

Turks and Caicos Islands House of Assembly Elections

Technical Observation and Assessment Report

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Introduction and Executive Summary

On 19 February 2021, the Turks and Caicos Islands (TCI), a United Kingdom Overseas Territory in the Caribbean, held legislative elections for the House of Assembly. The House of Assembly consists of 19 members, 15 of whom are elected and four appointed. In 2021, 38 candidates (10 women and 28 men) contested these 15 seats. The International Foundation for Electoral Systems ([IFES](#)) was invited by the TCI Governor Nigel Dakin to conduct an in-person technical observation and assessment of the February 2021 House of Assembly elections, and findings are presented herein.

An independent team of elections experts was deployed by IFES to TCI from 13-23 February.¹ The IFES team found that the 2021 House of Assembly Elections were generally well administered and the results reflected the will of the people. The people of TCI can be proud of how their governmental institutions overcame the challenges brought about by the COVID-19 pandemic to deliver these elections safely.

For the TCI mission, IFES employed a modified version of our Technical Election Assessment Methodology (TEAM), which allows for a broader assessment of the electoral process and context, beyond just an observation report. As such, this report offers an overview of key features of the electoral process, including the legal reform process and electoral system; political party and candidate registration, financing and campaigns; institutional framework; Election Day operations; and election dispute resolution. It also addresses specific issues around the COVID-19 pandemic.

Conclusions and recommendations are based on a detailed desk study of the legal framework for elections, election results and secondary information sources; interviews with a range of stakeholders and interlocutors, including polling station staff, candidates, parties, security personnel and voters; observation of Election Day; and the announcement of results. IFES is a signatory to the [Declaration of Principles of International Election Observation and Code of Conduct for International Observers](#) and conducted the mission in accordance with this normative framework. IFES conducted individual visits on Election Day to all polling stations throughout TCI, with the exception of South Caicos Island. This represented 30 of the 33 polling stations set up in Providenciales, North Caicos, Middle Caicos and Grand Turk. IFES also monitored traditional and social media around the election and its aftermath.

Despite being held amid a COVID-19 spike on TCI, the election administration authorities developed and implemented successful health and safety protocols to reduce potential exposure and/or transmission of the virus. This included dividing voters into separate stations based on the first letter of their last name, and by dedicating two hours at the start of Election Day to voters at higher risk of contracting COVID-19 and/or other priority voters requiring additional assistance. Election authorities also conducted extensive poll worker training, including around health protocols, which contributed to the safe and smooth running of the elections.

An Elections Oversight Committee (EOC) chaired by Governor Dakin brought together different parts of the government, including health authorities, to discuss and resolve challenges around election preparations during the pandemic. This is generally viewed as a best practice for these elections and should be continued.

¹ Note: The Commonwealth Parliamentary Association conducted a virtual international election observation mission, and the Caribbean Community conducted an in-person international election observation mission.



Poll worker supervising Election Day operations

Polling stations were adequately staffed throughout the long polling hours, and election workers carefully implemented COVID-19 mitigation measures. Some minor inconsistencies and variations in the application of procedures were observed, but party agents were present in all polling stations visited and generally reported satisfaction with the polling process and the officials administering it. Some polling stations opened slightly late but stayed open late to compensate. Some polling stations included accessibility measures for voters with limited mobility, such as adjustable polling booths and ramps. However, there were no dedicated accessibility measures for voters who are deaf, hard-of-hearing, blind or have low vision to allow them to vote independently rather than with assistance. Election administrators went to significant lengths to enfranchise prisoners who were eligible to vote. The distribution of polling sites across TCI, including in areas with small numbers of voters, was a positive reflection of the election authorities' commitment to ensuring all registered voters had an opportunity to cast a ballot.

These elections involved widespread use of social media by political parties and independent candidates for campaigning, given restrictions on gatherings and curfews. This resulted in more direct appeals that may have been more effective and efficient at reaching voters than more general appeals during previous years. Undecided voters could attend virtual rallies. Both political parties maintained active social media campaigns and hosted virtual campaign events. However, disinformation was prevalent throughout the campaign, including via fake WhatsApp messages that spread quickly.

The right to vote is set in the constitution, and is dependent upon reaching the age of 18, being a resident in TCI and being a Turks and Caicos Islander (traditionally called a "Belonger"). This latter qualification means that out of an estimated population of approximately 43,000 people, only 8,581 are eligible to elect members to the House of Assembly. This challenge is elaborated upon further in this report, as it represents an ongoing vulnerability in the integrity of the democratic process in TCI. IFES recommends an open and inclusive, TCI-owned dialogue process to consider a range of options that could be tailored to the unique TCI context.

While health concerns dampened the usual festive mood around Election Day, there was an atmosphere of quiet confidence and respect for the electoral process throughout the day. Stakeholders had earlier reported confidence in the process established to address any tensions or disputes that might arise during or after Election Day. This confidence was reflected in the relatively strong voter turnout of 76.74² percent. There were requests for recounts in two Electoral Districts. However, the general air of cordiality that characterized the process throughout the day continued. Election results were announced on 20 February; that day IFES also issued a [statement](#) on the election.

² <https://gov.tc/elections/news/18-election-results>

Recommendations

1. Directly Engage TCI Citizens to Consider Reform Options to Increase the Franchise

Additional dialogue and public engagement are required to determine the best way to ensure inclusion in the electoral process in TCI and, as a result, representative governance. A range of options could be considered, including electoral system and structural governance changes, and/or voter eligibility reforms. The current voter franchise regime does not align with international best practices in voter eligibility or international conventions to which the United Kingdom is a party.³ The eligibility to vote should be increased to include a greater proportion of the population, based upon domestic, regional and international best practices, laws, treaties and obligations. To not do so undermines the overall integrity and legitimacy of the electoral process, and the democratic will of the people may not be reflected in their elected leaders.⁴

2. Maintain Coordination Function of Elections Oversight Committee

The EOC was formed to coordinate and implement the 2021 House of Assembly Elections and was a best practice that should be continued well in advance of the next elections. Due consideration should be given to ways to increase transparency of this mechanism, including allowing observation by electoral stakeholders of public meetings and publishing meeting minutes online, with exceptions made for security-related matters.

3. Conduct a Needs Assessment of the Elections Office

A formal review of the current and future needs of the Elections Office should be conducted within the next year to allow for successful implementation of any recommended changes. This review should not only assess permanent and temporary staffing levels and budgets, but also technology upgrades and improvements to voter education outreach efforts – particularly in the event of any changes to voter enfranchisement as recommended above. In addition, any needs to increase inclusion and accessibility should also be identified with an eye toward maximizing voter enfranchisement. A review of necessary trainings should take place and be implemented in time for the next election. Finally, to improve accessibility, the Elections Office could conduct an audit of TCI's 37 polling stations and make recommendations for selection of new sites if necessary and/or improve site accessibility in time for the next election.

4. Implement a Rolling Voter Registration System

In the observed election, voter registration closed on 1 March 2020, almost a full year before the elections. Not only did this result in the disenfranchisement of first-time voters who turned 18 in the months leading up to the election, but also of other new voters who, despite being eligible, had not previously registered or whose eligibility status had changed in the months leading up to the election. The Elections Office should embrace a rolling voter registration system with a standardized deadline set prior to the next election, such as the date of the election is called plus one or two

³ The International Covenant on Civil and Political Rights (ICCPR), Article 25. General Comment 25 of the ICCPR provides that “The right to vote at elections and referenda ... may be subject only to reasonable restrictions.”

⁴ As Article 21 of the United Nations Universal Declaration on Human Rights provides, “The will of the people shall be the basis of the authority of government.”

weeks or the date of candidate nominations. A rolling voter registration system would maximize voter registration while also encouraging first-time voters.

5. Expand Voting Options Beyond Only In-Person Voting on Election Day

A single option of voting is unnecessarily restrictive and reduces voter enfranchisement. In addition, it is counter to international best practices aimed at increasing inclusion and accessibility for a broader segment of society, particularly voters with disabilities, older citizens, incarcerated prisoners and others who cannot be physically present to vote on Election Day. Therefore, TCI should consider authorizing advance voting and/or absentee voting well in advance of the next election. Advance voting could take place the day before the actual Election Day and could be limited to law enforcement, firefighters and/or military. Absentee voting could be considered via signed requests by confirmed voters to vote via a post- and/or hand-delivered absentee ballot.⁵ This would include persons on remand and prisoners serving sentences of less than 12 months. The options used around the world to widen the franchise to include voters who cannot cast a ballot in person on Election Day all have their own limitations in the provision of a secret and secure vote.^{6 7} Based upon lessons learned in the region and from around the world, IFES does not recommend proxy voting, in which one voter is legally authorized to cast a ballot for another, for TCI, particularly because it can be used by heads of household to influence how family members in their household vote, ultimately taking away the right to vote for the candidate or party of their choice.^{8 9 10}

⁵ IFES recently published a white paper on postal voting during the COVID-19 pandemic: <https://www.ifes.org/publications/vote-mail-international-practice-during-covid-19>

⁶ The International IDEA Handbook on external voting succinctly describes these limitations as follows: “Proxy voting may be rather problematic from the perspective of democratic theory because there is no guarantee that the vote cast by the proxy—and thus possibly even the result of the election—reflects the will of the original voter. A proxy could use this procedure to obtain an additional vote and thus infringe the principle of equal suffrage. Voting in diplomatic missions may deny some external electors the right to vote if they cannot travel to the polling stations. Voting by post may not be as transparent as voting in a diplomatic mission in the presence of state officials—and voting in a diplomatic mission depends on the perceived impartiality and integrity of those state officials.” Dieter Nohlen & Florian Grotz, *The Legal Framework and an Overview of Electoral Legislation*, in *Voting from Abroad: The International IDEA Handbook*, International IDEA & Instituto Federal Election (2007), p. 69.

⁷ Ellis, Andrew. *The History and Politics of External Voting*, in *VOTING FROM ABROAD: THE INTERNATIONAL IDEA HANDBOOK*, International IDEA & Instituto Federal Election (2007), p. 47. “The values of electoral inclusion, electoral system sustainability and electoral integrity may pull in different directions, and a balance must be achieved.”

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⁹ Ellis, Andrew. *The History and Politics of External Voting*, in *VOTING FROM ABROAD: THE INTERNATIONAL IDEA HANDBOOK*, International IDEA & Instituto Federal Election (2007), p. 47.

¹⁰ <https://aceproject.org/ace-en/topics/ge/ge5/ge55/family-and-proxy-voting>

6. Continue Engaging Political Leaders, Political Parties and Journalists on the Importance of Gender Equality and Women’s Rights in Politics

Although much progress has been made in the Caribbean and TCI, and women have held the top jobs in TCI, it is important to not get complacent about the fact that women still face cultural and institutional barriers when running for office. As social media use becomes more prolific, women may be reluctant to run for elected positions because opponents and the media will often focus on a woman’s personal life rather than focusing on her politics and proposed policies. In TCI, as across the globe, efforts should be made to continue educating political leaders and citizens that women, who are the majority of voters in TCI,¹¹ should be represented in the formal political space and all candidates should be treated equally with a focus on politics and policies, not personal life.

7. Modernize and Improve Security of Ballot and Voter Education Materials to Expand Inclusion

Adjust the appearance and layout of physical ballots to assist voters in making their candidate choice. This could include adding political party colors or photos to the ballot to make the choices more easily identifiable by the voters, particularly voters with low literacy and those who are blind or have low vision. In addition, a limited number of ballots could be printed based upon targeted need in the languages spoken in TCI, including English and, where applicable, Spanish, French and Creole, and tactile ballot guides could be developed for identified populations so voters with visual disabilities can vote unaided and in secret.¹²

8. Strengthen Regulations and Enforcement Around the Misuse of State Resources, Treating and Misuse of Social Media

IFES recommends that more resources be provided to the Integrity Commission (IC) and Supervisor of Elections (SOE) to proactively investigate issues around the abuse or misuse of state resources during elections, and different types of treating, or offering of material rewards in exchange for voting for a specific candidate or political party, to avoid a culture of impunity. In addition, while the Elections Ordinance includes rules around political advertising, these have not been extended to social media, and generally all political activity on social media platforms is on a personal basis as opposed to using paid advertisements and political pages. Hence, regulation of this content, as well as potential disinformation and hate speech, is challenging. As the influence and spread of social media continues to grow, consideration could be given to certain types of social media regulation, especially during electoral periods.

9. Implement an Elections-Specific “Conflict of Interest” Policy

Given the small size of TCI’s population, it is inevitable that candidates, party officials and election officials will have close ties. A Conflict of Interest policy should be developed that is specific to any election requiring senior electoral officials, returning officers and other officials to formally declare any familial and/or financial ties to any candidate or political party on the ballot. Upon declaration, officials could be required to abstain from any significant election-related government action and/or

¹¹ Women constitute 50.97 percent of voters in TCI.

¹² Note: In other countries with low braille literacy, like Sierra Leone, IFES has developed tactile ballot guides so voters can simply count raised dots, rather than need to know braille.

decision related to their specific conflict of interest. A formal Conflict of Interest policy would enhance transparency.

10. Change Polling Station Breakouts to Reflect Number of Voters

Individual polling stations should be segmented to equalize the number of voters on each list. Currently, voters are segmented according to the first letter of their last name, which results in unequal voting line lengths, due to several common last names in TCI. Apparently, this line segmentation is due to the ballot boxes having already been preprinted. This fact should not discourage the election authorities from expenditures necessary to modify or replace the ballot boxes to balance the polling station lines, particularly given health concerns with long lines.

11. Modify Polling Station Protocols Around Staffing and Voter Identification and Inking

The Elections Ordinance mandates the introduction of voter identification cards for registered voters, but this provision, which has been in the law for several years, does not come into effect until the government issues a proclamation in the Gazette.¹³ Until this provision comes into effect, TCI requires one form of official identification to vote.¹⁴ However, ahead of the 2021 elections, the Elections Office in its public education campaign encouraged voters to bring two pieces of identification. To prove both residency and the right to vote, eligible voters should only need one form of identification. It is therefore recommended that all eligible voters be issued a voter registration card in advance of the election, or revert to requiring one form of official ID. An additional form of identification could be required in the event the voter loses their voter registration card. In addition, voters should first be confirmed as eligible to vote at the polling station before their fingers are inked. Fingers should then be inked either at the moment voters receive their ballots or, optimally, at the moment they cast their ballots. Finally, an election staff member should be stationed at the ballot boxes to ensure that voters do not accidentally place a ballot into the wrong box.¹⁵

12. Count All-Island Ballots at Each Polling Station

The counting procedure should be consistent across all polling stations and in every Electoral District. In some Electoral Districts, following the count of the election district specific ballots, the all-island ballots were brought to the primary polling station for the Electoral District and counted by the returning officer. The all-island ballots should be counted at each polling station in the same manner as the election district-specific ballots to ensure consistency, maximize efficiency and release preliminary results more quickly. Afterwards, the ballots and boxes can be secured by the police in the event of a recount, as per the current protocol.

13. Increase Electoral Transparency by Expanding Participation and Observation Opportunities in Other Parts of the Electoral Process

Political party agents and civil society observers should be given the opportunity to participate and observe the entire electoral process and period. This should include opportunities to observe ballot

¹³ Elections Ordinance, Section 25(8)

¹⁴ Elections Ordinance, Section 45(9)

¹⁵ Note: Although disposable pencils are used widely throughout the Caribbean for marking ballots and they mitigated COVID-19 concerns during this election, strong consideration should be given for using permanent ink pens in the future given that pencil marks can be easily erased and/or changed, thereby posing a vulnerability in the voting process.

production, transportation and storage, as well as any election administration events. Proper training and a rigorous methodology have proven to mitigate most concerns about political interference of nonpartisan observers in other countries. This nonpartisan observation initiative, viewed as a citizen review, could be done in cooperation with international observation initiatives to develop long-term capacity during and after the COVID-19 pandemic.

14. Strengthen the Pre-Election Complaints and Objections Process and Further Clarify Deadlines for the Resolution of Election Petitions

A clear process for objections to candidate eligibility does not exist in the law and should be clearly established, including to avoid post-election disputes over candidate eligibility. It is also recommended that any complaints or objections related to voter registration are heard on appeal by the courts, rather than nonjudicial election adjudicators appointed by the governor. In addition, consideration should be given to setting a deadline in the legal or judicial procedure for when post-election petitions must be heard and decided upon. The current court practice of virtual hearings supports access to justice and could be adopted more broadly in the future, beyond the COVID-19 pandemic.

Technical Observation and Assessment Findings

Legal Framework and Electoral System

Legal frameworks for elections should be unambiguous, understandable and accessible, as well as support their consistent application by election administrators and adjudicators, the informed participation of citizens and the equal treatment of candidates and voters.¹⁶ At its core, any electoral system chosen “translates votes cast ... into seats won by parties and candidates.”¹⁷ Electoral system choice follows a number of internal factors, including the country’s political and social history and the type of representation the country seeks to achieve.

Elections in TCI are primarily governed by the new constitution, adopted in 2011,¹⁸ the Elections Ordinance 2020, the Electoral Districts (Boundaries Amendment) Ordinance 2012 and the Political Activities Ordinance 2012.¹⁹ The amendments to the Elections Ordinance were passed in December 2020, only two months out from Election Day. However, the amendments related primarily to operational issues, such as the introduction of an optional electronic tabulating system and the reporting of voting results by electronic means, rather than fundamental issues around electoral system or Electoral District delimitation – which the Venice Commission suggests should not be changed within one year of an election.²⁰ Amendments were subject to public consultation,²¹ and some responded to recommendations made by prior observer groups, such as streamlined counting, reporting and announcement of results, and standard layout for polling stations.²²

Not all amendments were put into practice for the 2021 elections – including those related to electronic tabulation – and their effectiveness will therefore need to be assessed in the next electoral cycle. In addition, while the overall legal framework generally provides for credible elections, various vulnerabilities still exist therein and should be addressed. These are discussed in the following sections.

With respect to the electoral system, TCI has a unicameral House of Assembly with 19 seats, each with four-year terms. Members of the House of Assembly are elected via a majoritarian first-past-the-post election system, in which 10 seats are elected from 10 single-member Electoral Districts, and five seats are considered “at large” seats elected from one, all-island multimember district. Four members of the Assembly are nominated rather than elected: two directly appointed by the governor at his or her own discretion, and two appointed by the governor following consultations with the new prime minister and leader of the opposition. The constitution provides that these representatives should be appointed “so far as possible from among persons representing shades of opinion which would not otherwise be

¹⁶ International IDEA, International Electoral Standards: Guidelines for Reviewing the Legal Framework of Elections, (2001), p. 15. International IDEA, Electoral Management Design: The International IDEA Handbook, (2006), p. 49.

¹⁷ Reynolds, Andrew, et al., Electoral System Design: The New International IDEA Handbook, International IDEA, (2005), p. 5.

¹⁸ Statutory Instrument No. 1681 UK, rev. 2014

¹⁹ 2012 rev. 2018

²⁰ Venice Commission Code of Good Practice on Electoral Matters, II, 2b, available at

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev2-cor-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev2-cor-e)

²¹ <https://www.gov.tc/pressoffice/2139-consultation-proposed-on-additional-amendment-to-the-elections-ordinance-for-advance-poll-covid-19-voting>

²² <https://www.uk-cpa.org/news-and-views/jersey-and-turks-caicos-islands-introduce-groundbreaking-reforms-following-cpa-bimr-election-observation-missions/>

represented in the House.”²³ On 1 March 2021, the governing Progressive National Party held an internal party election for its appointed member of the House, and Jameka Williams won by majority vote after a three-round process of elimination.²⁴ Hon. Alvin Garland was chosen by the Executive of the Opposition People's Democratic Movement party to fill the other appointed seat.²⁵

As discussed in more detail below, there continues to be controversy around the political and electoral rights of Turks and Caicos Islanders and other permanent residents, and there may be value in a wider discussion around electoral system options that could achieve a more equitable solution adhering to international principles and local context.

Voter Eligibility and Registration²⁶

Article 21 of the Universal Declaration of Human Rights states that everyone has the right to take part in government, access public services in his or her country equally and vote in elections by way of universal and equal suffrage.²⁷ For voter registration to be fair, comprehensive and inclusive, potential voters must be aware of the registration process and have reasonable opportunities and relatively easy access to complete it.²⁸



Elections sign outside polling station

The number of voters on the TCI register for the 2021 elections was 8,591, an increase of 865 from the 2016 register. Extensive discussions have taken place over the fact that of an estimated population of 43,000 residents,²⁹ only 8,591 were eligible to participate in the electoral process. The authorities are aware of the level of dissatisfaction in this regard and are pursuing efforts to find a resolution. The right to vote is fundamental, and international law stipulates that this right can only be restricted based on objective and reasonable criteria established by law. In addition, the International Covenant on the Elimination of All Forms of Racial Discrimination provides that “States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to

equality before the law, notably in the enjoyment of the following rights: (c) Political rights, in particular

²³ Constitution, Article 47

²⁴ <http://suntci.com/jameka-williams-humbled-and-proud-to-be-governments-appointed-member-in-ho-p5944-129.htm>

²⁵ <https://suntci.com/eddie-astwood-is-new-opposition-leader-sean-astwood-interim-pdm-leader-al-p5859-129.htm>

²⁶ TCI Elections Ordinance and TCI Constitution.

²⁷ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, at Article 21 (10 December, 1948).

²⁸ Voter Registration: Guiding Principles of Voter Registration, ACE: The Electoral Knowledge Network, <http://aceproject.org/ace-en/topics/vr/vr20> (last visited June 27, 2016).

²⁹ <https://www.gov.tc/stats/statistics/social/5-population>

the right to participate in elections—to vote and to stand for election—on the basis of universal and equal suffrage.”³⁰ In the 2004 case of *Aziz v. Cyprus*, the European Court of Human Rights held that while states had considerable latitude to establish rules for parliamentary elections, such rules had to be justified on reasonable and objective grounds, and the restriction on the basis of national origin was not justified.³¹ The Venice Commission Code of Good Practice in Electoral Matters provides that “it would be advisable for foreigners to be allowed to vote in local elections after a certain period of residence.”³²

IFES recognizes the need for the matter to be attended to within the shortest possible time to avoid destabilizing the social contract in TCI. As noted by the governor in his statement on 25 February, “whatever one’s position is on who a ‘Turks and Caicos Islander’ is - and who therefore should have a voice in the Legislature - there is a need for a national conversation on this issue.” IFES acknowledges that the local context is unique and complex and believes a dialogue around various electoral system options could help mitigate concerns expressed by different segments of TCI society in terms of fair and effective representation.

To vote in TCI, electors must be at least 18 years old, a resident of TCI, a Turks and Caicos Islander and on the voter register. Registration for the current list closed in November 2019, with the period of claims and objections taking place in early 2020 and finalized at the end of March 2020. During the claims and objections period, persons can present reasons for inclusion on the list if their names were not included, and objections could be raised against names that were included. The SOE is required to adjudicate on these matters, with aggrieved parties having the right to appeal the decision to a select panel of election adjudicators, whose decision is final and binding.

Young people who will turn 18 within the next 12 months can preregister by the 30 November deadline to be eligible for inclusion on the list published in March 2022. Any 17-year-old falling into this category or any other eligible voter who failed to meet the 30 November deadline must wait an additional year before being added to the voter register. To avoid such restrictions, a rolling or continuous registration system could be implemented, where the deadline for registration is linked to the announcement of an election. This would allow eligible voters who missed the 30 November deadline to be added to the list before any imminent election is held. The list used in the 2021 election further emphasizes the need for such a change. The cut-off date for inclusion on the list was 30 November 2019 with publication in March 2020. The elections that should have been held in 2020 were postponed until 2021 due to the COVID-19 pandemic, but no additions were made to the March 2020 list. The list used therefore appears to be outdated and may have missed eligible potential first-time voters who reached voting age between 1 December 2019 and 30 November 2020.

It is commendable that efforts are being made by the Elections Office and the prison authorities to ensure that, in keeping with the constitution, prisoners and persons on remand who are eligible to vote are able to do so. The system of transporting prisoners to their various polling stations throughout TCI on Election Day appears to be expensive, risky and inefficient. The introduction of a system utilizing absentee ballots, so the ballots can be taken to the prisoners and persons on remand at the prison, rather than moving individuals to the various polling stations, would be more efficient. In addition, providing advance

³⁰ International Covenant on the Elimination of All Forms of Racial Discrimination, Article 5.

³¹ European Court of Human Rights, *Aziz v. Cyprus*, 2004

³² Guideline 1.1 b, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev2-cor-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev2-cor-e)

voting for police officers and other uniformed groups such as firefighters would also facilitate availability for deployment where needed.

Overall, while commendable efforts were made to enfranchise marginalized populations such as prisoners, certain requirements do not adhere to international best practices, and voter eligibility remains inaccessible to large portions of the population, including youth and non-TCI Islanders. This is compounded by the absence of a rolling registration system, which further disenfranchises voters who become eligible close to elections.

Political Party and Candidate Registration

The guiding principle for the registration of political parties should be “freedom of association,” which gives citizens the right to form and join political parties and other political organizations. It is good practice to ensure that the electoral legal framework clearly specifies – uniformly across political groupings – when, how and where parties register.³³ In terms of candidates, a citizen should generally be permitted to stand for election and be duly elected to office in his or her country. This may be either as an independent candidate or as a candidate of a political party or other organization. It is critical to ensure that any restrictions to the process of nomination are clearly stated in the electoral law.

Political parties are registered and regulated by the TCI IC³⁴ as authorized by the Political Activities Ordinance.³⁵ The current legal framework clearly specifies when, how and where political parties register, what the requirements for registration are and how registration will be verified by the IC. In addition, there are requirements for the registration of key political party officers and party name limitations. These provisions seem to be applied uniformly across political groups. For the 2021 House of Assembly Elections, three registered political parties fielded qualified candidates: People’s Democratic Movement (PDM), Progressive National Party (PNP) and Progressive Democratic Alliance (PDA).

With respect to candidate nomination and registration, on 9 January 2021, Governor Dakin issued a formal writ for elections to be held on 19 February. Subsequently, Nominations Day was set for 29 January 2021. According to Article 46 of the TCI Constitution,³⁶ the following are qualifications to be elected as a member of the House of Assembly on the day of their nomination: a) attained age of 21 years; b) resident of TCI for not less than 12 months out of 24; and c) is a Turks and Caicos Islander. In addition, they must all satisfy the requirements for being on the voter list.

Article 49 of the TCI Constitution outlines disqualifications for elected or appointed membership in the House of Assembly including: a) allegiance, obedience or adherence to any foreign power or state, which has raised disputes around dual citizenship; b) holds or acting in any public office, including as a judge or magistrate; c) declared bankruptcy anywhere and has not been discharged; d) has had their right to vote

³³ National Democratic Institute, *Minimum Standards for the Democratic Functioning of Political Parties*, (2008), pp. 8-9, https://www.ndi.org/sites/default/files/2337_partynorms_engpdf_07082008.pdf.

³⁴ <https://www.integritycommission.tc>

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<https://www.integritycommission.tc/sites/default/files/Documents/General/Legislation/21.12%20Political%20Activities%20Ordinance.pdf>

³⁶ <https://www.integritycommission.tc/sites/default/files/Documents/General/Legislation/01.01%20TCI%20Constitution.pdf>

removed because of a psychosocial disability;³⁷ e) is serving imprisonment now or anytime within prior 15 years; f) is a party to any contract with the government and has not disclosed that interest; g) has been convicted of any offence of corruption, political party regulation or misuse of public money; h) has violated any law relating to “offences” connected with elections; i) has not made a declaration according to Article 50; and j) has violated any law related to the functions of an election or voter register.³⁸

It should be noted that several of these disqualifications, particularly those related to bankruptcy and prior imprisonment are relatively restrictive compared to global best practices.³⁹ General Comment 25 to the International Covenant on Civil and Political Rights provides that “any restrictions on the right to stand for election ... 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 ... [and] States parties should indicate and explain the legislative provisions which exclude any group or category of persons from elective office.”⁴⁰ Hence, any restriction on the fundamental right to stand for election should be justified and explained.

Section 50(1) of the constitution states that “Each candidate for election to the House of Assembly shall, on the date of his or her nomination for election, make a written declaration to the Supervisor of Elections that he or she is qualified for election under section 46 and that no disqualification mentioned in section 49 applies to him or her.” As mentioned above, the issue of dual citizenship has been contentious in TCI, to the extent that on 12 January 2021, the SOE published guidance on the issue.⁴¹ However, this guidance was more akin to an analysis of prior jurisprudence and may have not provided sufficient clarity on this issue – particularly as one candidate noted after the election that a petition was being considered on the basis of alleged dual citizenship, which ultimately did not come to fruition. The 2012 petition on this issue (discussed further below under election dispute resolution) held that the acquisition of foreign citizenship by naturalization would disqualify a potential candidate.⁴² This decision has been reinforced by a more recent judgment by the Eastern Caribbean Supreme Court, which held that “application for, possession and use” of a foreign passport constitutes an act that places a candidate “under an allegiance” to a foreign power.⁴³

Nominations Day took place on 29 January 2021, and a total of 20 candidates associated with political parties were nominated to contest the 10 Electoral Districts, and for the all-island district, 11 political

³⁷ International best practice is to provide necessary reasonable accommodations to ensure that all persons with disabilities can participate on an equal basis. The United Nations Convention on the Rights of Persons with Disabilities protects the rights of all persons with disabilities to participate in elections and political life on an equal basis with others. (Convention on the Rights of Persons with Disabilities [CRPD] Article 29: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>) The CRPD Committee has further clarified that persons with intellectual and psychosocial disabilities cannot be disqualified on the basis of disability. (General Comment 1: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/1&Lang=en

³⁸ <https://www.integritycommission.tc/sites/default/files/Documents/General/Legislation/01.01%20TCI%20Constitution.pdf>

³⁹ In addition, in the 2010 case of *Tanase v. Moldova*, the European Court of Human Rights struck down a ban on candidates with dual nationalities, holding that that no restriction on electoral rights should have the effect of excluding groups of persons from participating in the political life of the country.

⁴⁰ <https://www.equalrightstrust.org/ertdocumentbank/general%20comment%2025.pdf>

⁴¹ Lister Dudley Lewis, “Guidance On Dual Citizenship And Section 49(1)(A) Disqualification Under The Constitution” <https://suntci.com/guidance-on-dual-citizenship-and-section-a-disqualification-under-th-p5715-129.htm>

⁴² *Selver v. Smith Missick and Others* (judgment 9 January 2013)

⁴³ *The Attorney General of Saint Christopher and Nevis v. Dr. Denzil Douglas*, SKBHCVP2019/0007

party candidates and seven independent candidates for a grand total of 38 duly nominated candidates.⁴⁴ A total of three political parties nominated candidates: PNP (15), PDM (15) and PDA (1), with a total of seven independents. Each candidate is required to put down a \$500 deposit, which is subsequently returned after the election if the candidate polls in excess of 12.5 percent of the total votes cast. All independent candidates each polled less the 12.5 percent of the total votes cast.

Ten candidates nominated for the election were women.⁴⁵ There is no specific requirement for political parties to affirmatively nominate female candidates, and there is no gender quota requirement in the House of Assembly, although Articles 7 and 16 of the TCI Constitution do guarantee equality and protection from discrimination.⁴⁶

In general, the political party and candidate registration requirements are in line with international best practices. It is commendable that the TCI Constitution guarantees protection from discrimination; however, several of the candidate disqualification factors are relatively restrictive compared to international best practices and leave room for improvement.

Campaign Financing and Spending

In a competitive democracy, the system of financing should be equitable and transparent, allowing candidates to compete on a reasonably equal playing field, regardless of personal wealth or connections. Political parties and candidates must be able to raise money to campaign for office, but should do so with sufficient guidelines, state regulation and oversight. Without oversight, the political process can become vulnerable to undue influence, thus undermining competitiveness and creating other vulnerabilities in the electoral process.

The Political Activities Ordinance 2012 established the IC to oversee the political party registration, along with political finance issues. The ordinance requires all electoral funding and spending to be recorded and reported to the IC and made public. Campaign donation reports must be submitted weekly during the campaign period by political parties, and both political parties and independent candidates must file full returns of all campaign expenditure after the election. The IC generally assists in this process, if necessary, especially with independent candidates who may lack resources or be unfamiliar with the process. The Auditor General assists with auditing campaign finance reports.

While the ordinance provides some regulation and oversight of money in the electoral process, the IC lacks resources to fully execute its mandate; only one person in the IC is currently dealing with campaign finance reports. In addition, there are some confusing jurisdictional issues between the IC, the SOE and the police: for example, the abuse of state resources (ASR) falls under the IC, while “treating”⁴⁷ is the mandate of the SOE and police. Several interlocutors noted that treating was occurring but that no one would formally report it because of potential repercussions and/or self-incrimination. Additional

⁴⁴ <https://gov.tc/elections/news/8-list-of-nominated-candidates-for-general-election-2021>

⁴⁵ Verbal communication from TCI SOE. Candidate nominations form did not include a request for information on gender identity (man, woman, nonbinary, agender or other).

⁴⁶ <https://www.integritycommission.tc/sites/default/files/Documents/General/Legislation/01.01%20TCI%20Constitution.pdf>

⁴⁷ Elections Ordinance, Section 71

resources allocated to the IC and SOE to proactively investigate issues of ASR and treating would assist them in fully executing their mandate.

While the ordinance includes rules around political advertising, these have not been extended to social media, and generally all political activity on social media platforms is on a personal basis as opposed to using paid advertisements and political pages. Hence, regulation of this content is challenging. As the influence and spread of social media continues to grow, consideration could be given to certain types of social media regulation, if feasible, during electoral periods. This could be done in partnership with social media platforms (e.g., Facebook) during election silence periods.

Campaigns and Social Media

Accessible, unbiased and accurate media plays a critical role in providing voters with the necessary information to cast their vote in an informed manner. Article 19 of the Universal Declaration of Human Rights states that everyone has the right to freedom of opinion and expression; this right includes “the freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.”

The IFES team did not formally observe the entire election campaign due to limited time in country plus the strict limitations on public meetings, travel and campaign events because of the COVID-19 pandemic and curfew. Nonetheless, social media served a robust role via online campaigning. Both the PDM and the PNP held daily three-hour-long evening rallies on their Facebook pages, given that such events were not permissible in person. Additionally, both parties and their candidates placed an unprecedented focus on operating their campaigns digitally across popular social media platforms, including Facebook, WhatsApp, Instagram and Twitter. The third registered political party, the PDA, had a limited presence online, but it did hold irregular Facebook Live events. While the campaign silence period that started at midnight on 18 February 2021, was generally adhered to in terms of physical signage and campaigning with billboards generally taken down ahead of the election, consideration may need to be given to the role of social media during the silence period.

As observed through social media monitoring and discussions with local officials, misinformation and disinformation claims and efforts were prevalent throughout this election. Regarding misinformation, the PNP claimed that the Elections Office was producing and posting incorrect content about polling locations and ballots on social media. However, no remaining posts supporting these claims were found by the IFES team. Regarding disinformation, there were several cases of fake WhatsApp accounts being used to encourage PNP party members to spread false information to constituents. On Election Day, a virtual fake document surfaced alleging insider communications between TCI’s governor and former premier, Sharlene Cartwright Robinson. The governor’s office and several other local authorities and groups quickly denounced the document as fake news. Such disinformation efforts did not collectively appear to significantly impact the election outcomes despite surfacing on Election Day.

Over the past 18 months, there has been a large increase in documented private groups on WhatsApp and Facebook dedicated to promoting counter-propaganda and spreading fake news. However, it should be noted that such efforts leading up to and during the election have been tied to domestic actors rather than to foreign actors. Social media monitoring and observation revealed that such attempts were most likely made by both parties in an effort to gain an advantage and appeal to a greater number of voters. Despite the challenges with misinformation and disinformation, social media played a significant role in

awareness-raising, voter education and preparations, and information-sharing during the campaign period. In terms of monitoring and enforcement, interlocutors with the IC noted that, while there were some issues regarding airtime and political advertising on the national radio station, this did not fall within the IC's mandate to address, and was instead the mandate of the Communications Board and attorney general.

To combat mis/disinformation, either the mandate for such work should be shifted from the Communications Board and attorney general to the IC, given their wider jurisdiction over political party funding and spending, or to the office of the SOE during elections or to an independent oversight body.

Institutional Framework for Election Management

The capacity and commitment of election management bodies to administer elections in a manner consistent with the law, international standards and democratic best practice are important factors impacting the integrity of elections. As such, independent and impartial election management bodies are necessary to ensure the proper conduct of elections.

The conduct of elections in TCI is the responsibility of the SOE, who is appointed by the governor. Under the Elections Ordinance, the SOE is authorized to carry out their functions independent of any external influence. The SOE is supported in the execution of their duties by four full-time staff members. This staffing profile is augmented during the election cycle with 11 returning officers (10 district-level and one national), several assistant returning officers, and approximately 300 Election Day workers. Two individuals were temporarily appointed to senior positions in the SOE office (one deputy SOE and one training officer) to assist the SOE in preparing for and conducting the elections.

Several electoral stakeholders expressed the view that the Elections Office is understaffed, which may have led to the late execution of some of its statutory functions, including the timely distribution of election materials and supplies to all polling locations. One solution to avoid potential delays is to conduct a needs assessment of the Elections Office in relation to its current and future functions – which could include the introduction of more technology – with a view to adjusting the number of full-time and/or temporary “surge” support staff to ensure it can adequately and comfortably fulfill its mandate. These results of the needs assessment could then be used to design training programs to ensure employees are equipped to function at maximum efficiency.

In addition, given the small size of the population and the inevitability that candidates in elections and electoral officials will have close ties and possible family connections, whenever this is the case, it would be best practice to make a standard “conflict of interest” declaration in order to enhance transparency.

The SOE also has the benefit of legal advice from the independently appointed attorney general, who is responsible for providing defense against any legal action brought against the SOE and the Elections Office in the conduct of elections. While any unlawful action by the SOE can be remedied by actions of the governor and attorney general, administrative actions that remain within their purview could conceivably bring the office into disrepute, especially if it appears to favor one political party over another. Direct instructions from the governor in this regard could also be seen as direct interference in the independent functioning of the SOE.

The decision to establish an EOC, while not mandated by statute, is a good practice to facilitate interagency coordination on elections. The EOC facilitated collaborative and informed decision-making, particularly in light of the threat posed by the COVID-19 pandemic, and was staffed by key stakeholders including the governor, attorney general, SOE, chief medical officer, and the IC's acting deputy director, among others. Due consideration should be given to ways to increase transparency of this mechanism, including allowing observation by electoral stakeholders of public meetings and publishing meeting minutes online with exceptions made for security-related matters.

Overall, the institutional framework for election management is largely devoid of bias, as the SOE and EOC provide impartial bodies to oversee the elections. There is, however, a need to address the lack of transparency when it comes to disclosing potential conflicts of interest between candidates and elected officials.

Election Day Operations

The experience of voters on Election Day is largely determined by the extent to which polling stations are staffed by well-trained personnel and offer a secure, clear, accessible and orderly process by which to cast votes. Sufficient ballot integrity measures, as well as appropriate efforts to ensure the secrecy of the vote, are also essential features of a credible Election Day operation.

Despite instances of inconsistencies in the carrying out of some functions at polling stations on Election Day and a few glitches where polling staff arrived late, resulting in some polling stations not opening on time, overall the electoral system stood up to the challenges of conducting an election, particularly given the added difficulties posed by the COVID-19 pandemic.

Opening of Polls

The IFES technical observation team was able to visit 34 of the 37 polling stations on Election Day. Polling stations across TCI were to be opened at 7 a.m. and close at 7 p.m. except in Providenciales, where closing time was set for 9 p.m. For the polling hours to vary, the TCI Elections Ordinance requires that the change be recorded in the writ of elections, which in this case would have required an amended writ, given the evolving pandemic situation.⁴⁸ Most of the polling stations opened on time. The polling stations were all adequately staffed and there were party agents representing the two major political parties in all polling stations visited. The third political party, the PDA, did not register any party agents according to the SOE. In addition, international observers from the Caribbean Community were observed at multiple polling stations. There were signs of inconsistency in polling station operations at the outset, as it was reported that some stations allowed party agents and observers to witness the preparations, while others invited them in just before admitting voters. It is a requirement that party agents and accredited observers be allowed to witness the entire process according to the statute.⁴⁹ Each polling station had two color-coded ballot boxes: one for the deposit of ballots marked for the Electoral District election, and the other for the all-island election. Both boxes were shown to everyone inside the polling station before the lids were sealed, ensuring that they could not be opened. There were voters in line at all polling stations at the opening of polls, with varying levels of turnout with some having very long lines and others

⁴⁸ Elections Ordinance, Section 33(3)

⁴⁹ Who may be present. Elections Ordinance, Section 50

very few voters. The stations were generally equipped with the necessary tools and supplies to conduct the polls.

Security

There were police personnel present at all locations and in a few instances assisted by customs officers who were deputized for the day. The police assisted in ensuring crowd control with some seeking to enforce the social distancing guidelines in the long lines. Others simply sat and observed proceedings without seeking to intervene in any way. The police also monitored the entrances to the various polling locations and assisted with traffic management. On occasions, law enforcement officials were observed inside the polling stations in Providenciales. Although they did not appear to have been invited in by the polling station supervisor, their presence did not appear to be of any particular concern to polling station staff and/or voters.

COVID-19 Mitigation Protocols

The staff in all polling stations wore masks and gloves. All voters entering the polling stations also wore masks. Hand sanitizer was present at both the entrance and exit of each polling station. Inside the polling stations, presiding officers and poll clerks were separated from voters by plexiglass and were socially distanced from each other. Similarly, party agents wore masks and were socially distanced from each other and the others in the room. The voting booths were sanitized at regular intervals and each voter entering the voting booth was given a new voting pencil, which they were allowed to keep or discard in the bin provided.⁵⁰ Voters for the most part were required to again sanitize their hands before leaving the polling station. Based on reports on other elections around the world conducted since the COVID-19 pandemic, the TCI electoral authorities mitigated COVID-19 concerns to a high degree of success and should be applauded for their planning and implementation of health and safety protocols.

Polling

The first two hours of voting were specifically dedicated to voters with increased risk of contracting COVID-19 and other priority voters. This group included voters over 70 years of age, uniformed officers, candidates and persons with disabilities. The list in each Electoral District was divided alphabetically from A-I, J-Q and R-Z according to the voter's last name. This did not take into account the number of voters on the list and the amount that fell into each category. Apparently, this was because the ballot boxes had been pre-labeled. As a result, some polling stations had very long lines while others had a few voters waiting in line. This contributed to the frustration of some voters who had waited in line for extended periods, sometimes in the heat of the sun. To avoid such future occurrences, individual polling stations could be segmented to balance the number of voters on each list. There is no way of determining how many voters, if any, ran out of patience and left, or whether they returned later in the day to exercise their franchise, although it is assumed that it was most likely a very small number.

⁵⁰ Note: Although pencils are used widely throughout the Caribbean for marking ballots and they were disposed of to mitigate COVID-19 concerns during this election, strong consideration should be given for using permanent ink pens in the future given that pencil marks can be easily erased and/or changed, therefore posing a vulnerability in the process.



Poll worker monitoring voters as they await to enter the polling station to cast their ballots

Voters were required to sanitize their hands at the entrance to the polling station. Their fingers were marked using an inking pen before they were allowed to enter. In a number of instances, the fingers of the voters were inked before the polling staff confirmed their eligibility to vote in the station. In several situations this led to an administrative dilemma, which was apparently solved and such voters from all reports were nevertheless allowed to vote in their correct stations. This clearly indicated that the use of the ink was not a foolproof way of preventing a voter from voting more than once. While the IFES team observed no evidence of voters voting more than

once, ensuring that voters are verified as eligible to vote before their fingers are inked could help mitigate this issue.

The identification of voters was checked at the door in some polling stations, but in others they were sent to the polling officials for identification. Voters are required to provide one official form of photo identification such as a passport or driver’s license, and are generally advised, although not required, to bring two pieces of identification.⁵¹ It is not possible to say how many voters did not vote because of their inability to provide two separate pieces of identification. The need for two forms of identification could be mitigated by having the registration details and/or photo of voters inside each station to be used in assisting to verify the identity of voters. Alternatively, as recommended in Section 25 of the Elections Ordinance, a voter registration card, which could serve as the primary means of identification, could be issued to each registered voter well in advance of the election. The requirement for additional forms of identification would then only become applicable when a voter is unable to provide their voter registration card.

Once processed, the voters were given instructions by the presiding officer on how to mark the ballot properly in order for the ballot to be valid and the vote counted. Instructions were also given on the proper way to fold the ballot so that each vote remained secret. The number printed on the back of each ballot was recorded by the presiding officer at the time the ballot was issued and verified as being the same before the voter deposited the ballots into the respective boxes. Voters with disabilities who were accompanied by a friend or relative to help them vote were admitted along with their assistant. There were some inconsistencies in the application of the oath of secrecy, as some presiding officers did not ensure the assistant took the oath as required by the TCI Elections Ordinance. Additionally, it was observed that a number of assistants only used the opportunity as a means of voting early. In several observed cases, the assistants voted in one booth while the voter whom they accompanied voted

⁵¹ Elections Ordinance, Section 45(9)

independently in another. However, it is possible that some voters required assistance to stand in line for an extended period of time or to travel to the polling station but not to mark and cast their ballots.

The method of applying the oath of secrecy and the instructing of voters on the proper voting procedures was also inconsistent across polling stations, resulting in the process taking upwards of five minutes in some stations for each voter. The stations in which this process took an extended time saw long lines of voters awaiting their opportunity to exercise their franchises.

Polling Station Accessibility

The polling stations were mainly housed in school classrooms of varying sizes. The polling station layout was standard for the most part, but the ability to social distance was more easily achieved in the larger stations. Even though all the polling stations were on the ground floor, they were not all step-free, which created barriers for some older voters and voters with disabilities. The absence of ramps in most polling stations meant that wheelchair users were carried up a single step to enter and lowered while exiting. In some cases, the entrance was not wide enough to facilitate the entry of wheelchair users. In those polling stations with ramps, the incline was often too steep for a voter using a wheelchair to navigate by themselves. At least one voter with a disability was observed opting not to vote because of the inaccessible entrance. Alternatives such as taking the ballot outside the polling station are not explicitly mentioned under TCI electoral regulations. Although the entrances of many polling stations were inaccessible, all the polling stations had adjustable voting booths that could be used by voters with disabilities. To improve accessibility, the electoral office could conduct an audit of TCI's 37 polling stations and consider the selection of new sites.

The color-coded ballot boxes were set up in full view inside the room. The voters were required to show the presiding officer the number on the back of each ballot before depositing the Electoral District ballot and the all-island ballot into the respective ballot boxes.

It is possible that the number on the ballot could be used to trace the ballot back to the elector, thus compromising the secrecy of the vote. To avoid this, the numbering of ballot papers could be printed on detachable counter foils which are removed before the ballots are deposited into the ballot box. This would satisfy the need to ensure the voter is depositing the ballot issued by the presiding officer, while maintaining the secrecy of the vote. There is precedence in other Caribbean states for this practice.

There were inconsistencies in the process as some presiding officers sought to verify the numbers on the ballots with the numbers on those issued, while others did not. Some polling stations had a polling staff designated to monitor the voter to ensure ballots were deposited into the correct boxes while others did not. This should become standard procedure across all polling stations.

After depositing the ballots voters were required to sanitize their hands and to exit polling stations using a designated door separate from that used to gain entry. This ensured voters did not come in contact with those entering into the polling station.

By about 1pm on Election Day, most of the long lines had dissipated and voting was reduced to a trickle, even nonexistent in a few polling stations. The last two hours of the Election Day were reserved for “voters who are COVID-19 positive or in quarantine/isolation.”⁵² During this period, the staff in some polling stations including party agents donned additional personal protective equipment (PPE) to include gowns, face shields, and gloves. However, the IFES observers noted that very few voters turned up at this time with most polling stations having no voters during the period. This was an indication that the general population presumably voted early in order to avoid contact with COVID-19 positive and potentially positive voters. Nonetheless, it would appear that very few of the 800 persons reportedly in quarantine or isolation turned out to vote. Speculations are that this is a result of fear of being stigmatized in what in most districts are very small communities. Electoral stakeholders reported their belief that some of these individuals may have actually voted earlier in the day due to the stigma associated with a positive COVID-19 status.



Socially distanced voters standing in line waiting to cast their ballots

Overall, the electoral authorities must be commended for initiatives taken to ensure a safe election despite the ongoing COVID-19 pandemic and that no registered voter was observed to have been denied the opportunity to exercise their franchise. While nearly all polling stations opened on time, there were minor inconsistencies, such as some stations allowing party agents and observers to witness the preparations while others did not, that should be addressed. Considerations should also be made to address the inking procedures and to increase polling station accessibility for all eligible voters.

Count and Reconciliation and Announcement of Results

Vote counting processes should be governed by three key principles: accuracy, transparency and timeliness. Rules should be pre-determined and understood by all stakeholders, including election officials, the public and observers. Similarly, responsibility and accountability should be clearly delineated at each stage of the process. Ideally, all stakeholders should be allowed to be present and able to follow each step of the counting process. It is considered best practice for the poll workers who managed the polling to also count the votes and post the results at the voting bureau level.

⁵² <https://online.fliphtml5.com/peiq/tdne/#p=1>

Reports are that all polling stations closed at the stipulated times except for the ones that opened late. These stations stayed open late to make up for the time lost at the start of polling. According to the SOE, no written or verbal authorization from the SOE was required, as returning officers were instructed during training that if their polling stations opened late, they must close later in accordance with the time it opened. There were no reports of any queues at any polling station at closing time. At the designated time, the doors to the polling stations were closed with only authorized persons allowed to remain inside. This included polling station staff, political party counting agents and international observers. The security personnel remained outside.



Sealed ballot boxes containing ballots from District 10 (Wheeland)

Once the doors were closed, the ballot boxes were sealed to ensure no more ballots could be deposited. Party agents were allowed to record the serial number of these seals. The polling station workers then proceeded to check off and pack away all the materials and supplies given to them by the SOE at the start of polling into designated envelopes and bags. In addition, the ballots were reconciled starting with the number of ballots issued to the station. The unused ballots and the spoiled ballots were then deducted from the issued ballots and mathematically should equal the actual number of votes cast. The process was conducted without any direct involvement or direction from the party agents who were able to watch the proceedings, although polling station staff transparently answered all questions asked. The party agents were, however, asked to verify the number of votes actually cast following the ballot reconciliation process. In all observed polling stations, the reconciliation process was accurate.

Once the reconciliation was completed and the supplies packed away, the room was prepared for the counting of ballots, which started with the Electoral District ballots. The seals closing the lids of the ballot box were broken after being verified by the agents, and the contents checked to see if there were any misplaced ballots. The folded ballots were not opened but confirmed based upon their size to be in the proper ballot box. The all-island ballots were noticeably larger in size. Following the completion of the checks, the ballots were replaced inside the box and the box was then resealed. A similar check was done for the all-island ballot boxes. Any misplaced ballots were transferred to the correct box, which is not a best practice. In the future, it would be a best practice for a polling station staff person to monitor voters as they place ballots in each box to guarantee the proper deposit of ballots into the correct ballot boxes.

A. Electoral District Vote Count

The seals placed on the box containing Electoral District ballots were again broken, and the ballots removed one by one, examined by polling officials and determined to be assigned to one candidate or the other or deemed rejected. In observed polling stations, the determination of each ballot was verbally announced to party agents and observers. Each ballot was held up and shown to the party agents and observers who were able to support the determination or voice their objections. Most ballots were clearly marked for one candidate and in observed polling stations were counted accurately. Unmarked ballots were universally accepted as a rejected ballot. Debates emerged when the ballot was marked but not in the area designated for the mark to be placed. In such cases the law allows for the ballot to be

counted if, in the opinion of the person responsible for the count, the intention of the voter is clear.⁵³ Despite there being disagreements in the interpretation of the intention of the voter, this only becomes material if at the end of the count, the number of rejected and/or disputed ballots exceeded the margin of victory.

Following the count in the individual stations, the results were verified against the tally kept by the different polling staff and counting agents in the room.

As soon as counting was completed in each polling station, the returning officer then allowed the polling staff for the other stations under their supervision to present their results. A final tally of all the votes for the candidates contesting the election in the Electoral District was then done. The candidate with the largest number of votes tallied was announced as the winner and the results called in to the SOE by the returning officer. As no formal report or protocol was produced and signed by those present, including the party agents, there was no formal report or protocol physically transmitted to the SOE and no copy of the results in each station shared with the party agents who witnessed the count. This is not an international best practice. In future elections, a formal written report or protocol should be transmitted to the SOE and copies given to party agents and observers.

If party agents watching the count on behalf of a candidate were not satisfied, they were able to request a recount of the ballots by completing the prescribed form, stating the reason for the recount and handing the same to the returning officer.⁵⁴ Requests for Electoral District recounts were made in Electoral Districts 7 and 10. In both cases the results remained unchanged following the recount.

To adhere to international best practices, it is IFES' assessment that the SOE should develop a formal written protocol for certifying the Electoral District ballot counts before the boxes leave the polling stations.

B. All-Island Vote Count

Following the Electoral District vote count at each station, the all-island vote count is undertaken in a similar manner. However, in an Electoral District comprised of three polling stations, it was observed that the ballot boxes containing the all-island votes were taken to a designated polling station and counted by the returning officer. This took a very long time to be completed, as the returning officer was the only person doing the counting.

The all-island boxes should be counted in each polling station, similar to the Electoral District votes, in keeping with the requirements contained in the TCI Elections Ordinance. The ballot boxes can then be handed over to the returning officers to be secured before then being handed over to the police as is the current practice. It is noted that the TCI Elections Ordinance has been amended to allow for counting of ballots using the electronic tabulating system.⁵⁵ As a result, this could end up being a moot point.

The process of tallying the ballots was the same as in the case of the Electoral District election, except that each voter could vote for a maximum of five candidates. All ballots on which the number of votes

⁵³ Elections Ordinance, Section 56(2)

⁵⁴ Elections Ordinance, Section 56(2)

⁵⁵ Elections Ordinance, Section 55(A)

cast exceeded the maximum were automatically rejected, as were blank ballots. The intention of the voter was again brought into question when ballots were not clearly marked for a particular candidate.

After each box was counted there was a verification of the tally with the party agents. Any difference could result in a recount not by a request on the part of the agents, but for purposes of verification. In the end the count for all boxes for which the returning officer was responsible were tallied and the results called in to the returning officer responsible for the all-island district. The all-island returning officer then called in the results to the SOE, again with no formal documentation.

The SOE used the results called in by the returning officers for each electoral district to determine the winner of each district. The return from the all-island returning officer was used to determine winners of the all-island seats, which were assigned to the five candidates who received the most votes. The results are joined with the seat assignment from the Electoral District election to arrive at the number of seats won by each political party and independent candidates, if any. The seat count for the political parties was used to ultimately determine which party would form the government.

Requests for all-island recounts are submitted to the returning officer on the prescribed form. The SOE is required to collect all the all-island boxes and transport them back to Grand Turk where the elections department is located. In the event of a recount, the recounting of the ballots is undertaken starting the day after the election and completed by the following day. There were no requests for a recount by the candidates contesting the all-island election in 2021.

It was observed that following the count in each polling station, there was no formal certification of the results by polling staff and party agents. Because there was no report, no data was transmitted to the SOE and the party agents who witnessed the count. As per international best practices, a result sheet should be immediately prepared at each polling, signed by the electoral officials and party agents present and a copy delivered to the returning officer for use as the source document to inform the SOE of the result in the polling station. A copy of the results sheet should be given to party agents present.

Similar to the Electoral District vote count, it is IFES' assessment that the SOE should develop a formal written protocol for certifying the all-island ballot counts before the boxes leave the polling stations.

C. Announcement of Results

After advising the governor of the election results, the SOE went on the radio and made a formal preliminary announcement of the results pending any request for recounts in the all-island election. According to the SOE, returning officers initially transmitted the results via telephone to the SOE and later transmitted the written returns to the SOE. The written protocols were posted outside each polling station by the returning officers. These results were then used to compile the final elections report inclusive of the number of rejected ballots.

Figure 1: Final Electoral District Elections Results

Electoral District	Name of Candidate	Party	Total Votes
01 Grand Turk North	Butterfield, Temard	PDM	239
	Morris, Otis	PNP	362
02 Grand Turk South and Salt Cay	Astwood, Edwin	PDM	414
	Missick, Leshun	PNP	297
03 South Caicos	Thomas, Patrease	PDM	109
	Malcolm, John	PNP	190
04 North and Middle Caicos	Higgs, Ralph	PDM	220
	Musgrove, Arlington	PNP	293
05 Leeward	Forbes, Gertrude	PDM	249
	Missick, Akierra	PNP	460
06 The Bight	Skippings, Audric	PDM	299
	Stubbs, Matthew	PNP	367
07 Cheshire Hill and Richmond Hill	Been, Samuel	PDM	487
	Parnell, Douglas	PNP	411
08 Blue Hills	Ewing, Goldray	PDM	318
	Howell, Randy	PNP	333
09 Five Cays	Astwood, Sean	PDM	359
	Taylor, Rachel	PNP	510
10 Wheeland	Williams, Vaden Delroy	PDM	270
	Knowles, Kyle	PNP	273

Figure 2: Final All-Island Elections Results

Name of Candidate	Party	Total Votes
Been, Robert	PDM	2,527
Cartwright Robinson, Sharlene	PDM	2,470
Malcolm, Karen	PDM	2,491
Taylor, Hugh Derek	PDM	2,352
Thomas, Maxovanno	PDM	2,242
Connolly, Josephine	PNP	3,464
Malcolm, Shaun	PNP	3,157
Missick, Charles Washington	PNP	3,594
Robinson, Jamell	PNP	3,418
Saunders, Erwin Jay	PNP	3,478
Forbes, Lucky	IND	75
Fulford, Jermaine	IND	85
Lightbourne, George	IND	162
Lightbourne, Jacqueline	IND	300
Missick, Courtney	IND	280
Missick, Lekansay	IND	107
Swann, Alicia	IND	81
McLaughlin, Winston	PDA	89

Inclusion and Meaningful Participation

Elections, as a key opportunity to influence decisions that impact residents' lives, should be inclusive of all persons and follow international standards for universal suffrage. Meaningful participation can be achieved when women, persons with disabilities, young people, older people, minorities and others have equal access to participate as voters, candidates, election officials and observers by eliminating attitudinal, communication, environmental and institutional barriers that restrict participation.⁵⁶

According to Article 7 and 16 of the TCI Constitution, everyone is equal before the law and protected from discrimination.⁵⁷ As earlier discussed, only TCI residents with status as Turks and Caicos Islanders (formerly "Belonger" status) are eligible to participate in elections. According to Article 132 of the constitution, a person can only become a Turks and Caicos Islander if they are "a British overseas territories citizen by virtue of a connection with the Islands or a British citizen who either—(i) has held a permanent residence certificate for a period of at least five years; or (ii) has been legally resident in the Islands for a period of at least ten years; and ... is neither serving a sentence imposed by a court for an offence against the law in force in any country nor has been adjudged or otherwise declared bankrupt under any law in force in any country and has not been discharged."

Regardless of the duration of residency, persons without status as Turks and Caicos Islanders are ineligible to vote in elections. In practice, the majority of persons living permanently in TCI do not meet the requirements to take part in elections, which suggests that the criteria for enfranchisement are too restrictive, are in part tied to national origin and as such contradict democratic norms and practices, as discussed in the section above on "Voter Registration." Turks and Caicos Islanders who meet these requirements but are incarcerated for less than 12 months are eligible to vote, though those who are serving sentences longer than 12 months are not eligible.⁵⁸

Parking facilities, bathrooms and entrances to the polling stations were mostly accessible to voters with disabilities. Most of the polling stations were at ground level and included ramps; however, several of those ramps were at an angle of incline that would have been challenging for some voters with disabilities to navigate independently. There were adjustable voting booths at every polling station, which were observed to have been used frequently by voters with disabilities. Several voters exercised their right to an assistant of their choice and were accompanied by support persons to the polling station. This is in keeping with international standards in the United Nations Convention on the Rights of Persons with Disabilities.⁵⁹

Consideration should be given to provide voters with ballots in other languages, or to have instructional voter education materials in those languages posted at the polling stations, as well as in formats such as

⁵⁶ The electoral process should align with the United Nations Convention for the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of Persons with Disabilities and other international human rights frameworks, which call upon States Parties to ensure access to the process.

⁵⁷ <https://www.integritycommission.tc/sites/default/files/Documents/General/Legislation/01.01%20TCI%20Constitution.pdf>

⁵⁸ <https://www.uk-cpa.org/media/1940/tci-eom-2016-final-report.pdf>

⁵⁹ CRPD Article 29 (political and public life), <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

“easy-to-read,” which facilitates access of persons with low literacy. Tactile ballot guides could also be considered so that voters who are blind or have low vision can vote independently and in secret.

Due to the COVID-19 pandemic, voters at higher risk of contracting COVID-19 and “other priority electors” were encouraged to vote during the first two hours of voting on Election Day, and those “voters that were COVID-19 positive and/or quarantined/isolated” were encouraged to vote during the last two hours of voting. However, although voters were encouraged to vote at specific times, there was no mechanism in place to restrict them from voting at other times. In addition, and on Providenciales Island only, the voting hours were expanded from 12 to 14 hours to reduce crowding and lines as a COVID-19 mitigation measure.⁶⁰ While polling staff changed into full personal protective equipment, almost no voters showed up during the last two hours of polling. Interlocutors suggested that this is because the diagnosis still carries a stigma, and it was likely some voters with COVID-19 instead chose to vote earlier in the day during regular voting hours.

Many first-time voters were observed voting on Election Day, which is encouraging. However, voter registration took place almost a full year in advance in advance of this election, which means that any voters who turned 18 after 30 November 2019, and who were not registered were unable to vote on Election Day. To address this, a rolling registration system could be implemented and/or a voter registration cut-off date set much closer to Election Day, possibly on Nominations Day or a week or two after the elections are called. In addition, voter education efforts could be expanded to specifically target first-time voters prior to the next election to encourage them to vote.

Although there were only 10 women out of 38 total nominated candidates in this election, the prior TCI premier was a woman, and there were many female representatives in the last House of Assembly. The IFES team observed that female voters and candidates were clearly empowered and visible in TCI. Approximately 50.97 percent of all voters are women. However, the IFES team did take note of clearly sexist statements made by several high-level electoral interlocutors, which indicates that women who run as candidates still face barriers and unequal treatment compared to their male counterparts. Irrespective of past officeholders, current representation and/or makeup of the electorate, throughout the world and in the Caribbean, women often face cultural and institutional barriers when running for office. Efforts should continue to be made to educate political leaders and citizens that women actually represent the majority of citizens and should be represented. All candidates deserve to be treated equally with a focus on politics and policies, not personal life.

It is commendable that TCI makes accommodations for voters with disabilities, including ramps and adjustable polling booths. However, greater efforts should be made to ensure polling stations are accessible to voters with a wider range of disabilities, not only mobility issues. Additionally, there is no existing gender quota requirement for candidates, which could be considered to increase the gender balance of TCI’s electoral system.

Public Information and Education

The provision of voter information and educational materials by election officials and other relevant actors to the public is critical to ensuring electoral transparency and integrity. Voter education programs should disseminate balanced and objective information on what voters need to know to exercise their

⁶⁰ <https://gov.tc/elections/news/11-general-elections-protocols-guidelines>

right to vote. This includes information on voters' rights and obligations in the electoral process and explanations of the importance of voting. Voter information also provides the necessary details about the rules governing elections, the work and decisions of electoral bodies, election preparations and voting processes.

The TCI government took a two-pronged approach to the dissemination of public information. The public awareness program began in January and focused on the voting process, including voters' rights and why eligible residents should participate.

The voter education campaign was disseminated through eight radio commercials, posters around TCI, posters specifically at polling stations and videos posted to the government website. No voter education was conducted via television. The subject matter of the education campaign included: requirements for employers to give time off to voters, the different forms of acceptable identification at polling stations, voting times for each voting group, prohibition of cellular phones in polling stations, prohibition of campaigning on Election Day, list of designated election offences, finger-inking requirements, voting procedures, COVID-19 protocols and assurances that voting is safe. The consensus among all interlocutors was that the information provided was both relevant and timely.

A separate COVID-19 awareness campaign disseminated information on the safety protocols to prevent the transmission and spread of the COVID-19 virus during the electoral process. This included the designation of voting protocols for different "groups" of voters including: a) "vulnerable and other priority voters," b) "voters who are not in quarantine/isolation nor COVID-19 positive and c) "voters who are in quarantine/isolation."⁶¹ Each group of voters was then voluntarily encouraged to vote during specific hours during Election Day to mitigate exposure to COVID-19.

Notwithstanding the successful voter education and COVID-19 awareness campaign, there is room to improve future elections. In addition to the previously mentioned option of ballots and voter education materials in additional languages, consideration should also be given for voter and civic education for young people and first-time voters, and accessible materials specifically targeting voters with disabilities and low literacy.

Election Dispute Resolution

The core purpose of an electoral complaints process is to maintain credibility and reliability through a clear and consistent right of redress that is available to all injured parties. This right must be clearly established in the law and known to the public. Specifically, political parties, candidates and voters need to know: which entity has jurisdiction over specific types of disputes, the process of bringing such a claim and which procedural and substantive rules will govern the complaint.

There is a clear right of redress set out in the law, and petitions against the results of the election are heard by the Supreme Court of TCI, with a single judge presiding.⁶² Interlocutors generally expressed confidence in the integrity of the court and its ability to resolve election disputes. There are two different deadlines for the filing of petitions based on the grounds for complaint: an ordinary petition questioning the return of a member must be filed within seven days of the return of the writ, while a petition that

⁶¹ <https://gov.tz/elections/news/11-general-elections-protocols-guidelines>

⁶² Constitution, Article 53, Elections Ordinance, Section 60

questions the return or election due to allegations of corrupt practices that have occurred since the return can be filed any time within 14 days after the date the petitioner has become aware of the corrupt act.⁶³ It is unclear whether there is a time limit on the latter type of petition, or whether this type of complaint may be filed at any time while a member is still in office.

The law does not limit who has standing to file an election petition. However, a petitioner is required to pay \$1,000 as deposit for costs to the court with the intention of limiting frivolous petitions. High fees do have the potential to limit access to justice for petitioners who may have a legitimate grievance but cannot afford the deposit payment. In addition, the court generally sits in Providenciales, which may also be a barrier for petitioners who must travel. However, due to COVID-19, all hearings are currently being conducted virtually, which can improve access to justice, and could be adopted more broadly in the future, assuming there is widespread access across all Electoral Districts.

The judge has broad powers to determine whether a member or a different candidate was validly returned or whether the election was void, and there is no further appeal. However, the law does not clarify what grounds must be proven before an election may be invalidated, except when involving the corruption of illegal practices – which must “have so extensively prevailed that they may be reasonably supposed to have affected the result.”⁶⁴ The requirement of an outcome-determinative irregularity is generally in line with international good practice.⁶⁵

Prior election petitions in TCI have focused on issues around candidate eligibility. In 2012, the Supreme Court found that a candidate for Electoral District 7 was ineligible, as he had never renounced his U.S. citizenship or surrendered his U.S. passport and had traveled using his U.S. passport only a few months before declaring his run for office. Questions of candidate eligibility are more appropriately dealt with ahead of elections to avoid destabilizing election petitions and by-elections. However, a clear process for objections to candidate eligibility does not exist in the current law, with the exception of a reference in section 27(11) of a candidate being “disqualified by a court.”

Conversely, a clear process for voter registration complaints and objections is set out in Sections 14-18 of the Elections Ordinance. Plaintiffs may seek redress from the SOE in the first instance, with a right of appeal to election adjudicators. However, adjudicators are appointed at the discretion of the governor and are not required to have either elections or judicial experience, and their decisions are considered final under this law. This discretion and lack of professional expertise could open the process to some vulnerability, and generally undermines the international right to judicial appeal for issues related to political and electoral rights.⁶⁶ Therefore any complaints or objections related to voter registration would benefit from being heard on appeal by the courts. Interlocutors in the judiciary have suggested that the reference to finality would not necessarily circumscribe the court’s jurisdiction over an electoral rights case.

There are no deadlines in the law as to when the petition must be heard and decided. However, the Supreme Court was aware of the importance of expediting these types of cases and had proactively set

⁶³ Elections Ordinance, Section 61

⁶⁴ Elections Ordinance, Section 63

⁶⁵ For a discussion on this issue, see IFES, “When Are Elections Good Enough? Validating or Annuling Election Results,” available at <https://www.ifes.org/publications/when-are-elections-good-enough>

⁶⁶ Article 14, ICCPR

aside Wednesdays to deal with any election petitions, with a backup judge designated in case of a large number of petitions. This proactive judicial planning is commendable and should be continued for future elections. Consideration should also be given to setting out a deadline in the law or judicial procedure for when election petitions must be heard and decided.

Ultimately, a clear process for objections to candidate eligibility should be clearly established, including to avoid post-election disputes over candidate eligibility. It is also recommended that any complaints or objections related to voter registration are heard on appeal by the courts, rather than nonjudicial election adjudicators appointed by the governor. Consideration should be given to setting a deadline in the legal or judicial procedure for when post-election petitions must be heard and decided upon. Finally, the current court practice of virtual hearings supports access to justice and could be adopted more broadly in the future, beyond the COVID-19 pandemic.

About IFES

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IFES advances democracy for a better future. We collaborate with civil society, public institutions and the private sector to build resilient democracies that deliver for everyone. As the global leader in the promotion and protection of democracy, our technical assistance and applied research develops trusted electoral bodies capable of conducting credible elections; effective and accountable governing institutions; civic and political processes in which all people can safely and equally participate; and innovative ways in which technology and data can positively serve elections and democracy. Since 1987, IFES has worked in more than 145 countries, from developing to mature democracies. For more information, visit www.ifes.org. IFES is a signatory to the [Declaration of Principles of International Election Observation and Code of Conduct for International Observers](#).



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