



Kingdom of the Netherlands

Sint Eustatius 2020 Island Council Elections

Technical Observation and Assessment Report



December 2020

This publication was produced by IFES for the Kingdom of the Netherlands. The contents are the sole responsibility of IFES and do not necessarily reflect the views of IFES or the Government of the Kingdom of the Netherlands.

Sint Eustatius 2020 Island Council Elections

Technical Observation and Assessment Report



Orrette Fisher, Mission Leader
David V. Hamilton, Senior Elections Advisor

Copyright © 2020 International Foundation for Electoral Systems. All rights reserved.

Permission Statement: No part of this work may be reproduced in any form or by any means, electronic or mechanical, including photocopying, recording or by any information storage and retrieval system without the written permission of IFES.

Requests for permission should include the following information:

- A description of the material for which permission to copy is desired.
- The purpose for which the copied material will be used and the manner in which it will be used.
- Your name, title, company or organization name, telephone number, fax number, e-mail address and mailing address.

Please send all requests for permission to:

International Foundation for Electoral Systems
2011 Crystal Drive, 10th Floor
Arlington, VA, 22202
Email: editor@ifes.org
Fax: 202.350.6701

Cover photo: Courtesy David V. Hamilton, 2020

Report photos: Courtesy of Orrette Fisher and David V. Hamilton, 2020

I. Introduction

On 21 October 2020, Sint Eustatius, a special municipality in the Caribbean Netherlands, held Island Council elections. The Sint Eustatius Island Council is made up of five seats, and members are usually directly elected for a four-year term.¹ Members of the Island Council are chosen according to a system of party-list proportional representation as per Netherlands law. In the European Netherlands, numerous parties vie for seats at each level of government, and generally no single party secures an overall majority, so several parties must cooperate to form a coalition government. The exception is in very small municipalities, where one party will occasionally win all seats or secure a majority as is the current case in Sint Eustatius.

The International Foundation for Electoral Systems (IFES) was invited by the Ministry of the Interior and Kingdom Relations of the Kingdom of the Netherlands to conduct a technical observation and assessment of the October 2020 Island Council elections, and findings are presented herein. This report offers a general overview of key features of the electoral process, including the law reform process and electoral system; political party and candidate registration, financing and campaigns; institutional framework and Election Day operations; and election dispute resolution. Specific issues around the legal suspension of democracy in Sint Eustatius by the Dutch Parliament and COVID-19 pandemic are also addressed. 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 the interim “Elections Project Working Group”, voting bureau (polling station) staff, candidates, parties, security personnel and voters; observation of Election Day; and the preliminary results announcement.

The election was held under unusual circumstances due to two major factors impacting the island. First, the previously elected Island Council was dissolved in 2018 and replaced by a government-appointed Commissioner directly responsible for overseeing the affairs of the island as a result of a legal administrative intervention by the Ministry of the Interior and Kingdom Relations based upon Article 132 (para 5) and Article 132a of the Dutch Constitution and formally approved by the Netherlands Parliament.² This action effectively and directly resulted in a suspension of democracy on the island. Second, the island, like the rest of the world, faced the threat of the COVID-19 pandemic, which has negatively impacted economies and the free movement of people and commerce globally, as well as the administration of elections.

The Council elected in March 2015 was legally removed from office by the Dutch Government in 2018. The Dutch government was of the view that a minimum intervention period of two years was required to carry out the basic reforms required before the return of democracy to the island; the intervention period was extended in July 2020.³ As a result, no elections were held in March 2019, when all other municipalities in the Kingdom held elections as scheduled, including Bonaire and Saba. Therefore, this election was conducted outside the regular four-year cycle and those members elected to the Island Council in October 2020 will not serve a full four-year term before the regularly-scheduled elections for a new Island Council in March 2023.

¹ Dutch Electoral Act (1989), § C.4.1.

² <https://www.government.nl/documents/regulations/2012/10/18/the-constitution-of-the-kingdom-of-the-netherlands-2008>

³ <https://www.statiagovernment.com/governance/news/2020/07/09/law-restoration-of-the-provisions-unanimously-passed-in-the-senate>

The 21 October 2020 Island Council elections did not result in a return to democracy but was the beginning of a process initiated by the Ministry of the Interior and Kingdom Relations to return democracy to the citizens of Sint Eustatius. In fact, the newly-elected Island Council members only have limited authority and do not have the full powers that their counterparts on Bonaire or Saba islands have.⁴ It is difficult to say how the lack of return to full democracy may have figured in the minds of voters during the campaign period and as they voted on 21 October.

Following the election observed by IFES in October 2020, the appointed Government Commissioner⁵ and Deputy Government Commissioner will continue to administer the affairs of the island while members of the Island Council are granted limited authorities⁶ that are gradually increased during four pre-determined phases.⁷ The process of returning to full autonomy is dependent on the Island Council as a body satisfying twelve pre-determined conditions during the previously mentioned four distinct phases.⁸ During this period, the Executive, which normally consists of a Lieutenant Governor and two commissioners, and which is usually overseen by the Island Council will not be appointed.

There were also significant concerns about the threat of the COVID-19 pandemic on the conduct of the election and the campaign period. Although the restrictions imposed on campaigning and other electoral activities prior to the election were quite constraining, albeit understandable, the protocols put in place by the electoral authorities to mitigate exposure to the COVID-19 virus at the polling stations were very robust and allayed the fears of those who voted by all accounts. Notably, the Elections Project Working Group made the wise decision to add another polling location due to COVID-19 concerns. Voting at the two designated polling locations was orderly with no sign of intimidation, thus allowing voters to exercise their franchise in a peaceful manner. Other positives were reflected in the extremely professional manner in which polling staff carried out their roles, and despite a slight hiccup at the preliminary count, the results of the election were widely accepted by all interviewed interlocutors.⁹

The context of this election includes the suspension of democracy and the COVID-19 pandemic, and follows a series of referendums across the Netherlands Antilles, when on October 2010, Curaçao and Sint Maarten became independent countries within the Kingdom, and Bonaire, Sint Eustatius and Saba became part of the Netherlands as public entities collectively known as BES. It is important to note that during the referendum, Sint Eustatius was the only island that voted in favor of remaining a part of the Netherlands Antilles. The BES islands de facto became Dutch ‘public entities’, which was not a specific choice on the Sint Eustatius Status Referendum in 2005, but was a generic choice listed as “Integration into the Netherlands”.¹⁰ However, because of the preferences of the other islands this outcome was impossible to achieve. The appointed Executive Council of Sint Eustatius eventually chose to accept the status of public entity. The status of public entities is defined by Article 134 of the Dutch Constitution, and in essence this Article provides for a special form of decentralized administration within the Netherlands

⁴ https://www.eerstekamer.nl/wetsvoorstel/35422_wet_herstel_voorzieningen

⁵ <https://www.statiagovernment.com/governance/government-commissioner-and-deputy-government-commissioner>

⁶ https://www.eerstekamer.nl/wetsvoorstel/35422_wet_herstel_voorzieningen

⁷ <https://www.sxm-talks.com/the-daily-herald/commissioner-encourages-statias-eligible-voters-to-exercise-their-right-the-daily-herald/>

⁸ <https://www.statiagovernment.com/governance/news/2020/07/09/law-restoration-of-the-provisions-unanimously-passed-in-the-senate>

⁹ Verbal Communication with Statia Government Official: “Total votes cast stay the same. There was a discrepancy in communication”

¹⁰ https://en.wikipedia.org/wiki/2005_Sint_Eustatius_status_referendum

that is comparable to that accorded to municipalities.¹¹ Dutch legislation is slowly replacing Antillean law on Sint Eustatius.¹² A subsequent new Status Referendum in 2014 in Sint Eustatius did not resolve the will of the people or the issue.¹³ A review of the new administrative structure was conducted in 2015 by an official evaluation committee, and their report detailed the progress that had been made and ongoing challenges. Although it did not specifically address electoral processes, these challenges may be instructive when considering future electoral reforms to take into account the specific character of the current situation in Sint Eustatius.¹⁴

As described further below, assessment interlocutors highlighted some of the weaknesses of the transition process as it relates to elections and governance on the island; most notably, that the process did not sufficiently address the needs and history of the island in adopting most elements of the Netherlands electoral process without adaptation. Accordingly, certain features of the electoral framework that may be functional or appropriate in the European Netherlands – for example, the use of a proportional representation list system and proxy voting – have engendered electoral and governance vulnerabilities in Sint Eustatius. With five seats to be allocated, the difference of a very few votes could see a significant portion of the population not having direct representation from a preferred candidate for whom they voted.

In addition, the current system of proxy voting was highlighted as a major weakness in the system by all stakeholders interviewed, including all three political parties contesting in the election. The large number of proxy votes cast in the BES island is not unique and has been identified in the past as problematic in European Netherlands as well, particularly among some demographic groups.¹⁵ The lack of a sufficiently strong monitoring and control mechanism for proxy votes may potentially skew the results as well as inflate the voter turnout if individuals not interested in participating in the electoral process can simply hand over their vote to someone else, voluntarily, involuntarily or even for compensation. In addition, the current system does not ensure that the designated proxy actually votes in accordance with the wishes of the franchise holder.

Portions of this report - including background, legal framework and recommendations - are based on the previously issued IFES report on the Saba 2019 Island Council elections.¹⁶

¹¹ Nauta, Oberon. Five Years of the Caribbean Netherlands Working of the New Administrative Structure, DSP Group, p. 2, <https://kennisopenbaarbestuur.nl/media/211663/Working-of-the-new-administrative-structure-Caribbean-Netherlands-English-Summary.pdf>.

¹² <https://www.statiagovernment.com/governance/documents/decrees-orders-and-decisions/2010/05/17/the-public-entities-bonaire-st.-eustatius-and-saba-act>

¹³ https://en.wikipedia.org/wiki/2014_Sint_Eustatius_status_referendum

¹⁴ <https://kennisopenbaarbestuur.nl/media/211663/Working-of-the-new-administrative-structure-Caribbean-Netherlands-English-Summary.pdf>. “The constitutional transition was a major job in terms of legislation. A large number of provisions needed to be enacted for the Caribbean Netherlands within a short timeframe. Formally speaking, the duty of consultation was clearly implemented: the ministries did a lot of work to involve the islands well in the legislative process. However, because of the scale and intensity of the transition progress on the one hand and extremely limited staffing (compared to the Ministries) on the other hand, it was generally impossible for the islands to adequately utilize the opportunities for consultation on offer.”

¹⁵ <https://www.cbs.nl/en-gb/news/2009/23/one-in-eight-voters-vote-by-proxy>

¹⁶ <https://www.ifes.org/publications/saba-2019-island-council-and-senate-electoral-college-elections-technical-observation>

II. Summary Recommendations

1. Directly Engage Sint Eustatius Citizens on the Future

Additional dialogue and public engagement is required to find out exactly what form of government is desired by the majority of Statian citizens given that voters in the past did not choose specifically to become a public entity, a de facto municipality. This dialogue and engagement should be structured and focused on achievable and possible outcomes given that Sint Eustatius is firmly on track as a public entity and other forms of government or options may be foreclosed.

2. Strengthen Party System and Internal Political Party Democracy

Rules governing party internal democracy should be established to facilitate more transparency for the public as to how candidates are ranked and chosen. Clear messaging from the parties would assist the public in choosing its leaders. The role of political parties is important on the island, but the operation of the parties and the method of choosing and ranking candidates is less clear. If the party system remains, it is important for parties to set clear and transparent rules for how they will democratically elect candidates, to increase the legitimacy of those elected to the Island Council.¹⁷

3. Address Vulnerabilities Presented by Proxy Voting Before Next Election

A review of the current proxy voting system in Sint Eustatius is highly recommended to ensure that proxies are only used for voters who will not be able to go physically to the polling station on Election Day and that the voter's preference will be followed when the ballot is actually cast. As currently applied in Sint Eustatius, proxy voting presents significant opportunities for misuse and undermines the secrecy of the vote. The potential for allegations of vote buying and coercion – real and imagined – gives the direct impression that the ability of candidates and parties to organize the attainment of proxies plays a role in the outcome. This is not good for democratic participation. Therefore, early voting and postal voting, which are permitted under the law for elections to the Second Chamber of the States General, should be extended to voters in municipal elections who will be off the island or otherwise unable to vote in person on Election Day. In addition, the vote cast by the proxy does not necessarily reflect the choice of the voter. Therefore, ballots and secrecy envelopes should be considered so that the ballot is actually completed by the voter and the proxy simply transmits the secret ballot to the polling location if early and postal voting is not allowed. A secrecy envelope would de facto eliminate a vote cast by a proxy designate (aka proxy voting) in favor of a vote cast by a voter and delivered by a designated their chose designated individual (former proxy voter). A paper on postal voting during Covid-19 was recently published that could help to determine what makes the most sense for the Sint Eustatius situation¹⁸. An election access assessment should be conducted, including consultations with older voters and those with disabilities to determine how eliminating proxy voting might impact them and alternative measures developed to ensure all voters have access to a secret ballot. Authorities should continue to encourage the use of proxies only in those situations in which a voter is unable to physically go to the polling station on election day.

¹⁷ NDI, 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.

¹⁸ https://www.ifes.org/sites/default/files/ifes_vote_by_mail_international_practice_during_covid-19_october_2020.pdf

4. **Modernize Physical Ballot and Voter Education Materials to Expand Inclusion**

Adjust the appearance and layout of physical ballots to assist voters in making their choice of candidates and/or political parties. This could include the addition of political party colors or photos on the ballot to make the choices more easily identifiable by the voters, particularly voters with low literacy and those with visual disabilities. In addition, ballots should be printed in all of the major languages spoken on Sint Eustatius, including Dutch, English, Spanish and Papiamentu, and tactile ballot guides should be developed so voters with visual disabilities can vote unaided and in secret¹⁹.

5. **Institutionalize Two Polling Stations Permanently**

Maintain the use of at least two polling locations ensuring that both are fully accessible to older voters and voters with disabilities.²⁰

6. **Secure, Track and Reconcile Blank Ballots During Entire Electoral Process**

Develop a clear process for voting bureau staff to account for all ballots at the end of the day. The total number of ballots received at the opening of voting less ballots remaining at the close of polls should equal the total number of ballots cast. While this does not appear to be of major concern to stakeholders in Sint Eustatius nor in Saba²¹ in 2019, it is a valuable integrity measure and a best practice.²² Although this did not appear to have impacted the credibility of the elections, should additional ballots find their way into the system in future elections, without a proper reconciliation, the possibility of tracking the source of the breach is reduced. In addition, upon the receipt and arrival of newly printed ballots to Sint Eustatius, the ballots should be counted and stored securely with a reduced number of authorized individuals allowed access to the storage location prior to the election.²³ Political party observers should be allowed to observe the arrival, storage and deployment of the ballots, but should have no access to the storage facility itself.

7. **Institute Simple Campaign Funding Oversight Measures²⁴**

The Netherlands should consider instituting a simple campaign financing and spending oversight mechanism for Sint Eustatius, in line with international standards and recommendations from the United Nations Convention Against Corruption (UNCAC), the Council of Europe/Venice Commission, and the Organization for Security and Co-operation in Europe (OSCE)²⁵. For example, parties could be required to complete and submit simple post-election reports on income and expenditures, including the identity of donors providing funding above a certain threshold^{26,27}.

¹⁹ IFES 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 know Braille.

²⁰ IFES Note: The Lion's Den voting bureau was almost completely accessible with one small ramp missing at threshold entrance.

²¹

https://www.ifes.org/sites/default/files/ifes_report_saba_2019_island_council_and_senate_electoral_college_elections.pdf

²² <http://aceproject.org/ace-en/topics/vc/vce/vce01/default>

²³ According to a verbal communication with a Statian Government Official, eight government staff had access to the ballot storage facility, including several non-election-related officials.

²⁴ https://www.ifes.org/sites/default/files/ifes_ungass_2021_submission_november_2020.pdf

²⁵ <https://www.unodc.org/unodc/en/corruption/uncac.html>

²⁶ <https://rm.coe.int/16806cc1f1>

²⁷ <https://www.ohchr.org/EN/Issues/RuleOfLaw/CompilationDemocracy/Pages/CoEGuidelines3.aspx>

Public funding for party operations or campaigns should also be considered, along with additional reporting and oversight requirements²⁸. The dominant parties are clearly better funded and have a greater outreach capability. A cap should also be considered on donations and expenditure to assist in keeping the playing field level. Finally, the Central Voting Bureau could also make any received financial reports available to the public and posted to the Sint Eustatius government website. There are regional models for simple campaign funding oversight measures, particularly in Jamaica that might be considered.

8. Review the Counting System to Increase Transparency

Voting Bureau Staff should announce the party each ballot is cast for when sorting by parties. This would allow political party observers to tally simultaneously providing an independent control mechanism at the end of the process. The present system does not engage stakeholders who are generally unaware of what is taking place until there is an announcement of preliminary results. The same could be done when votes are being sorted by candidates. The results at the second polling station should be announced before the ballots are transported to the main station for consolidation.²⁹ In addition, all preliminary results should be released at the same time and not separately. Every effort should be made to encourage more openness and transparency and not less when it comes to the counting of ballots.

9. Reduce Voting hours to Reflect the Realities of Sint Eustatius

The voting hours for the 21 October Island Council elections were from 7:30 am to 9:00 pm, which is excessive based on the number of electors, the size of the island and the proximity of residents to the voting bureaus.³⁰ Consideration would be given to making the voting hours a standard 12 hours between 7:00 am and 7:00 pm. In addition, employers should be encouraged to give workers two hours' leave to vote. However, employees not afforded time off could realistically vote before or after work.

10. Clarify Complaints Process for Stakeholders to Ensure Consistent and Accessible Avenue for Appeals

While there are complaints mechanisms for different parts of the electoral process, these do not seem to be fully understood, particularly with respect to judicial review processes in The Hague. In addition, while verbal complaints processes are also provided for, it is unclear what remedies are available beyond simply recording these complaints in the official record of public meetings. Finally, it is not clear in the law that an avenue of appeal exists against final results. This is particularly important to resolve during the current suspension of democracy in Sint Eustatius.

11. Expand Voter Education and Information Efforts Prior to Election Day

The complex process by which votes are converted to seats for the Island Council is not well understood by the public. Insufficient understanding of the process represents an important vulnerability that could have impacts on public perceptions and credibility of the election. Interlocutors noted that the electorate receives insufficient information on a number of issues including the distinction between and mandates of the Island and Executive Councils. Educational efforts on the proxy process – and a voter's rights and obligations therein – may also be an area for

²⁸ <https://www.osce.org/odihr/77812>

²⁹ In the October 2020 Island Council Elections, results at Sports Center were counted but not announced prior to delivery of ballots to Lion's Den.

³⁰ IFES Note: Poll hours were expanded in order to reduce density of voters to mitigate concerns about Covid-19 which is applauded. However, application of new hours determined that they were not necessary.

improvement in future election cycles, as well as voter education in other languages and to voters with disabilities. In addition, a special effort should be made to educate youth and first-time voters about the electoral process prior to their first election in order to instill a democratic ethos. Both the interim Elections Project Work Group and the political parties competing in elections have roles to play in ensuring that voters are well equipped to make informed choices on Election Day. Existing and future civil society organizations should also be empowered to improve and expand voter education. Voter education messages should include information on the importance of women's representation and on the value of women's leadership.

12. Increase Electoral Transparency by Expanding Participation and Observation Opportunities

Political party 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 production, transportation and storage, as well as any election administration events including the previously mentioned counting process. In particular observers should be allowed to observe any election administration meetings and events. Finally, domestic non-partisan Stian citizen observers and/or non-partisan citizen observers from Saba and Bonaire should be allowed to observe future elections unless there is direct and irrefutable evidence of political party connections. A rigorous methodology and proper training have been proven to mitigate most concerns about political interference of citizen observers in many other countries including in the Caribbean region. This non-partisan observation initiative, viewed as a citizen review, could be done in cooperation with international observation efforts in order to develop long-term capacity.³¹

13. Re-Engage and Empower Regular and Legal Electoral Administration Authorities

Consideration should be given for reintroducing and empowering the regular and normal administration of elections via legal bodies outlined in the Electoral Act for the upcoming March 2021 Senate elections and certainly for the next March 2023 Island Council elections.

14. Review All Festivities, Public Gatherings and Campaigning Within Voting Bureau Compounds

Due to COVID-19 protocols, political parties and citizens were banned from holding festivities at traditional booths within the Lion's Den voting bureau compound. The actual physical polling location of the voting bureau is located within the compound. This may have unexpectedly helped to reduce possible perceptions of voter intimidation within the compound in past elections. IFES recommends that any festivities and/or public gatherings inside the actual voting bureau compounds be delayed until the close of the polls, irrespective of the pandemic, in order to reduce potential voter intimidation whilst entering the voting bureaus. In keeping with international best practices, actual political campaigning should always be explicitly barred from occurring within a certain distance from the edge of the compound, and not just from the voting bureau entrance.³² However, special consideration should be given to allowing supporters to gather outside the compound until the close of polls after which festivities inside the compound should be allowed to commence given their

³¹Additional information on the rights and responsibilities of non-partisan citizen observers is codified in the "*Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations*".

³²Dutch laws do not limit and/or ban political activity within a certain distance from the polling station as seen in many regional Caribbean countries.

historical and cultural importance to citizens. It is widely believed that the post-election festivities in Sint Eustatius do help to increase overall voter turnout.

15. Engage Political Leaders, Political Parties, and Journalists on the Importance of Gender Equality and Women’s Rights in Politics.

Throughout the world and in the Caribbean, women often face cultural and institutional barriers when running for office. In Sint Eustatius, women are often reluctant to run for elected positions because opponents and the media will often focus on a woman’s personal life – asking her questions about marital status, children and critiques of appearance, rather than focusing on her politics and proposed policies. Efforts should be made to educate political leaders and citizens that women actually represent the majority of citizens and voters³³ in Sint Eustatius and it is natural that women’s representation should be valued and all candidates treated equally with a focus on politics and policies, not personal life. Through awareness-raising and a greater understanding of the unique challenges facing women in political life, political leaders can help create a more welcoming environment for the participation of women as voters, candidates and ultimately elected leaders.

III. Technical Observation and Assessment Findings

Law Reform Process and Electoral System

Legal frameworks for elections should be unambiguous, understandable and accessible, supporting their consistent application by election administrators and adjudicators, the informed participation of citizens, and the equal treatment of candidates and voters.³⁴ When amending legal frameworks for elections, reform processes should be transparent, consultative and participatory, ensuring widespread stakeholder buy-in. Reform must also conclude in a timely manner, so that the rules do not change after stakeholders have begun investing themselves in the process.³⁵

With respect to the electoral system, at its core any system chosen “translates votes cast...into seats won by parties and candidates.”³⁶ However, despite its importance and unlike other areas of the electoral process, no consensus or international norm guides a country’s selection of electoral systems. Electoral system choice follows a number of internal factors, including the country’s political and social history and the type of representation that the country seeks to achieve.

In the period preceding the change in constitutional structure that resulted in Saba, Bonaire and Sint Eustatius becoming municipalities within the Kingdom of the Netherlands, a significant legislative reform effort was undertaken to convert Netherlands Antilles regulations into Netherlands legislation, and to modify provisions when necessary.³⁷ At the same time, European Netherlands legislation was declared applicable on the islands, and in certain cases, new legislation was introduced.³⁸ Hence, from October 2010, the Dutch legal framework, including the Electoral Act of 1989, has applied to elections in Sint Eustatius. The Electoral Act was amended prior to this date to provide for the new status of the three

³³ Written Communication from Statia Government Official: 50.76% of voters are women.

³⁴ 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.

³⁵ Venice Commission, Code of Good Practice in Electoral Matters, 52nd Sess., Doc. No. 190/2002, (2002), p. 65.

³⁶ Reynolds, Andrew, et al., Electoral System Design: The New International IDEA Handbook, International IDEA, (2005), p. 5.

³⁷ Five Years of the Caribbean Netherlands: Working of the New Administrative Structure, p. 4.

³⁸ Five Years of the Caribbean Netherlands: Working of the New Administrative Structure, pp. 4-5.

Islands, with Chapter Ya of the Act explicitly extending application of the law to Saba, Bonaire and Sint Eustatius.

The legal framework for elections also includes the General Administrative Law Act, the Law on Public Bodies of Bonaire, Sint Eustatius and Saba, the Financing of Political Parties Act (although this does not apply to municipal elections), and the BES Criminal Code. While it is not uncommon for provisions relevant to elections to be spread over a number of different laws, this can make the framework difficult to navigate. For example, to determine the appropriate complaints process for an election violation, it may be necessary to cross-reference several of these laws, which are detailed in nature. The electoral legal framework that governs Sint Eustatius does not include any legislated gender quotas or other affirmative action measures related to the participation of marginalized groups.

Since Sint Eustatius officially became a public entity within the Netherlands, section i10 and i11 of the Elections Act, which allowed for the merging of lists by parties to form a combined list for the declaration of results, was repealed on 1 December 2017. This was the first Island Council elections in which that section of the Elections Act was not applicable. Political party interlocutors and other electoral stakeholders did not reference this repealed section as having any meaningful impact either upon the electoral process or the political party campaign³⁹.

Some interlocutors suggested that the transition process from the Antillean framework suffered from several weaknesses particularly with respect to ensuring an inclusive process. These concerns were highlighted by one interlocutor who stated that there was “too little attention paid to cultural and historical elements” relevant to how elections are and have been conducted on Sint Eustatius. This was considered by some to be the case for both fundamental elements (such as electoral system and seat allocation), but also more minor procedural details such as not allowing party colors on the ballots and adopting much longer hours for polling. Interlocutors noted that the transition process had reintroduced proxy voting, which had been previously abolished on the island due to concerns around vote buying and undue influence (proxy voting is discussed further below).

With respect to the electoral system in place, the Netherlands (which encompasses the Caribbean Netherlands) has five territorial levels of government: the European Union, the bicameral ‘States General’ (made up of the Second Chamber and the Senate), provinces, water boards, and municipalities. The three public bodies of Saba, Bonaire and Sint Eustatius are equivalent to municipalities for the purposes of elections to the Island Council, and equivalent to a province for the purposes of indirect Senate elections.⁴⁰ The Sint Eustatius Island Council is equivalent to a Municipal Council⁴¹ and for elections to municipal councils, each municipality forms a single electoral district.⁴² Elections for all provincial councils, water boards, and municipalities are normally held on the same day. The temporary suspension of democracy in Sint Eustatius necessitated the election to be held out of sync to facilitate the return to democracy with the election of a new island council. Senate elections will be held in March 2021, and the next Island Council elections will ostensibly take place again in March 2023.

Sint Eustatius Island Council Elections

The background to the conduct of the elections on 21 October 2020 is significant in seeking to analyze the process. Prior to becoming a public entity (municipality) within the Kingdom of the Netherlands in October

³⁹ Dutch Electoral act (1989) § i8 2

⁴⁰ Dutch Electoral Act (1989), § Y.a.3.1.a.

⁴¹ Dutch Electoral Act (1989), § Y.a.3.1.d.

⁴² Dutch Electoral Act (1989), § E.1.4.

2010⁴³, the people of Sint Eustatius had voted to maintain the status quo by remaining a part of the Netherlands Antilles in a 2005 Status Referendum.⁴⁴ The other countries which constituted the Netherlands Antilles voted differently, with Curaçao and Sint Maarten opting for independence, and Bonaire and Saba for more autonomy within the Netherlands. Sint Eustatius, along with Bonaire and Saba, ended up by default as public entities (municipalities) of the Kingdom of the Netherlands. Subsequently, another status referendum was held in 2014 to resolve the fact that Sint Eustatius had become a public entity (municipality) which was inconclusive due to low voter turnout.⁴⁵ As a result, the status quo was maintained with a certain level of autonomy at the municipal or local level with the Dutch Government responsible for external affairs. However, allegations of gross mismanagement, lack of cooperation and a general unwillingness to engage in constructive dialogue to resolve topical issues eventually led to the suspension of democracy on the island and direct administration of its affairs by the central Dutch Government.⁴⁶ According to the report by the 'Committee of Wise Persons', "not only are opinions of others not accepted, the authority of others, such as ministers, the Kingdom representative and the Committee for Financial supervision (Cft), the acting governor, the opposition or the island's own public officials is not accepted, not even in a crisis situation after a hurricane."⁴⁷

The Sint Eustatius Island Council is made up of five seats, and members are usually directly elected for a four-year term.⁴⁸ The Council elected in March 2015 was legally removed from office by the Dutch Government in 2018.⁴⁹ The Dutch government was of the view that a minimum intervention period of two years was required to carry out the basic reforms required before the return of democracy to the island; the intervention period was extended in July 2020.⁵⁰ As a result, no elections were held in March 2019, when all other municipalities in the Kingdom held elections as scheduled, including Bonaire and Saba. Therefore, this election was conducted outside the regular four-year cycle and those members elected to the Island Council in October 2020 will not serve a full four-year term before the regularly-scheduled elections for a new Island Council in March 2023.

Based upon interviews with interlocutors, the level of support for the intervention in 2018 seems mixed at best, with no way to compare with the level of opposition to the intervention. There were interlocutors on the island who gave open and full support, while others were openly opposed to it, but most importantly there were those who saw the need for it but objected strongly to the way the intervention was implemented. This is important to note because it may have influenced the way electors voted. For example, speculatively it could suggest that those in opposition to the intervention – irrespective of need – may have voted for the return of the island commissioners who were removed from office in 2018.

Following the election observed by IFES in October 2020, the appointed Government Commissioner⁵¹ and Deputy Government Commissioner will continue to administer the affairs of the island while members of

⁴³ <https://english.kiesraad.nl/elections/elections-of-the-island-councils>

⁴⁴ https://en.wikipedia.org/wiki/2005_Sint_Eustatius_status_referendum

⁴⁵ https://en.wikipedia.org/wiki/2014_Sint_Eustatius_status_referendum

⁴⁶ <https://www.statiagovernment.com/news-and-tenders/news/2020/04/21/bill-concerning-reinstatement-of-provisions-for-the-administration-of-st.-eustatius>

⁴⁷ <https://www.dropbox.com/s/s1p5u573830k00s/Rapport%20Refunjol-Janssen%20%28Sint%20Eustatius%29.pdf?dl=0>

⁴⁸ Dutch Electoral Act (1989), § C.4.1.

⁴⁹ <https://www.statiagovernment.com/news-and-tenders/news/2020/04/21/bill-concerning-reinstatement-of-provisions-for-the-administration-of-Sint-eustatius>

⁵⁰ <https://www.statiagovernment.com/governance/news/2020/07/09/law-restoration-of-the-provisions-unanimously-passed-in-the-senate>

⁵¹ <https://www.statiagovernment.com/governance/government-commissioner-and-deputy-government-commissioner>

the Island Council are granted limited authorities⁵² that are gradually increased during four pre-determined phases.⁵³ The process of returning to full autonomy is dependent on the Island Council as a body satisfying twelve pre-determined conditions during the previously mentioned four distinct phases.⁵⁴ During this period, the Executive, which normally consists of a Lieutenant Governor and two commissioners, and which is usually overseen by the Island Council, will not be appointed.

While the 21 October 2020 Island Council elections initiated the Ministry of the Interior and Kingdom Relations' process to return democracy to the citizens of Sint Eustatius, they did not mark a return to democracy. In fact, the newly elected Island Council members only have limited authority and do not have the full powers that their counterparts on Bonaire or Saba islands have. This expected lack of authorities may have played a key role for voters during the campaign period and as they voted on 21 October.

Members of the Island Council are chosen according to a system of party-list proportional representation as per Netherlands law. In the European Netherlands, numerous parties vie for seats at each level of government, and generally no single party secures an overall majority, so several parties must cooperate to form a coalition government. The exception is in very small municipalities, where one party will occasionally win all seats or secure a majority as is the current case in Sint Eustatius. See Figure 1.

According to the Electoral Act, as it applies to municipal councils with fewer than 19 seats, full seats are awarded to a list "as many times as the total vote for that list contains the electoral quota,"⁵⁵ which is calculated by dividing the total votes cast by the number of seats to be allocated. Residual seats are then assigned under the law "sequentially to the lists whose total votes have the largest remainder when divided by the electoral quota," excepting lists that have not achieved receive at least 75% of the quota.⁵⁶ Once all eligible parties have received a residual seat, any remaining seats are awarded using the system of highest averages "provided always that no more than one seat may be awarded in this way to any of the lists."⁵⁷ Use of this method means that smaller parties are unlikely to get a residual seat; the system ultimately benefits larger parties.

In the October 2020 Island Council elections (results depicted in Figures 1 and 2), the party threshold for seat allocation (or "quota") was 317 votes. The 75% threshold rule (240 votes) eliminated the United Peoples Coalition (UPC), which polled a total of 124 votes from contention for seats. The Progressive Labour Party (PLP) (815 votes), which had two seats in the previous council, won three seats, giving it a majority in the five-seat council. The Democratic Party (DP) (647 votes) was assigned the two remaining seats. Following the announcement of results, a member of the DP list resigned from the party to become an independent member of the Island Council citing differences with the party leader.

⁵² https://www.eerstekamer.nl/wetsvoorstel/35422_wet_herstel_voorzieningen

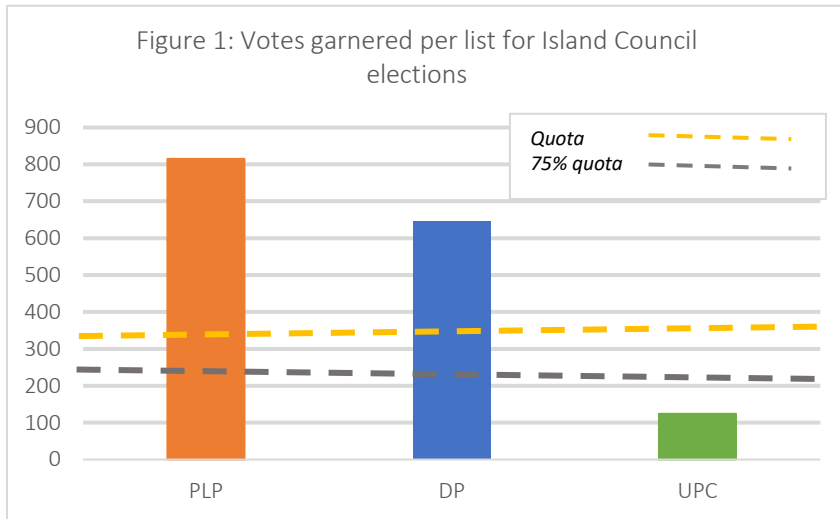
⁵³ <https://www.sxm-talks.com/the-daily-herald/commissioner-encourages-statias-eligible-voters-to-exercise-their-right-the-daily-herald/>

⁵⁴ <https://www.statiagovernment.com/governance/news/2020/07/09/law-restoration-of-the-provisions-unanimously-passed-in-the-senate>

⁵⁵ Dutch Electoral Act (1989), § P.6.

⁵⁶ Dutch Electoral Act (1989), § P.8.

⁵⁷ Dutch Electoral Act (1989), § P.8.



Given this election results, a number of questions arose in light of the fact that it was ostensibly the prior actions of the previous PLP councilors which reportedly triggered the suspension of democracy on the island. In the end, all five members of the disbanded Island Council were voted in and assigned seats. In speaking to civil society groups, former politicians, church leaders and individual citizens after the election, questions were raised

in relation to the fact that the elected member receiving the most votes was the most vocal about the Dutch intervention. Opinions as to the message behind this varied, with some suggesting that the Dutch Government, having made certain allegations of misconduct against the members of the previous Council, made no effort to prove the allegations, thus allowing the candidates to campaign on the premise that they were falsely accused. This, it is felt, afforded them sympathy votes from the electorate. Others were of the view that the Dutch government squandered its credit with the population by taking too long to call the election. Finally, there were some of the view that the election should not have been held until 2023, which would have afforded the administration installed by the Dutch Government more time to put systems in place to prevent a recurrence of the allegations of gross mismanagement which led to the takeover. Despite the speculations, there was no clear indication as to why the electorate voted the way it did.

Figure 2: Final Island Council Elections Results

Party	Candidates	Total Votes
Progressive Labor Party	Leerdam, R.M.C.	111
	Woodley, C.a.	116
	Schmidt, G.W.	96
	Merkman, R.E.	168
	Simmons, D.A.U.	10
	Tearr, R.R.C.	33
	Spanner, geb. Schmidt, A.C.	32
	Jones, I.M.	15
	Abreu Gomez, J.C.	17
	Lopes, C.T.	46
	van Putten, C.I.	171
Democratic Party	Spanner, F.E.A.	132
	Sneek, N. (Koos)	121
	Simmons, E.C.	55
	Woodley, J.C.A.	98

	Carty e/v Spanner, R.A.	60
	Gibbs e/v Mercera, S.R.	42
	Fleming, S.S.M.	64
	Cyntje, A.	7
	Spanner e/v Korstanje, M.L.	6
	Woodley, C.M.K.	43
	Herrera Rodriguez, H.	6
	van Heyningen, A.P.	13
United People's Coalition	Henriquez, E.J.	90
	Nova Bonilla, C.L.	21
	Richardson, D.V.	13

Political Party and Candidate Registration, Financing, and Campaigns

Political Party 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 when, how, and where parties register (and that these provisions be applied uniformly across political groupings), what the requirements for registration are and how registration will be verified by the relevant authorities.

The current legal framework is quite pellucid on when, how, and where parties register, what the requirements for registration are and how registration will be verified by the relevant authorities. These provisions are to be applied uniformly across political groupings.

The electoral law of the Netherlands specifies that local political parties must register their names with the Central Voting Bureau on the island to be eligible to compete in Island Council elections.⁵⁸ Parties which had submitted a valid list of candidates for the 2015 Island Council elections were exempted from registering unless they were participating under a different name or merging with another party that did not submit a valid list in 2015. Parties not exempted were required to go through the registration process and pay the requisite security deposit of USD 225 before 24 August 2020. According to section 3.5 of the *Information Bulletin of the Public Entity of Sint Eustacius* dated 21 October 2020,⁵⁸ “the security deposit will be paid back if 75% or more of the votes-per-seat ratio (*kiesdeler*) is achieved”.

Candidate Selection

In general, a citizen should be permitted to stand for election and to 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 on and the process of nomination are clearly stated in the electoral law. In many electoral systems, political parties determine or delimit the choices of candidates available to voters on the ballot. Many legal frameworks establish that political parties should “democratically” elect their candidates, but the concept is rarely defined further in law. Only in a few

⁵⁸ Information Bulletin of the Public Entity of Sint Eustacius Island Council Elections 21 October 2020: “Local political parties who wish to participate in the Island Council Elections on 21 October 2020, must register at the Central Voting Bureau of the Public Entity of Sint Eustacius. The name will be registered in a special register that is kept up to date by the Central Voting Bureau.”

countries does legislation provide for the process by which candidates should be selected. Parties should, however, establish clear rules before each election to mitigate internal conflict and increase the legitimacy of those selected.

Eligibility requirements for the Island Council require that candidates be Dutch nationals and residents of Sint Eustatius who have reached the age of 18 and are not otherwise excluded under the law. Nomination Day, 7 September 2020 was the deadline for eligible parties to submit their list of candidates to the assigned member of the main voting bureau at the census office.

Since the suspension of democracy in Sint Eustatius, two of the three political parties have changed leadership. The selection process is internal to the party. Compared to other Caribbean jurisdictions, it is noteworthy that two of the three parties had female leaders, and the third, although headed by a male, submitted a candidate list with two of the three candidates being female. It is worth noting that the candidate slates for the 21 October elections included 11 women and 15 men. Although there are no legal barriers to women's participation, several interlocutors noted that during a campaign, opponents of women candidates and the media often focus on women's candidates' personal lives, rather than on their policy suggestions or stances. This focus on women candidate's personal lives has led to the reluctance of some women to run for office, as the consequences of the public discussion of their personal lives can have far-reaching negative consequences beyond the campaign.

In addition, the lack of funding for political parties (as described further below) may be a deterrent to candidates who do not have the personal resources to marshal in support of their campaigns. Throughout the Caribbean, women are often less likely to have the financing and/or resources to support their campaigns, as they lack access to many of the networks that male candidates do, and they might not have as much control over household finances as male candidates do.

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. This standard of transparency and equity should apply equally to local elections as well as national elections, with reasonable adjustments to acknowledge that the capacity to comply with a complex political finance oversight framework may be more limited for local parties and candidates.⁵⁹

The present financing system for elections in the Netherlands is different for parties contesting elections at the national level versus those doing so at the local level. This has left the door open at the municipal level for better resourced parties to dominate the landscape at the expense of the parties with limited resources. Despite the fact that the Island Council does exercise significant influence over the day-to-day lives of the residents of Sint Eustatius, there are no legal mechanisms to govern or monitor how political parties and candidates solicit and spend funds in elections to these bodies. The absence of any legal oversight mechanism in the sourcing and expenditure of funds for elections by political parties and candidates means that political parties in Sint Eustatius are under no disclosure obligation, and there are no limits on the types of funding received, including anonymous donations or foreign donations. There is

⁵⁹ UNCAC Article 7.3, Council of Europe Recommendation 2003(4) and ODIHR/VC guidelines on the regulation of political parties 2016.

also no public oversight system in place to ensure donations raised by political parties are actually used to finance campaign activities.

Information received from interlocutors indicates that political parties and candidates fund their campaigns primarily from personal resources, with smaller amounts through fundraising activities, contributions from businesses and very small donations from political party supporters. The costs to campaign during this election included registration fees and expenditures relating to voter outreach, in particular radio broadcasts, posters, flags, billboards and t-shirts. However, because public rallies or events were limited during this election due to COVID-19, party expenditures were speculatively lower than in previous elections. The lack of oversight and transparency in campaign finance may have fed allegations that “proxies have been bought and electors paid to vote for a political party” according to interlocutors who also referred to the results as “paid results”.

The Netherlands should consider reforming the campaign financing and spending oversight mechanism for Sint Eustatius in line with international standards and recommendations from the UNCAC, the Council of Europe and OSCE/ODIHR.⁶⁰ For example, parties could be required to complete and submit simple post-election reports on income and expenditures, including the identity of donors providing funding above a certain threshold. To ensure these requirements are practicable in the Sint Eustatius context, the Central Voting Bureau could provide a simple template and written guidance to each relevant party or individual, as well as clear and reasonable timelines for submission of the required information. Public funding for party operations or campaigns could also be considered, along with additional reporting and oversight requirements. Finally, the Central Voting Bureau could also make any received financial reports available to the public and posted to the Sint Eustatius government website. There are regional models for simple campaign funding oversight measures, particularly in Jamaica, that might be considered.

Electoral Operations

Institutional Framework

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. Independent and impartial election commissions are necessary to ensure the proper conduct of elections, or at a minimum eliminate serious suspicions of irregularity. Public confidence in the fairness of the electoral process and the accuracy of electoral results depends in large measure on both the actual and perceived impartiality of the Election Management Body (EMB), its sub-national institutional structures, and other state bodies responsible for supporting the electoral process.

In normal times, the principal/central electoral committee is composed of five members, including a presiding officer, a deputy presiding officer and three deputy members. The Island Governor acts as presiding officer, and other members are appointed by the Island Executive Council. While there are clear eligibility requirements in the law, the appointment and dismissal process are not further elaborated, and it is conceivable in such a small community that these appointments would be called into question as not being impartial. Presumably, this electoral committee will be



Political party and voter advertising

⁶⁰ Ibid.

reconstituted for the March 2023 elections, but it could be possibly reinstated for the March 2021 elections as well. However, given the suspension of democracy, the 'Project Group Elections ER 2020' led by the Government Commissioner made up the larger institutional framework overseeing electoral operations. This group is brought together every election to guide and support the electoral process.

Sint Eustatius has a Central Voting Bureau which is primarily responsible for the electoral process. The Central Voting Bureau normally carries out the following functions:

- Registration of the appellations of political parties
- Candidate nomination
- Determination of the election results
- Allocation of seats

The planning for the election was undertaken in the midst of the global COVID-19 pandemic. The virus is known to affect persons of all ages, but studies have shown that the elderly and individuals with underlying conditions are more susceptible and likely to die from the virus. The challenge therefore was to create protocols during voting to ensure a safe environment for both electors and poll workers. An Elections Project Work Group was established to plan the elections, and to create measures which would ensure a safe campaign period, polling on election day and subsequent counting of the votes. This also meant working closely with health officials in designing the measures and with the security forces to ensure its enforcement. Political parties were forced to review their campaign strategies as a ban was placed on large public gatherings. This meant no mass meetings and therefore the parties took to social media, radio and door-to-door campaigning in an effort to reach voters. Party leaders stated that the absence of a published voters list due to Dutch privacy laws placed them at a disadvantage since they were unable to target voters specifically but had to use a more generalized approach because they did not know who was on the voter list. Most countries in Europe restrict access to voter lists, including to prevent political party micro-targeting.⁶¹

The Elections Project Work Group also took the decision to establish a second polling bureau on the island with a view to reduce overcrowding and to make it easier to facilitate social distancing. The new voting bureau located at the Earl Merkman Auditorium (Sports Center) was equipped with accessibility ramps and access points to accommodate voters with disabilities and older voters who were advised through a government sponsored public awareness campaign to utilize the new location. However, any elector could utilize either of the two voting bureau locations.

The original polling location located at the Ernest Van Putten Youth Center (Lion's Den) was staffed by persons who traditionally performed those functions. The staff for the new voting bureau location were new and provided with extensive training and simulations of polling procedures. A dry run was conducted at each voting bureau prior to the election. The voting bureau staff at both polling stations were demographically diverse. It should be noted that political party representatives were not represented at the meetings of the 'Project Group Elections ER 2020' either as observers or as participants and therefore did not contribute to the initial planning which was not problematic. However, the political parties were advised of the electoral plans through regular briefing sessions with the Government Commissioner and used that avenue to make suggestions, some of which were incorporated according to interlocutors.

In general, interlocutors were satisfied with:

- The level and content of the voter awareness campaign
- Selection and training of polling staff

⁶¹ <https://policyreview.info/articles/analysis/regulation-online-political-micro-targeting-europe>

- The addition of the second voting location
- Information on government website
- Frequent briefing sessions by Government Commissioner

There was dissatisfaction with:

- The absence of a voter list (complete or redacted)
- The fact that party colors were no longer included on the ballot
- The late issuing of voting passes
- Allegations of abuse of the proxy system by other parties
- Voting passes in Dutch language only
- Change to the format of sample ballots sent to voters

Overall Impressions of Election Day

The staff of the voting bureaus arrived on time to receive the ballots delivered by the police force from the storage room at the Census Office. The staff was well trained and effectively carried out the setting up of the voting bureau. The members of the voting bureau at the Lion’s Den were told that they had been given 1300 ballot papers, but upon counting determined that they received 1310 ballots. It was not observed whether the staff working at the voting bureau located at the Sports Center counted the number of ballots they received.

Polling started promptly at 7:30 am at both voting bureaus, but electors had to wait outside while members of the voting bureaus first cast their ballots. Although legally permitted, political party observers voluntarily did not observe the opening of the voting bureaus to confirm that the ballot boxes were in fact empty and to watch the members of the voting bureau cast their ballots.

Electors were free to decide which voting bureau they would vote at, with most choosing the traditional location at the Lion’s Den. Approximately one third of the voters went to the Sports Center, ensuring there were no long lines at either location throughout the day.

The voting locations were laid out to facilitate adherence to COVID-19 protocols.⁶² The staff of the voting bureau sat behind plexiglass dividers which separated them from voters, while they themselves sat six feet apart from each other. There were markers on the ground indicating where voters were to stand to ensure they remained two meters apart. The hands of voters were sanitized three times during the process: at the entrance, after interacting with the chairperson of the voting bureau before voting and upon leaving the polling station. Voters used separate doors to enter and exit the locations to ensure they did not have to come in close contact with each other. The voting booths and the pencils were sanitized immediately after each voter exited the voting booth. The vast majority of voters adhered to the COVID-19 protocols by observing social distancing, sanitizing their hands and wearing masks. They also



Voting bureau members display empty ballot box before polling

⁶² IFES observers were provided with a copy of the Sint Eustatius Safety Plan and found it to be quite comprehensive and generally in line with developing best practices, particularly in regards to COVID-19 mitigation practices.

promptly exited the polling locations despite it being a tradition for them to remain after voting as part of the festive atmosphere associated with previous elections on the island.

Voting progressed smoothly throughout the day with voters casting their ballots in secret and with no visible signs of intimidation. Approximately six electors had difficulty communicating with the polling officials, in part due to the ballots only being available in Dutch. Voting bureaux closed on time at 9:00 pm, as there were no electors in line at closing time. In addition, approximately ten electors were turned away due to a lack of or improper identification.⁶³



Lion's Den Polling Station

Voting bureaux in the Netherlands are open between the hours of 7:30 am and 9:00 pm. The staff of the voting bureau remained throughout the entire day with someone else covering to facilitate personal breaks. Despite the hours being set by Dutch law, the number of electors on the list (2012) could warrant consideration to returning to the voting hours prior to 10/10/10 when the polling period was from 8:00 am to 7:00 pm or switch to the 7:00 am to 7:00 pm time used in several jurisdictions. Some interlocutors noted that the original, more truncated period of time was sufficient for the purposes of the electorate, given the island's small geographic size and proximity of the two voting

bureaus to residences, businesses and government offices. Any changes would appear to be possible without legal reform given that the Electoral Act states that "if required due to a voting bureau's location, the municipal executive may decide that voting at the voting bureau in question shall start earlier or later than 07.30 hours and continue until a time earlier than 21.00 hours."⁶⁴ Any determination to alter the hours of polling should prioritize the inclusiveness of the electoral process for all voters including those who may not be able to cast a ballot during their working hours. Under the law, employers are obligated "to ensure that all the voters in his employ have an opportunity to cast their votes if they cannot do so outside fixed working hours and provided that the voters are not as a result prevented from working for more than two hours."⁶⁵

Voters are permitted under Dutch law to cast their ballot at any voting bureau within their municipality. As there are now two voting bureaux in Sint Eustatius, concerns about long lines and ballot shortages under this scenario are relatively limited. However, it was observed that additional ballots were available at the nearby Census Office and could have easily been delivered to the voting bureau if needed.⁶⁶

IFES observers noted that the mood on Election Day was one with a high level of positive expectancy. Reports of a celebratory mood and atmosphere were not evident until the end of polling, when some party supporters started congregating outside the compound of the Lion's Den.

A small number of party observers gathered inside the Lion's Den to observe the conclusion of counting and for the preliminary announcement of results. There were no acceptance speeches by the successful party leader, although there was a late-night celebratory automobile caravan around the island immediately following the release of preliminary results by the Government Commissioner.

While party observers were permitted to observe the voting process inside the voting bureau, none turned up prior to the close of polls despite an authorization from the 'Project Group Elections ER 2020'

⁶³ Written Communication from Statia Government Official

⁶⁴ Dutch Electoral Act (1989), § J.1.3.

⁶⁵ Dutch Electoral Act (1989), § J.10.

⁶⁶ Written Communication with Statia Government Official: 404 ballots were kept in reserve.

that one observer from each of the three political parties would be accommodated inside. Several electors expressed relief about their absence since some felt it was intimidating.

Voter Eligibility and Vote Process

In order to vote in the Island Council elections, an individual must be at least 18 years old on Election Day, and a legal resident of Sint Eustatius on Nomination Day.

- Residents who have Dutch nationality must also be registered in the Base Registry Person BES on Nomination Day, 7 September 2020.
- Residents who do not hold Dutch citizenship must reside legally in the island (or in one of the other public entities or European Netherlands) for a continuous period of at least five years on 6 September (the day before Nomination Day). They must also be registered in the Base Registry Persons BES on Nomination Day.⁶⁷

The administrators of the civil registry use the above criteria to determine one's eligibility to vote. Once the criteria are met, eligible voters are sent an invitation to vote (voting pass) for the election. Persons who believe they meet the criteria to vote but were not issued with a voting pass can request a review of the register and will be required to provide evidence of eligibility. Voting passes carry unique serial numbers and are delivered to voters at their home address at least 14 days prior to Election Day.⁶⁸ Under the law, "a voter who is qualified to take part in the election but whose voting pass has been mislaid or who has not received a pass shall, at his request, be issued with or sent a new voting pass as no one is permitted to vote without a valid voting pass."⁶⁹ One form of identification is also required to vote (which may have expired within the five years prior to Election Day). Acceptable forms of identification are outlined in Section 1 of the Netherlands Compulsory Identification Act (*Wet op de identificatieplicht*) and include passports, certain driver's licenses and residency cards.

One feature of the Dutch system that is applied in Sint Eustatius and that diverges somewhat from common international practice is that there is no comprehensive voter list provided to the polling officials on Election Day to be checked when voters arrive at the polling station. Instead, under the law, there is a register of invalid voting passes, produced the day before Election Day and maintained at each voting bureau/voting bureau. A voting pass is included on this list if it has been replaced with a new pass (as per the process indicated above); superseded by a certificate of authorization or voter's pass per the proxy process; determined that "its holder should not be registered as a voter or has died before casting his vote;" or "it has been established that the voting pass has been stolen or is otherwise unlawfully in circulation."⁷⁰

According to officials at the Census Bureau, 2102 individuals were eligible to vote in the Island Council Elections, with 49% being males and 51% females. Before voting, the voter was asked to provide his or her identification and voting card, given a blank ballot for themselves and along with any proxy ballot(s) proceeded to the voting booth, marked and placed the ballot(s) in the box. All of this was in keeping with the COVID-19 protocols of maintaining social distancing, wearing a mask and sanitizing hands at three different stages of the process.

It is noteworthy that no political party observers were continuously present to observe proceedings throughout the day at either polling location. Prior to the election, the political parties expressed the view

⁶⁷ Written Communication with Stata Government Official: 350 voters did not have Dutch citizenship.

⁶⁸ Written Communication with Stata Government Official: 5 voting passes were issued within 14 days of the election.

⁶⁹ Dutch Electoral Act (1989), § J.8.1.

⁷⁰ Dutch Electoral Act (1989), § J.7.1.

that they were not permitted to observe polling, the Government Commissioner indicated via personal communications to the IFES Team that each political party could have an observer in each location. Ordinance 15 was issued immediately prior to the election stating that observers were permitted in polling stations, but it did not specifically say political party agents or non-partisan observers.

Proxy Voting Process

The options used around the world to widen the franchise to include voters who cannot cast a ballot in person on Election Day each have their own limitations with respect to the provision of a secret and secure vote.⁷¹ Provision of external vote options may serve the admirable purpose of widening the franchise, but can also engender political controversy and debates over the use of limited resources. As noted in the International IDEA handbook on external voting: “The values of electoral inclusion, electoral system sustainability and electoral integrity may pull in different directions, and a balance must be achieved.”⁷²

Netherlands electoral law permits the use of the proxy vote in which an elector who is unable to vote on Election Day can have someone else vote on their behalf. The law states that “a voter who does not expect to be able to vote in person may vote by proxy in accordance with the provisions of this chapter”.⁷³ There are two forms of proxy voting in use: transfer of the voting pass (accompanied by a copy of the original voter’s identification), or a written proxy, in which the voter submits an advance written request to the relevant executive office.

For the 21 October Island Council elections, an individual was able to cast as many as three ballots: one on his or her own behalf for the Island Council and one ballot for two additional voters who had selected them to be a proxy.⁷⁴ A considerable number of ballots (37.9% or 613 of the 1616 votes cast) for the Island Council elections were cast via proxies on Election Day.⁷⁵ Apparently, this rate of proxy use exceeds the use of proxies in European Netherlands significantly.⁷⁶

The ACE Electoral Knowledge Network indicates that proxy voting is permitted under the law in very few jurisdictions globally (both the Netherlands and the United Kingdom offer the option), noting that “a proxy vote may be given where a voter is unable to attend a voting station through infirmity, employment requirements, or being absent from the area on



Written voter proxy sample

⁷¹ 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.

⁷² 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.

⁷³ Dutch Electoral Act (1989), § L.1.

⁷⁴ Dutch Electoral Act (1989), § L.4.

⁷⁵ Written communication from Statia Government Official

⁷⁶ <https://www.cbs.nl/en-gb/news/2011/09/many-dutch-vote-by-proxy>

voting day – often similar qualifications to those for voting by post. Such arrangements may be implemented to provide accessibility where other forms of absentee voting are relatively restricted or unavailable.”⁷⁷ The proxy voting process raises important concerns for electoral integrity, however, as the proxy fills out the ballot in the voting booth, and there is no way for a voter to determine whether his or her vote has been cast as desired. ***All interlocutors in Sint Eustatius raised serious and significant concerns about the proxy voting process and the potential for intimidation or manipulation.*** Parties openly admitted to organizing proxy voting for their supporters. In fact, one party suggested that a proxy strategy was required, since other parties were doing so, and that a party could only abstain from the practice at its own electoral peril. There were allegations of voters being rewarded (cash or in-kind) to appoint a proxy. There were anecdotal reports of older voters who might have difficulty going out on Election Day being coerced by relatives to appoint them as proxies without any guarantee that they would represent the wishes of the voters. Interlocutors also reported cases of parents “taking” the proxies of voting age children living in their households. The overall view of proxies by all interlocutors was that the system was being abused and that voters willingly handed over their voting passes and copies of their identification. This most likely resulted in a higher voter turnout than would have been the case had proxy voting been limited by additional regulations.

Several candidates interviewed felt that the use of proxy voting presented the opportunity for fraud, vote buying and soliciting. It was generally agreed by all interviewed interlocutors that proxies had to be restricted to specific cases where the voter would be off the island or was medically proven to be incapacitated on the day of the election. Some interlocutors were of the view that the practice should be discontinued all together. One candidate noted that the proxy process is “a form of corruption and the practice of intimidation with the proxies is widespread”. Another candidate observed that there are no real checks in the review process to ensure that voters granting a proxy have understood and consented to what they are signing. A more mundane but nonetheless important consideration is that the proxy process also results in a substantial amount of paperwork for the proxy voter and for poll workers to process.

Postal voting is permitted under the law for elections to the Second Chamber of the States General. Extending postal voting to Sint Eustatius voters during all elections who will be off the island on Election Day could serve to improve the integrity of the electoral process, protect the secrecy and security of individual ballots and widen the franchise as was intended with the proxy process. An alternative method in some jurisdictions is to designate a proxy to hand carry to the polls a ballot that has been filled out, secured in a secrecy envelope, and signed – all by the voter.

The OSCE Election Assessment Mission (2017) also previously recommended to the Netherlands that the proxy voting process be reformed in the country, finding “Although proxy voting in the Netherlands enjoys broad support and is considered to facilitate access to voting, the scale and disproportionality of its use are at odds with the OSCE commitments and other international standards for ensuring the equality and secrecy of the vote and respect for voters’ choices.”⁷⁸ Although no such records are available for the Caribbean Netherlands, the OSCE’s review of the process in the European Netherlands indicates “a historically higher rate of use among women (with men more likely to serve as proxies) and among ethnic and religious minorities.”⁷⁹ While proxy voting is a valid way to enable those with limited mobility to vote,

⁷⁷ Vote Counting: Proxy Voting, ACE: THE ELECTORAL KNOWLEDGE NETWORK, <https://aceproject.org/ace-en/topics/vo/voa/voa02/voa02e>.

⁷⁸ The Netherlands Parliamentary Elections: Election Assessment Mission Final Report, pp. 16-17.

⁷⁹ Ibid.

“family voting”, or enforced proxy voting, can be used by male heads of household to influence how women in their household vote, taking away a woman’s right to vote for the candidate or party of her choice. Any reforms to proxy voting should take into consideration the fact that this system can be used in a harmful way to illegitimately disenfranchise women and dependents.⁸⁰

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.

The process of vote counting in Sint Eustatius was modified for the first time as a result of the addition of a second voting bureau. Previously, voting took place in one location, after which the ballots were counted and the results announced. The addition of a second voting bureau resulted in ballots counted at each location, the results from the Sports Center taken to the Lion’s Den and then merged to produce the final result. The members of each voting bureau reconciled the number of cast ballots with the valid voting passes and written proxy certificates prior to counting votes, but did not reconcile the number of blank ballots received with the number of uncast ballots. The reconciling of ballot papers is critical given the fact that two ‘additional ballots’ were found in the ballot box during the counting at the Sports Center. These were easily identified as the sample ballots issued with the voting passes, but had they been valid ballots, there would have been no way of verifying whether or not they came from the ballots printed and issued for the election.

Although the counting process was conducted in the view of party observers, the media and members of the public, it was conducted in near silence (though under the law, anyone present could have raised objections during the process). At the end of counting at the Sports Center, no results were announced. In the interest of transparency, consideration should be given to announcing the preliminary results at the Sports Center before physically moving the ballots and results to the Lion’s Den. In addition, a legal form should be completed with the preliminary results from the Sports Den and optimally posted publicly and/or distributed to observers prior to the transfers of the ballots and election materials to the Lion’s Den. There is little point in observing the process at the Sports Den if observers do not know what results will be merged with the count at the Lion’s Den.

While the counting process did not permit observation of individual ballots, polling officials allowed IFES observers to view the training and reference materials they relied upon when determining whether a ballot should be declared invalid. These materials were clear, comprehensive, and provided numerous visual examples of what would constitute a valid or invalid ballot under the law. Instructions on marking the ballot were also prominently displayed in polling places. As a consequence, very few ballots were declared invalid, and when this did occur, the decision of polling officials appeared accurate and in compliance with the legal framework.

On Election Night, the staff at the voting bureau located at the Lion’s Den were seen counting and recounting the ballots, which took an inordinately long time given the small number of voters. After a while, it became clear that there was some concern in relation to the reconciliation, but those witnessing the process were left to speculate given that there were no official or even unofficial public

⁸⁰ <https://aceproject.org/ace-en/topics/ge/ge5/ge55/family-and-proxy-voting>

announcements during the counting process. After hours of waiting, the Government Commissioner eventually addressed the public and the media, advising that only the party totals would be announced as there was some difficulty balancing the candidates' votes for one party, and that this could be problematic as a single vote could determine which candidate was assigned a seat on the island council. The parties and others present expressed their disappointment and indicated that the candidates' results should have been announced as was customary. They stated further that they understood that the results were preliminary and that there could be slight adjustments to the numbers on the final count as had happened in the past. The preliminary results announced had a total of 1617 votes cast (PLP- 815, DP-647 and UPC-124). Island Council seat allocation based on the preliminary results announced on 21 October was PLP-3, DP-2 and UPC-0.

Directly following counting, the sealed results packets and results form (*proces-verbaal N 10-1*) were handed over to the police for safe keeping. Final results were publicly declared two days later, by which time the IFES Team had departed the island, at a meeting of the Central Voting Bureau. The final results showed a total of 1616 votes cast (1586 valid votes, 14 blank votes, 16 invalid votes), with 815 votes for the PLP, 647 DP and 124 for UPC. At the time no explanation was given for the difference of one vote cast.⁸¹ Interestingly, the DP received more votes at the Lion's Den and the PLP received more votes at the Sports Center. Based on the final results, the seat allocation remained the same as announced at the time of the preliminary results announcement.



Polling officials count ballots in Lion's Den at close of polls while voters, candidates, and journalists watch

From reports received following the departure of the IFES Observer Team, no one witnessed a final count, but were instead informed of the final results by the Government Commissioner.

According to international best practice, results forms should include several specific pieces of information, including the number of ballots received at the opening of voting; spoiled ballots; unused ballots; invalid, cancelled and blank ballots; valid ballots for each candidate or party; total valid ballots; and total voters who cast ballots on Election Day.⁸² The paper results forms in use in the Netherlands provide a written accounting and narrative for the manual count conducted at the voting bureau level. The results form used for tallying votes at the voting bureau asks for the following information: opening times for the polls; a record of the polling officials present during Election Day; narrative of objections made by voters during polling and counting and any response from the voting bureau; a narrative of any irregularities (e.g., late poll workers or a full ballot box prior to the end of polling); the number of voters, disaggregated by valid voting passes and proxy certificates; the number of counted ballots, disaggregated by valid votes, blank ballots and invalid ballots; reconciliation of the number of admitted voters and the number ballot papers counted and narrative explanations for any deviations thereof; and signatures of the voting bureau members. An appendix contains the number of votes per list and candidate.

Form *N 10-1* is relatively clear and comprehensive, though it lacks a reconciliation of the number of ballots received at the opening of voting relative to the total number of ballots cast. Accordingly, it would not be possible to assess with certainty whether any blank ballots were waylaid during Election Day (and any

⁸¹ Written Communication from Statia Government Official: "Discrepancy in Communication".

⁸² Vote Counting: Transmitting Voting Station Results, ACE: THE ELECTORAL KNOWLEDGE NETWORK, <https://aceproject.org/ace-en/topics/vc/vce/vce04/default>.

implications thereof). Poll workers were observed during the count filling in a draft of the *proces-verbaal* in pencil, to enable any corrections prior to submission of sealed ballot packets and the final *proces-verbaal* to the Central Voting Bureau.

At the central level (in this case, the votes from the two voting bureaus were aggregated together), form P 22-2 is used to provide an official accounting of the final results. This form provides fields for the following information: Central Voting Bureau session date, time and location; the aggregate number of votes per list and candidate; the number of blank and invalid ballots; a reconciliation of the total number of ballots cast against the number of voting passes received; the number of ballots cast by proxy; the quota calculation; the allocation of full and residual seats by list number; the total seats allocated per political grouping; votes by candidate for each list receiving seats; recount information, as relevant; and the number of votes received by specific candidates who garnered full and residual seats.

There were no complaints from the public on the process by which votes are converted to seats for the Island Council and there also appeared to be general understanding and acceptance by the electoral stakeholders, which may not be the case among the general voting population.

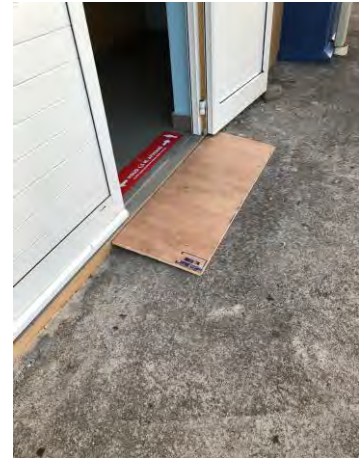
Concerns

The counting process should be reviewed to increase transparency about what is happening at each stage by encouraging more engagement between the voting bureau staff and electoral stakeholders witnessing the count. IFES observers felt that, had the counting process had been more engaging, confidence in the next day's announced results would have improved. While there is nothing to suggest that this took place, the fact that only the members of the voting bureau were able to verify the ballots on the night of their tabulation could leave room for the possibility that the cast ballots could theoretically be adjusted overnight to reflect the results announced the next day. Greater electoral stakeholder engagement is therefore advocated to avoid any room for such interpretations.

After a very good day of adherence to COVID-19 protocols, there was some breakdown at counting at the Lion's Den after the close of polls. Island Council elections have traditionally been marked by a festive atmosphere with celebrations and gatherings. Although this did not take place until the end of the day, supporters did gather outside the compound without adhering to the social distancing guidelines, and some were not wearing masks. Inside the counting center at the Lion's Den, some political representatives, observers, media and officials gathered without observing the COVID-19 protocols such as mask usage and social distancing. The staff of the voting bureau conducting the count were separated from others by plexiglass dividers.

Accessibility

According to the *Kiesraad*, “the Executive Board has a duty to ensure that no fewer than 25% of the total number of voting bureaus are accessible to voters with an impairment.”⁸³ Parking facilities, bathrooms and entrances to the voting bureau at the Sports Center were fully accessible to voters with disabilities, and a public awareness campaign encouraged persons with disabilities to vote at its location. The voting location at the Lion’s Den was not fully accessible because there was a single step at entrance to the voting bureau which would prevent wheelchair access. The Lion’s Den and Sports Center locations had four and three voting booths, respectively, separated by privacy screens. The voting booths were adjustable and at least one was set at a level to facilitate voting by wheelchair users. The opaque ballot boxes were labeled and suitable for the occasion, although consideration should be given to use more traditional ballot boxes in the future.



A newly installed ramp to improve accessibility

The IFES Team did not witness any voter with a visible disability requiring assistance from members of the voting bureau. Several voters needing assistance were helped by a companion who brought the voter to the voting bureau. This is in keeping with the law, which provides for the right to choose an assistant, in accordance with international standards in the UN Convention on the Rights of Persons with Disabilities. However, voters needing assistance were not allowed to have an assistant help them actually mark their ballot.⁸⁴

However, it should be noted that because the ballots were in Dutch language only, multiple voters had trouble understanding the instructions about how to vote. Consideration should be given to provide voters with ballots in Dutch, English, Spanish and Papiamentu, or to have instructional voter education materials in those languages posted at the voting bureaus. Tactile ballot guides should also be considered so that voters who are visually impaired can vote unaided and in secrecy.

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 citizens need to know in order to exercise their 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. Voter education programs constitute an exercise in empowerment and enfranchisement, ensuring all citizens have access to their electoral and political system. They also serve a confidence-building function, by helping build public trust in electoral institutions and practices.

The government administration on Sint Eustatius took a two-pronged approach to the dissemination of public information. The public awareness program began in August and focused on the voting process, including voters’ rights and why eligible residents should participate. A separate approach disseminated information on the safety protocols to prevent the transmission and spread of the COVID-19 virus during

⁸³ Elections of the Island Councils, Kiesraad, <https://english.kiesraad.nl/elections/elections-of-the-island-councils>.

⁸⁴ <https://www.rijksoverheid.nl/onderwerpen/verkiezingen/vraag-en-antwoord/wat-is-er-geregeld-voor-kiezers-met-een-beperking>

the electoral process. This included restricting the number of persons allowed to assemble in each voting bureau and the requirement for voters to stay two meters apart from each other. Under Dutch law at the time, individuals could not be required to wear masks; nonetheless, the final election guidelines strongly urged members of the public to wear masks when coming to vote⁸⁵.

The voter education campaign was disseminated through printed fliers, posters and billboards. There were also advertisements placed on local radio stations. There is no functioning local TV on Sint Eustatius. In addition, ordinances were issued clearly outlining voting roles and responsibilities and COVID-19 safety protocols. Social media and the [government website](#) were widely used by the Government of Sint Eustatius to disseminate updates on the election as well as COVID-19. Voter education was in both Dutch and English, but not Papiamentu or Spanish.⁸⁶ The general consensus from all interlocutors was that the information provided was both relevant and timely.



Campaign flags on a voter's vehicle

Notwithstanding the successful voter education and COVID-19 awareness campaign, there is room for improvement for future elections. In addition to the previously mentioned need for 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 people with 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.

In normal times, the electoral complaints process in Sint Eustatius is somewhat difficult to navigate, and it is governed by a number of different laws and procedures, including the Electoral Law, General Administrative Law Act and the BES Criminal Code. Responsibility for complaints and appeals is shared between polling station committees, the Central Voting Bureau and administrative courts, while election offenses are dealt with by the Public Prosecutor's Office. During the current suspension of democracy and the extraordinary elections administration taking place on the island, any election dispute resolution process is not clear, but would appear to be on a case-by-case basis directly to the Government Commissioner. While no valid concerns were expressed by interlocutors about the impartiality and professionalism of the Government Commissioner and the Elections Project Working Group, the process for dispute resolution itself does not appear to be well known, and complaints are apparently very rarely filed with the Administrative Jurisdiction Division of the Council of State or with the Court of First Instance

⁸⁵ Netherlands Government Official: In March 2021 elections, masks will be legally required.

⁸⁶ Written Communication from Statia Government Official

in Sint Maarten. During this election no formal complaints were made to the Central Voting Bureau or filed with the Court of First Instance in Sint Maarten.⁸⁷

Under section D.8(3) of the Electoral Act, the Administrative Jurisdiction Division of the Council of State deals with appeals regarding voter registration, and section 8.2.3 of the General Administrative Law Act provides that these appeals will be dealt with under an accelerated procedure, which recognizes the need for expedited decisions in the electoral process. For review of the Central Voting Bureau's rejection of a political party registration, an application for administrative review must be submitted no later than the sixth day after the date on which the decision is published,⁸⁸ and review processes are governed by the Dutch General Administrative Law Act.⁸⁹ According to article 6.4, an objection is lodged by filing a notice of objection with the administrative authority which took the decision; an administrative appeal is lodged by filing a notice of appeal with an appellate authority; and an appeal to an administrative court is lodged by filing a notice of appeal with that court.

With respect to candidate nomination, following examination of candidate list, the law provides a three-day period within which a party can rectify omissions in the list and supporting documentation.⁹⁰ The validity of candidate lists are announced by the Central Voting Bureau in a public meeting,⁹¹ and any interested party or voter has four days from the date of the public meeting to lodge a request for judicial review of the Committee's decision.⁹² Voters present at the public meeting can make verbal objections, and these are recorded in the official report of the meeting. It is not clear from the law, however, whether any further response is required to verbal objections, other than placing them on record – suggesting that this particular element of the complaints process does not necessarily provide any kind of remedy aside from allowing an objector to be heard. The Administrative Jurisdiction Division of the Council of State is required to give judgment no later than the sixth day after the application for review has been received, which does provide for a timely remedy, although the Council of State sits in the European Netherlands, which may present challenges in Sint Eustatius in terms of access to justice.

The majority of informal complaints received by the IFES observer team related to individuals not receiving their voting passes. Right up to and on election day itself, some issues were being resolved. When complaints were investigated and found to have merit, the Dutch Immigration Office (IND) would upload such information to facilitate the belated printing of voter's cards for affected individuals. The formal process of addressing these issues through the courts appeared out of the reach of most voters and electoral stakeholders given that the jurisdiction is based in Sint Maarten.

During polling and counting, complaints are addressed orally to voting bureau staff and recorded in a *proces-verbaal* (written record of proceedings or statement of facts regarding a case). Very few complaints were witnessed on Election Day, and these were made informally and related to minor issues such as having to sanitize three times due to COVID-19. In the post-election period, the Electoral Law stipulates that on the second day following an election, the central electoral committee will convene a public meeting where any registered voter present may submit oral objections, which are recorded in the official report.⁴¹ The central electoral committee also has the authority to initiate a recount *ex proprio motu* (on its own initiative), or in response to a "reasoned request from one or more voters... if there are serious

⁸⁷ Written communication from Statia Government Official

⁸⁸ Dutch Electoral Act (1989), § G.5.

⁸⁹ *Ibid.*

⁹⁰ Dutch Electoral Act (1989), § I.2.2.

⁹¹ Dutch Electoral Act (1989), § I.4.

⁹² Dutch Electoral Act (1989), § I.7.

grounds for suspicion that errors in the count that might affect the allocation of seats have been made by one or more voting bureaus.”⁴² As Presiding Officer, the Island Governor confirmed that a complaint would have to be serious and well-founded for him to order a recount at that stage.

Following any recount, the results are finalized and published, and it is unclear whether any further appeal against the results can be made, as required by international standards.⁹³ Rather, section P.25 of the Electoral Act provides that

“[t]he central electoral committee shall keep the [election material] packets... for three months after a decision has been taken on the admission of those elected. It shall then destroy these packets immediately, unless: (a) a public prosecutor or an examining magistrate has requested the surrender of the packets in connection with a criminal investigation, in which case they shall be destroyed after the investigation has been completed; [or] (b) criminal proceedings have been instituted in connection with offences under the Elections Act, articles 125 to 129 of the Criminal Code, or articles 131 to 135 of the BES Criminal Code, in which case they shall be destroyed after a final and conclusive judgment has been given.”

There is however an appeal process against the appointment of Island Council members after receiving notice of their admittance but before confirmation.

Because there are no political or campaign finance laws governing elections to the Island Council, there are also no explicit complaints processes. Election offences are set out in Chapter Z of the Electoral Act, along with associated penalties. Offences are divided into those that are indictable (including falsified ballot papers, vote buying and bribing a voter to relinquish their voting pass to a proxy), and those that are summary (which includes voting by proxy for someone who has died or systematically trying to inducing someone to sign their voting pass over to a proxy). Penalties for indictable offences range from six months to six years’ imprisonment, plus fines, and for summary offences, 14 days to one-month detention, plus a fine.

The law also makes it an offence to accept a bribe in return for signing a voting pass over to a proxy. Criminalizing ‘vote-selling’ in this manner may disincentivize people from reporting actual or attempted vote-buying, for fear of sanction. One interlocutor also noted that the effectiveness of the complaints process with respect to proxy voting was limited as it is difficult to provide sufficient proof of a proxy voting offence, and that “many persons recant on their statements.” While Chapter 5 of the General Administrative Law Act provides for administrative sanctions, it is not clear that these apply under the Electoral Act, so electoral violations can only be sanctioned through the Public Prosecutor’s Office. Hence, while remedies exist for proxy voting offences, and seem proportional, it is not clear if they serve as a deterrent, given challenges around proving such offences if they occur. Administrative sanctions could be considered, or as discussed above, the proxy voting system could be reviewed.

As noted at the start of this report, electoral justice would be improved if the authorities clarify the complaints process for stakeholders and ensure a consistent and accessible avenue for appeal. While there are complaints mechanisms for different parts of the electoral process, these do not seem to be fully understood, particularly with respect to judicial review processes in The Hague. In addition, while verbal complaints processes are also provided for, it is unclear what remedies are available beyond simply recording these complaints in the official record of public meetings. Finally, while a mechanism exists to

⁹³ International human rights conventions all recognize, implicitly or explicitly, the fundamental value of an appeals mechanism. See International Convention on Civil and Political Rights, art. 14, § 5; Protocol No. 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 2.

appeal against the acceptance of individuals to the council, it is not clear in the law that an avenue of appeal exists against final election results.

Conclusion

The existing legal process for conducting Island Council elections in Sint Eustatius was followed with adjustments in administrative procedures to counter the threat of the COVID-19 virus. Electors turned out to support the process with no evidence of coercion or intimidation witnessed. In other words, electors appeared to have voted for the party and candidate of their choice.

There appeared however to be a number of underlying issues affecting governance and its structure which could not be addressed at the polling station on election day. This includes the form of government desired by the majority of the Statian people. These issues are outside the scope of this report.

However, the choice of the electorate coming out of the election appears to be a return to the pre-intervention status. The way back to internal self-rule is underway and could conceivably be achieved prior to or shortly after the 2023 Island Council Elections. There are questions as to whether the achievement of the 12 criteria before the return to internal self-rule will be enough to prevent a recurrence of the differences which led to the 2018 intervention by the Dutch Parliament. Again, this is outside the scope of this report. This report urges however that serious considerations be given to identifying the underlying factors which may have influenced the election result, and how this might impact future relationships between the local administration and the Central Dutch Government.



International Foundation
for Electoral Systems