the Attorney General. The Registration Officer must inform persons affected by the objection, except those made by the Attorney General. The affected person may dispute the objection – those dissatisfied with the decision of the Registration Officer may further challenge it within seven days by appealing to the Magistrates' Court. The latter must take a decision within ten days. The decisions of the Magistrates' Court are final.

Recommendation 11: All voters whose registration is subject to an objection should be promptly notified and given an opportunity to dispute it.

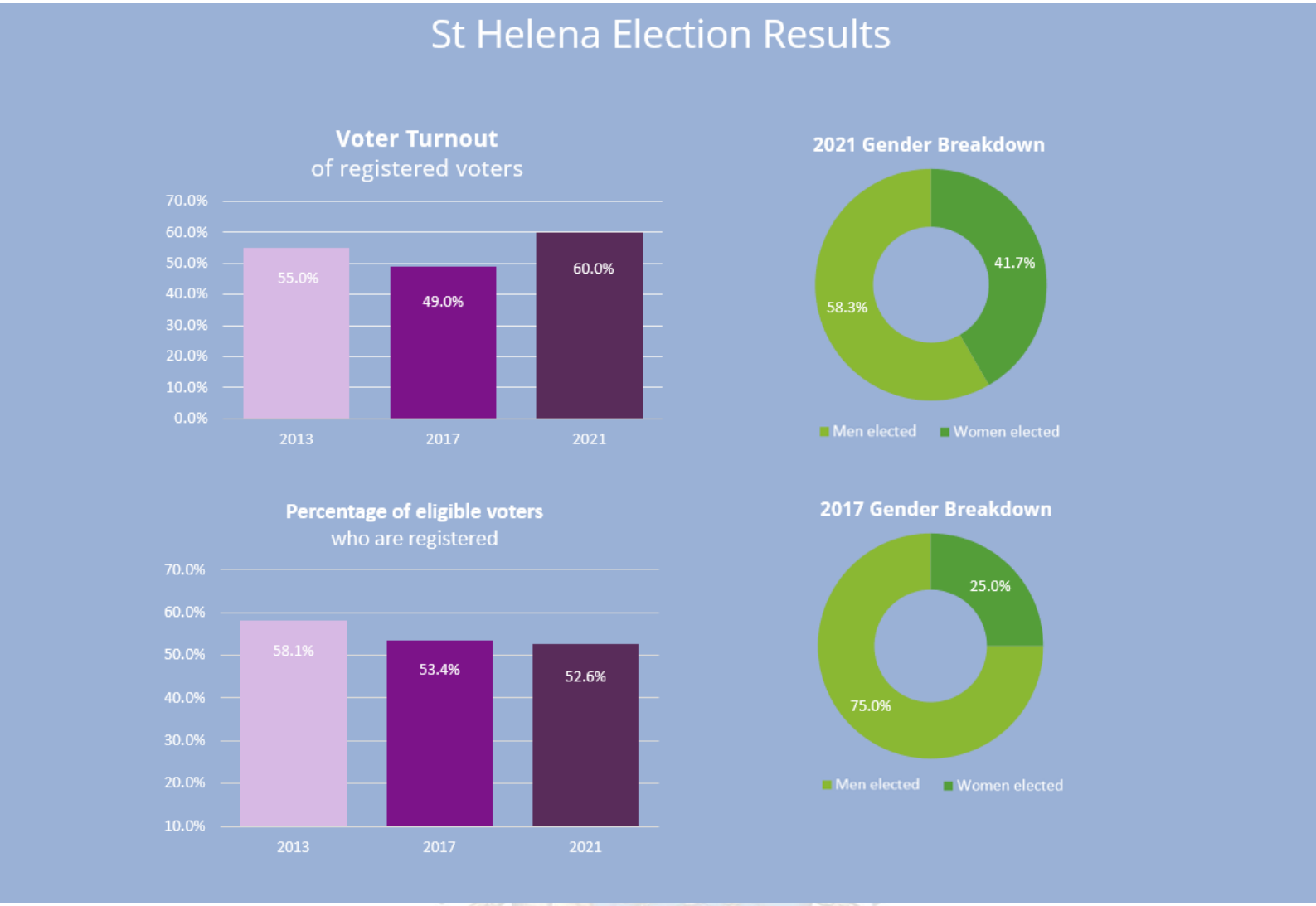
Although stakeholders raise complaints with the Returning Officer informally, there is no official complaints mechanism within the election administration. There is also a lack of an independent person or body outside of the election administration to receive complaints. This is out of step with international good practice. The only available avenue to complain is via a formal electoral petition addressed to the courts. No electoral petitions were lodged before, during or after this election.

Recommendation 12: A formal mechanism could be established for addressing certain categories of complaints to the Returning / Registration Officer or other election administrators, including the Presiding Officers.

Established in 2015, the Commission for Equality and Human Rights has a statutory duty to promote and protect human rights in St Helena as stated in the 2015 Commission for Equality and Human Rights Ordinance.[57] Multiple stakeholders suggested the Commission as a port of call to receive or action complaints related to the election process, but a lack of funding amongst other issues limits the Commission's capacity to seek legal advice and bring cases to court on behalf of complainants.

[57] Section 5 of the Ordinance states that the duties of the Commission include encouraging and supporting the development of a society in which (1) an individual's ability to achieve his or her potential is not limited by prejudice or discrimination; (2) there is respect for and protection of each individual's human rights; (3) there is respect for the dignity and worth of each individual; (4) each individual has an equal opportunity to participate in society; and (5) there is mutual respect between groups based on understanding and valuing of diversity and on shared respect for equality and human rights.

ELECTION RESULTS



RECOMMENDATIONS

1. **LEGAL FRAMEWORK**
   Extension of the United Nations Convention on the Rights of Persons with Disabilities should be pursued without delay.

2. **ELECTORAL COMMISSION**
   Consideration should be given to establishing an independent Electoral Commission or Commissioner, appointed by an independent body such as the Judicial Appointments Commission, to supervise the electoral process and to ensure it is conducted fairly and impartially. Such a person or body could also receive and adjudicate on electoral complaints and provide expert advice on all aspects of electoral reform.

3. **RIGHT TO VOTE**
   To allow for broader electoral participation on an equal basis, voting rights should be reviewed in line with international standards and good practices, including:
   a) Any discrimination against persons with disabilities should be abolished;
   b) The blanket ban on the right to vote for citizens serving prison sentences exceeding 12 months should be reviewed and/or include a distinction between the different types of offences;
   c) The blanket ban on the right to vote for citizens who committed electoral offenses during the previous seven years should be reviewed.

4. **VOTER REGISTRATION DEADLINE**
   The last date to register to vote in an election or referendum should be brought closer to polling day. If possible, a deadline within the period of the campaign (i.e. after Nomination Day) should be considered.

5. **VOTER REGISTRATION**
   Urgent action should be taken to address the low level of registration of eligible voters. Measures could include:
   a) identifying jurors using an alternative source in place of the electoral register;
   b) more effective voter education programmes to encourage registration amongst any under-represented groups.

6. **RIGHT TO STAND**
   To allow for broader electoral participation on an equal basis, candidature rights should be reviewed in line with international standards and good practices, including:
   a) Any discrimination against persons with disabilities should be abolished;
   b) The blanket ban on the right to stand for all prisoners sentenced to imprisonment exceeding 12 months ought to be reviewed and/or include a distinction between the different types of offences;
   c) The blanket ban on the right to stand for citizens who committed electoral offenses during the previous seven years should be reviewed.

d) Rules on the expression of allegiance or adherence to a foreign state should be clearly defined in the law to safeguard against arbitrary interpretation.

7. CAMPAIGN FINANCE LAWS
To build transparency around electoral finance, regulations should be introduced governing the sources of electoral finance, campaign spending limits, and reporting requirements for candidates and third parties, as well as regulations for parties or political groupings should they emerge in St Helenian politics.

8. PARTICIPATION OF WOMEN
In order to promote equal participation of women and men, greater efforts are needed to sustain the positive gains with regard to women's participation in elections and their greater representation in political and public life. Consideration could be given to introducing special measures to encourage a higher number of women candidates.

9. PARTICIPATION OF PERSONS WITH DISABILITIES
Measures and equipment should be introduced to facilitate the independent participation of persons with disabilities, including but not limited to:
   a) A review of the ballot paper design to ensure accessibility;
   b) The provision of equipment for voters with visual impairments;
   c) A revision of the provisions for assisted voting, with a view to allow voters to be aided by another voter of their choice.

10. VOTING
The practice of writing voter numbers on ballot counterfoils should be replaced with other safeguards to protect the secrecy of the vote.

11. ELECTORAL JUSTICE
All voters whose registration is subject to an objection should be promptly notified and given an opportunity to dispute it.

12. ELECTORAL JUSTICE
A formal mechanism could be established for addressing certain categories of complaints to the Returning / Registration Officer or other election administrators, including the Presiding Officers.

ACKNOWLEDGEMENTS

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

CPA BIMR ELECTION OBSERVATION SERVICES

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

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

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