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Saba 2019 Island Council and Senate Electoral College Elections: Technical Observation and Assessment

Final report

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International Foundation for Electoral Systems (IFES)

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I. Introduction

On 20 March 2019, Saba, a special municipality in the Caribbean Netherlands, held Island Council and Senate Electoral College elections. IFES was invited by the Ministry of the Interior and Kingdom Relations of the Netherlands to conduct a targeted electoral observation and technical assessment around these elections, and assessment 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. 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 Electoral Council, voting bureau (polling station) staff, candidates, parties, security personnel, and voters; and an observation of Election Day and the preliminary results announcement.

The elections were held against the backdrop of a complex – and ongoing – structural change for the island. Following a series of referendums across the Netherlands Antilles, as of 10 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. The status of public entities is defined by article 134 of the Dutch Constitution, and in essence this provides for a special form of decentralized administration within the Netherlands that is comparable to that accorded to municipalities.¹ 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 reforms to take into account the specific character of the Saban election context:

“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 utilise the opportunities for consultation on offer.”²

As described further below, assessment interlocutors highlighted some of the weaknesses of the transition process as it relates to elections and governance on Saba; 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 – have engendered electoral and governance vulnerabilities in Saba. As will be described below, the 2019 outcome arguably undermines the goal of proportionality in representation; this outcome is further magnified by the practice of elevating the top two vote getters to the Executive Council and allocating the vacated seats using the same method.

¹ 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>.

² Ibid. p. 12.

Other vulnerabilities, such as proxy voting, have previously been the focus of criticism and recommendations made by election observer missions in the European Netherlands. The proxy voting process as it is applied in Saba lacks any mechanisms to ensure that it is used properly (that is, by voters who will not be able to go to the polling station on Election Day) or that a voter's preference will be followed when the ballot is actually cast. Alternative methods of widening the franchise – such as postal voting – would offer more protections for the integrity of the vote.

For the first time, Dutch nationals in Saba also had the opportunity to influence the composition of the Senate, albeit in a mostly symbolic manner given the island's very small population relative to the overall electorate. Because Saba does not have a provincial council, an electoral college was elected to serve the purpose of voting in indirect Senate elections two months after the March 20 elections.³ Although some interlocutors suggested that the introduction of an electoral college in Saba was the result of advocacy from some who wanted a voice in the upper house of the Parliament, a number of voters encountered on Election Day indicated that the electoral college was not particularly well-understood or important to them.

Many strengths were also noted in the electoral process in Saba: polling operations were professionally run and orderly; clear and comprehensive instructions on ballot marking and ballot invalidity ensured that the will of the voters was captured in the results; there was widespread acceptance of the election outcome (even though the results brought only one party into the Island Council); poll workers were experienced and diligent throughout a long Election Day; there were no real tests of the electoral justice mechanisms; and the media, this assessment team, and the public were welcomed to observe the process.

II. Summary Recommendations

1. **Conduct a dialogue around possible changes to some aspects of the electoral system** for Saba, to account for the island's history, political context, and small population size. In particular, the Netherlands could consider changes to the electoral system for the five-member Island Council that would provide for a simpler and more representative seat allocation process.

2. **Clarify and strengthen internal political party democracy**

Because elected representatives in Saba are chosen using a system of party-list proportional representation, 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.⁴

3. **Address vulnerabilities presented by proxy voting**

As currently applied in Saba, proxy voting presents significant opportunities for misuse and undermines the secrecy of the vote. Postal voting is permitted under the law for elections to the House of Representatives; extending the postal voting service to Saba voters in municipal and electoral college elections who will be off the island or otherwise unable to vote in person on Election Day could serve to improve the integrity of the electoral process. Alternatively, secrecy envelopes

³ Dutch Electoral Act (1989), § Y.a.22.

⁴ 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.

could be considered so the ballot is actually completed by the voter and is simply transmitted in a secure fashion by a proxy.

4. Adjust the process of voter intake, ballot provision, and voting for the Island Council election and Senate Electoral College

To increase polling efficiency and ensure that all eligible voters understand how to cast their ballots, Saba may consider having different colored ballots and easily-distinguishable ballot boxes that are both provided to voters at the same time, rather than requiring voters to stand in line twice. Policymakers could also consider two separate stations within the polling location; voters would proceed from one election to the next rather than returning the original queue to get their second ballot.

5. Make further adjustments to polling stations to promote accessibility

Voting booths on Election were observed to all be at standing height, which could create difficulties for voters in wheelchairs. In addition, the transparent ballot boxes in use (newly procured for the March 20 elections) are tall, and labeled on the top and the back as receptacles for ballots for Island Council or Senate Electoral College. There should be an additional sign on the front of each box to ensure that voters in wheelchairs are able to identify the proper box for each of the two ballots. Training for poll workers should also reinforce the fact that the law provides for the right of a voter with a disability to choose an assistant, rather than assistance being provided by the poll worker.

6. Provide for reconciliation of blank ballots at start of polls with total ballots at end

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 implications thereof). While this does not appear to be impacting on the credibility of the process and result, it is a valuable integrity measure.

7. Institute simple campaign funding oversight measures

The Netherlands could consider instituting a simple campaign financing and spending oversight mechanism for Saba, 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). 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. Public funding for party operations or campaigns could also be considered, along with additional reporting and oversight requirements.

8. Minimize any potential for intimidation around voting bureaus

Saba could consider instituting additional rules limiting political party campaigning and activity at the entrances or within a certain distance of the two voting bureaus (e.g., prohibiting signage or the wearing of political party apparel within 100-200 yards of the entrance) to reduce vulnerability to intimidation and ensure a secure environment for voters on Election Day.

9. 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, it is not clear in the law that an avenue of appeal exists against final results.

10. Expand voter education and information efforts prior to Election Day

The complex process by which votes are converted to seats for the Island Council and the Electoral College 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 also noted that the electorate receives insufficient information on a number of additional issues, including the distinction between and mandates of the Island and Executive Councils and the purpose and functioning of the Electoral College. Educational efforts on the proxy process – and a voter’s rights and obligations therein – may also be an area for improvement in future election cycles. Both the election management body 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.

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.⁵ 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.⁶

With respect to the electoral system, at its core any system chosen “translates votes cast...into seats won by parties and candidates.”⁷ 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 created a decentralized unitary state (with Saba, Bonaire and Sint Eustatius becoming part of 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.⁸ At the same time, European Netherlands legislation was declared applicable on the islands, and in certain cases new legislation was introduced.⁹ Hence, from October 2010, the Dutch legal framework, including the Electoral Act of 1989, has applied to elections in Saba. The Electoral Act was amended prior to this date to provide for the new status of the

⁵ 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.

⁶ Venice Commission, Code of Good Practice in Electoral Matters, 52nd Sess., Doc. No. 190/2002, (2002), p. 65.

⁷ Reynolds, Andrew, et al., Electoral System Design: The New International IDEA Handbook, International IDEA, (2005), p. 5.

⁸ Five Years of the Caribbean Netherlands: Working of the New Administrative Structure, p. 4.

⁹ Five Years of the Caribbean Netherlands: Working of the New Administrative Structure, pp. 4-5.

three Islands, with Chapter Y.a. 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.

Some interlocutors suggested that the transition process suffered from several weaknesses, and particularly with respect to ensuring an inclusive process, there was arguably “too little attention paid to cultural and historical elements” relevant to how elections are and have been conducted on Saba. 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. One interlocutor 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 House of Representatives 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.¹⁰ The Saba Island Council is equivalent to a Municipal Council¹¹ and for elections to municipal councils, each municipality forms a single electoral district.¹² Elections for provincial councils, water boards, and municipalities are held on the same day.

Island Council Elections

The Saba Island Council is made up of five seats, and members are directly elected for a four-year term.¹³ The Council oversees the Executive, which consists of a Lieutenant Governor and two commissioners. The Lieutenant Governor of Saba is appointed directly by the monarch, and there are no term limits for this position. Article 3 of the Dutch Constitution provides that all Dutch nationals shall be equally eligible for appointment to public service.

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 – as was the case in Saba in 2019.

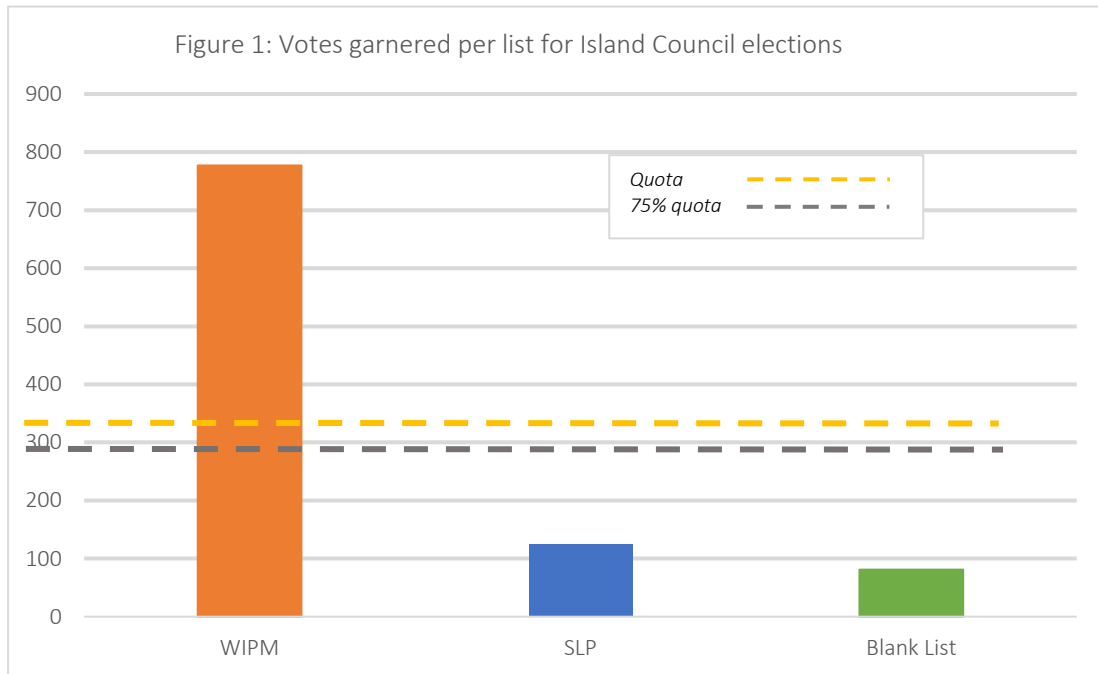
¹⁰ Dutch Electoral Act (1989), § Y.a.3.1.a.

¹¹ Dutch Electoral Act (1989), § Y.a.3.1.d.

¹² Dutch Electoral Act (1989), § E.1.4.

¹³ Dutch Electoral Act (1989), § C.4.1.

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,”¹⁴ 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.¹⁵ 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.”¹⁶ Use of this method means that smaller parties are unlikely to get a residual seat; the system ultimately benefits larger parties.



In the Island Council elections (results depicted in Figures 1 and 2), the party threshold for seat allocation (or “quota”) was 196.6 votes. The 75% threshold rule (147.45 votes) eliminated the SLP and David Levenstone (“Blank List”) from contention for seats, as these lists earned 125 and 81 seats, respectively. Three Windward Islands People’s Movement (WIPM) candidates were assigned full seats; two additional WIPM candidates received residual seats under the system outlined above. Given the structure of the Executive Council for Saba, which draws two commissioners from the initial slate of candidates elected to the Island Council, the two “vacant” seats then went to the remaining WIPM candidates on the ballot.¹⁷

Given this outcome, some members of the council have a smaller popular mandate than other (unsuccessful) candidates, which could have an outsized effect in a small community (and arguably undermines the goal of proportionality in representation of this electoral system). For example, Dave

¹⁴ Dutch Electoral Act (1989), § P.6.

¹⁵ Dutch Electoral Act (1989), § P.8.

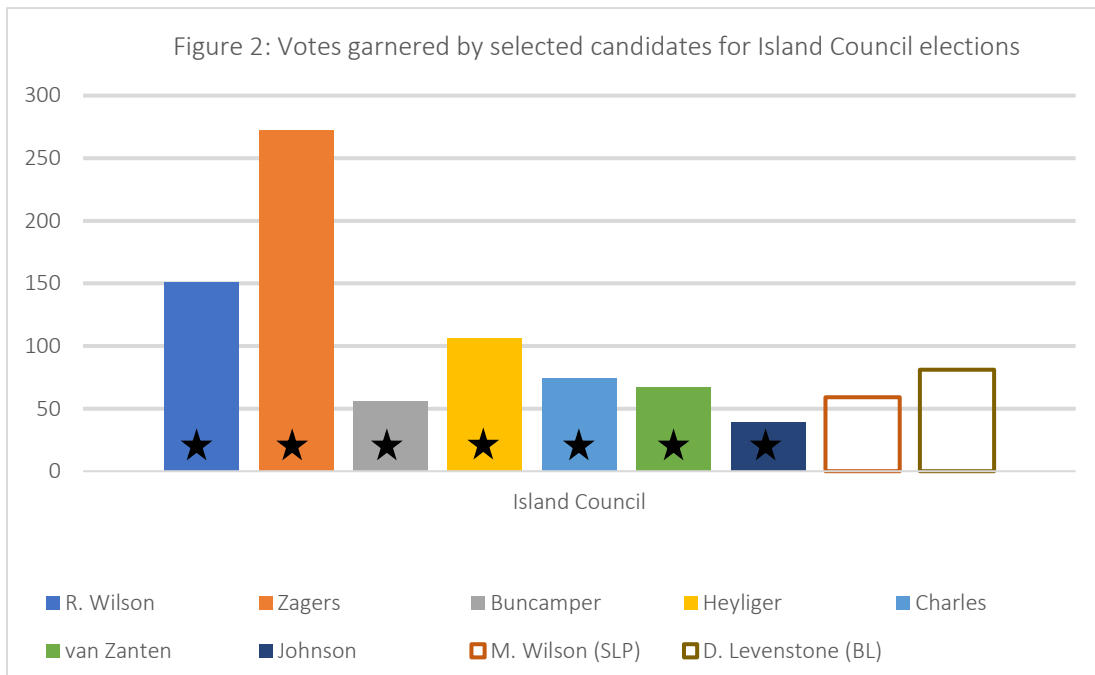
¹⁶ Dutch Electoral Act (1989), § P.8.

¹⁷ Swierstra, Sip. Main and Central Voting Bureau Ascertains Final Election Results, Saba News, 22 Mar. 2019, www.saba-news.com/main-and-central-voting-bureau-ascertains-final-election-results/.

Levenstone, the sole candidate on the blank list, received 81 votes, greater than Carl Buncamper (56 votes) and Vito Charles (74 votes) on the WIPM list – both of whom won seats on the Council while Levenstone did not.

This impact becomes even more pronounced with the practice of the top two vote-getters in the Island Council elections being subsequently appointed as the two Commissioners on the Island Executive, leaving two seats vacant that are then immediately filled from the party list. In these elections, this meant that Bruce Zagers and Rolando Wilson became commissioners, and Hemmie van Xanten and Esmeralda Johnson of the WIPM party secured the vacated seats, with 67 and 39 votes respectively. Effectively the lists are competing for seven seats, rather than five, but the quota reflects only the allocation of five seats (and is therefore higher than it would be if the formula were based on a dividend of seven).

The resulting municipal council has no opposition representation. This may exacerbate governance vulnerabilities; as noted in a study on the working of the new administrative structure five years after the transition: “it appears to be customary on all islands for the commissioners to liaise with the members of the coalition parties on the island council as part of a caucus. This state of affairs means that the island council members – contrary to the provisions of section 28 WolBES – certainly do not always vote independently, and the opposition is largely disempowered.”¹⁸



The practice of the top two vote getters moving into the executive may also make the role of the Island Governor – an appointee of the monarch – more difficult. The administrative study also noted: “the island governor suffered a significant conflict between on the one hand safeguarding the working relationships within the executive council and on the other side checking the lawfulness and compliance with the public interest of decisions by the island council.”¹⁹

¹⁸ Five Years of the Caribbean Netherlands: Working of the New Administrative Structure, p. 6.

¹⁹ Five Years of the Caribbean Netherlands: Working of the New Administrative Structure, p. 7.

Senate Elections

With respect to the Dutch Upper House, the 75 members of the Dutch Senate are indirectly elected for a four-year term by provincial councillors on the basis of proportional representation at the provincial elections. Because Saba does not have a provincial council, an electoral college is elected to serve the purpose of voting in indirect Senate elections two months after municipal elections.²⁰

Members of the electoral college are elected by persons who are residents of Saba on nomination day, provided they are Dutch nationals and have attained the age of eighteen years on polling day.²¹ Because voters for the electoral college must be Dutch citizens, while voters for the Island Council can be residents, there are different voter cards and ballots for the two different elections (discussed further in the *Electoral Operations* section below). The election of members of the electoral college follows the same system as election of members of provincial councils.²²

Interlocutors suggested that the introduction of an electoral college in Saba was the result of advocacy from some Dutch citizens who wanted a voice in the election of the Upper House of the Dutch Parliament. General sentiment by many voters spoken to on Election Day was that the electoral college was not particularly important or necessary for Saba, although this may be a result of the fact that this was the first time it was being implemented. There are 75 Senate seats, with the vote on Saba influencing 1/100th of a seat (0.01 seat).²³



Transparent ballot boxes for the Island Council and Electoral College ballots, seen from the side facing polling officials

Reflecting on whether the electoral college was necessary given the very small influence on the Senate elections, members of the Executive Council noted that Saba has historically maintained close relationships with The Hague and is generally accorded a greater influence on policy than other Dutch municipalities, because it is not part of a province (and therefore lacks an intermediate layer of government and bureaucracy between the Island Council and the National Executive).

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.

Netherlands electoral law specifies that local political parties must register their names with the Electoral Committee on Saba to be eligible to compete in Island Council elections. On Nomination Day, eligible parties submit their list of candidates to the Executive Council, along with a deposit of \$225. Parties

²⁰ Dutch Electoral Act (1989), § Y.a.22.

²¹ Dutch Electoral Act (1989), § B.2; Dutch Electoral Act (1989), § Y.a.22.

²² Dutch Electoral Act (1989), § Y.a.22.

²³ Samson, John. Not a Lot of Interest for Senate Elections on Bonaire, Saba, and Statia, Caribbean Network, 27 Feb. 2019, <https://caribbeanetwork.ntr.nl/2019/02/27/not-a-lot-of-interest-for-senate-elections-on-bonaire-saba-and-statia/>.

represented in the Island Council are exempt from this requirement; for other parties, the deposit will be refunded if the party satisfies at least 75% of the electoral quota.

The process for a political party to register for the Senate Electoral College Elections is slightly different. According to the Kiesraad,

“Local political parties that wish to participate in the elections for the Senatorial electoral colleges under a particular name must have this designation registered at the island's central voting bureau. To do this, the party must pay a deposit of US\$225 to the public agency. After the submission of a valid list of candidates for the next election, the deposit is refunded to the authorised party. In principle, registered designations for the House of Representative elections remain in effect until the elections for the electoral colleges for the Senate. This means that, in these cases, no new registration of the designation is required at the island's central voting bureau.”²⁴

On Nomination Day the eligible parties can then submit a list of candidates for the electoral college, along with a deposit of \$225 (subsequently refunded as with the Island Council elections, and in future, parties represented in the current electoral college will be exempted from this requirement), as well as at least 10 declarations of support.

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 of 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 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 Saba who have reached the age of 18 and are not otherwise excluded under the law.²⁵

Internal party democracy and decision-making processes on Saba are somewhat murky, and it is worth noting that the candidate slates for the March 20 elections were heavily skewed to male candidates. Although certainly the context is different in Saba, this may be in part reflective of dynamics and structures at play throughout the Netherlands. The OSCE observer report of the 2017 Parliamentary elections in the European Netherlands noted that

“Although equal rights for men and women are laid down in the Constitution, there are no temporary special measures in the law to promote women candidates. As voluntary measures, parties often set target figures for women in their candidate lists. The proportion of women on the candidate lists for these elections was some 35 per cent and two parties did not nominate any female candidates. In the new parliament, 36 per cent of elected representatives are women. Building upon the existing good practice of some political parties, consideration could be given to introducing special measures in the legal framework to promote women candidates, in line with

²⁴ Elections of the Island Councils, Kiesraad, <https://english.kiesraad.nl/elections/elections-of-the-island-councils>.

²⁵ Law on Public Bodies of Bonaire, Sint Eustatius and Saba, (2010), art. 11.

international standards. This could include a minimum number of candidates from each gender on all candidate lists or a specified placement order.”²⁶

Reports from local and regional media outlets touched on this issue; one article on the youngest candidate for the Island Council included a quote from a member of the WIPM party highlighting the ongoing challenges for both women and youth on the island:

“More women need to enter the political arena on Saba by giving their opinions and solutions to the issues confronting Saba. Saba’s politics has been dominated by men and of course, we had strong women in politics as well, but I think it’s often seen still as a male domain with one or two females being as exceptions. But, we need to change that by continuing to confront it, particularly with our youngsters.”²⁷

Candidate interlocutors did not identify any specific gender-related concerns, but did highlight that many on the island who might otherwise be capable and dedicated candidates are deterred from seeking candidacy because of a prevailing sense that it would be inappropriate to express strong opinions publicly (particularly those that may not align with the ruling WIPM party). In addition, the lack of funding for political parties (as described further below) may be a deterrent to candidates who do not have personal resources to marshal in support of their campaigns.

Campaign financing and spending

The financing system for elections 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 doing so with insufficient regulation by the state or oversight by constituents and watchdog groups can undermine competitiveness and create other vulnerabilities in the electoral process. This standard of transparency and equity applies to local elections as well as national, with reasonable adjustments to acknowledge that the capacity to comply with a complex political finance oversight framework might be more limited for local parties and candidates.

Despite the fact that the Island Council and the Executive Council have considerable sway over the daily lives of the residents of Saba, there are no legal mechanisms to govern or monitor how political parties and candidates marshal and spend funds in elections to these bodies. This gap is in line with the Netherlands legal framework, which does not provide oversight mechanisms for either municipal or provincial elections. Political parties in Saba are therefore under no obligation to disclose details about their funding sources or expenditures, and there are no limits on the types of funding received, including anonymous donations or foreign donations. There is also no public financing structure in place; candidate and government interlocutors indicated to the assessment team that political parties and candidates fund their campaigns largely from personal resources, with a very small donation base from political party supporters. The costs to campaign include registration fees and expenditures relating to voter outreach (in particular, for posters, flags, billboards, t-shirts, and rallies).

The Netherlands should consider reforming the campaign financing and spending oversight mechanism for Saba, in line with international standards and recommendations from the United Nations Convention

²⁶ OSCE/ODIHR, The Netherlands Parliamentary Elections: Election Assessment Mission Final Report, 7 June 2017, p. 10, <https://www.osce.org/odihr/elections/netherlands/321821?download=true>.

²⁷ Henry, Esther. Saba Youngest Female (21) Campaigns in Island Elections, Caribbean Network, 20 Mar. 2019, caribbeannetwork.ntr.nl/2019/03/20/saba-youngest-female-21-campaigns-in-island-elections/.

Against Corruption (UNCAC), the Council of Europe/Venice Commission, and the Organization for Security and Co-operation in Europe (OSCE). 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 Saba context, the Central Voting Bureau could provide a simple Excel 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.

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 EMB, its sub-national institutional structures, and other state bodies responsible for supporting the electoral process.

Saba has a single principal electoral committee, acting as the central electoral committee (referred to in Saba as the Central Voting Bureau). This Central Voting Bureau fulfills the following primary duties:

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

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 is not further elaborated, and it is conceivable in such a small community that these appointments could be called into question as not being impartial. However, no complaints were made in this regard, and party or candidate connections are inevitable in a community this small. In addition to the Central Voting Bureau, there are two voting bureaus (polling stations) led by a team of five people each who are responsible for administering the polls and doing the initial count – most of whom had played in this role in previous elections and were therefore familiar with the process and legal requirements.



An SLP sticker adorns a party supporter's vehicle on Election Day

Overall impressions of Election Day

The experience of voters on Election Day is largely determined by the extent to which voting bureaus are staffed by well-trained personnel and offer a secure, clear, accessible, and orderly process to cast votes. A voter's assessment of this process can condition his or her perception of the credibility of the election process, its outcomes, and even the resulting governing institutions. Sufficient ballot integrity measures, as

well as appropriate efforts to ensure the secrecy of the vote, are essential features of a credible Election Day operation. Transparency of Election Day operations is also essential; to that end, observers, political party agents, and the media should have access to observe (but not interfere with) polling and count processes.

Voting bureaux in the Netherlands are open between the hours of 7:30 am and 9:00 pm. On Election Day, the two voting bureaux on Saba – located in The Bottom and Windwardside – opened and closed promptly according to this schedule. In elections held prior to the 2010 transition, the polling period was from 8:00 am to 7:00 pm. 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 bureaux to residences, businesses and government offices. Any changes would appear to be possible without legal reform; the Electoral Act notes 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.”²⁸ Any determination to alter the hours of polling should, however, 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.”²⁹

Voters are permitted under Netherlands law to cast their ballot at any voting bureau within their municipality. As there are only two voting bureaux in Saba, concerns about long queues and ballot shortages under this scenario are relatively limited; however, it was observed that additional ballots were needed (and promptly delivered) to the voting bureau in The Bottom towards the conclusion of Election Day.

To the outside observer, the mood on Election Day was celebratory and exuberant. The island’s narrow main road was periodically clogged with cars travelling between the two voting bureaux, emblazoned with party flags and ferrying supporters wearing WIPM orange or the bright blue of the opposition SLP. A sizeable crowd gathered outside the government building following the conclusion of counting for the preliminary announcement of results and acceptance speeches by the successful candidates. Celebrations reportedly continued well into the night.

Some interlocutors noted, however, that the very public outpouring of support for specific candidates and parties could be intimidating to voters. The law requires that “no activities shall be undertaken *in* the voting bureau which are intended to influence the voters in their choice”³⁰ (emphasis added), but there



Orange traffic barriers outside the polling station prior to opening on Election Day



WIPM flags on a party supporter's vehicle on Election Day

²⁸ Dutch Electoral Act (1989), § J.1.3.

²⁹ Dutch Electoral Act (1989), § J.10.

³⁰ Dutch Electoral Act (1989), § J.36.

may be other options for limiting this vulnerability besides a change in the law. It was observed that election administrators were attuned to the potential for strife or politicization of the electoral process; at one voting bureau, orange traffic barriers – a fluorescent shade of the WIPM party’s color – were removed from the premises prior to the start of polls and replaced with a more neutral red barrier. However, the chairs and tables outside the voting bureaus invited lingering (in the case of The Bottom, they were set up specifically for this purpose); one candidate from an opposition party noted that the prevalence of party supporters and candidates outside the voting bureaus – all day, in some cases – is intimidating and inimical to the conduct of polling. With these concerns in mind, Saba could consider whether it would be appropriate to limit political party campaigning and activity on the exterior grounds or within a certain distance of the two voting bureaus (e.g., prohibiting signage or the wearing of political party apparel within 100 yards of the entrance) to reduce vulnerability to intimidation and ensure a secure environment for voting on Election Day.

A related concern was also raised by one opposition candidate, who noted that the voting bureau in The Bottom was too small to ensure ballot secrecy and to create the needed environment for voters to cast their ballot free from intimidation. Polling officials noted to the assessment team that the usual location for The Bottom polling site offers a much larger physical space, but it had been previously reserved for another function on Election Day. Given the fundamental importance of the secrecy of the vote, the Voting Bureau should have the authority to utilize the appropriate facilities for the election, with precedence over other functions.

Voter eligibility and vote process

Under the law, to cast a vote for the Island Council election, an individual must be at least 18 years old on Election Day, and a legal resident of Saba on Nomination Day (for individuals who are not citizens of a European Union member state, that residency requirement is five uninterrupted years).³¹ Similar to other municipal council elections in the Netherlands, Dutch nationality is not a requirement. For Senate Electoral College elections, however, the voter must be a Dutch national. Eligible voters receive an invitation to vote at their home address at least fourteen days prior to Election Day, which includes the voting pass (marked by a serial number) required to cast a ballot. 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 by the mayor.”³² 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*), including passports, certain driver’s licenses, and residency cards.

One feature of the Dutch system that is applied in Saba and that diverges somewhat from common international practice is that there is no comprehensive voter list provided to or checked by the polling officials on Election Day. 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); it has been

³¹ Non-European Union member state citizen residency requirements are outlined in the Dutch Electoral Act as follows: “a. they are legally resident in the Netherlands pursuant to section 8 (a), (b), (c), (d), (e) or (l) of the Aliens Act 2000 or pursuant to a headquarters agreement between an international organisation and the State of the Netherlands, and; b. they have been resident in the Netherlands for an uninterrupted period of at least five years immediately prior to nomination day and have residence rights as referred to at (a) above or pursuant to section 3 or section 6 of the BES Admission and Expulsion Act.” § B.3.2.

³² Dutch Electoral Act (1989), § J.8.1.

superseded by a certificate of authorization or voter's pass per the proxy process; it has been 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."³³

According to the Saba government, 1,078 individuals were eligible to vote for Island Council on March 20. Of these, 905 individuals were Dutch nationals also eligible to vote in the Senate Electoral College race. The 2019 elections were the first polls in which Saban residents could participate in the Senate election and, accordingly, the first test of a new process for capturing votes on two different ballots from two separate – but overlapping – pools of voters. Although other options were reportedly considered, ultimately the Central Voting Bureau determined that the most efficient use of time and resources would be to require eligible voters to repeat the voting process twice, should they choose to vote in both elections. Poll workers were observed in some, but not all, cases permitting voters to come to the front of the line for their second ballot, to reduce the amount of time in the queue. For each ballot, the voter was asked to provide his or her identification and voting card, proceed to the voting booth with the blank ballot, and place the ballot in the relevant box. There was some confusion over this process, and it increased the possibility that an eligible voter might depart without having cast his or her second ballot, even though the voting bureau team were observed clearly explaining the process to voters. The ballots and ballot boxes were both elections were nearly identical, further increasing the risk of confusion.

An alternative option, space permitting, would be to set up a second area for the voter to present his or her identification and receive and cast a ballot. This would require a small increase in resources and equipment (an additional table, two additional voting booths, and one or two more poll workers). The impact on the total size of the voting bureau committee should be minimal, as there are currently 1-2 individuals who are tasked specifically with observing monitoring ballot placement into the ballot boxes. This task would not be necessary as the two ballot boxes would be separated. This recommendation would also address a concern raised by assessment interlocutors that the close placement of identical ballot boxes could have led to voters placing their ballots in incorrect boxes. In a few cases, this concern was borne out, but rectified during the count process. A second alternative would be to request both voting cards (as relevant) at the same time (or to use one voting card that indicates for which elections the voter is eligible), review the identity information, and provide the voter with two distinctly colored ballots at the same time.

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.³⁴ 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

³³ Dutch Electoral Act (1989), § J.7.1.

³⁴ 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 mail 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.

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.”³⁵

Netherlands electoral law permits the use of the proxy vote, in which voters authorize another individual to cast a ballot on his or her behalf in person on Election Day. The law notes 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”³⁶ but does not further elaborate on the parameters of eligibility. There are two forms of proxy voting in use: transfer of the voting or poll card (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 March 20 elections in Saba, an individual could cast as many as six ballots: two on his or her own behalf for the Island Council and Senate Electoral College elections, as well as the same two ballots for each of two additional voters who have selected him or her to be a proxy.³⁷ A considerable number of ballots (21%, or 213 out of the 993 total ballots for the Island Council, and 13%, or 88 out of 664, for the Senate Electoral College) were cast via proxies on Election Day.

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 voting day—often similar qualifications to those for voting by mail. Such arrangements may be implemented to provide accessibility where other forms of absentee voting are relatively restricted or unavailable.”³⁸ 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.

Interlocutors in Saba raised significant concerns about the proxy voting process and the potential for intimidation or manipulation; one candidate noted that the process is “a form of corruption,” and “the practice of intimidation with the proxies is...widespread.” Another candidate observed that there are insignificant checks in the review process to ensure that voters granting proxy have understood and consented to what they are signing. A more mundane but nonetheless important consideration is that the proxy process also engenders a substantial amount of paperwork for the proxy voter and for poll workers to process.

In the case of Saba, which has relatively limited educational and employment opportunities available to its residents on the island, there is a strong basis for providing special voter services, in particular for voters who live abroad. Postal voting is permitted under the law for elections to the House of Representatives; extending the postal voting service to Saba voters 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 in use 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.

³⁵ 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.

³⁶ Dutch Electoral Act (1989), § L.1.

³⁷ Dutch Electoral Act (1989), § L.4.

³⁸ Vote Counting: Proxy Voting, ACE: THE ELECTORAL KNOWLEDGE NETWORK, <https://aceproject.org/ace-en/topics/vo/voa/voa02/voa02e>.

The OSCE Election Assessment Mission has 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.”³⁹ 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.”⁴⁰

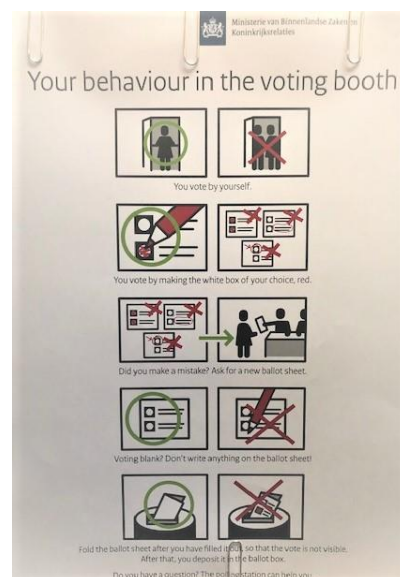
Count and reconciliation and announcement of results

Vote counting processes should be governed by three key principles: accuracy, transparency, and timeliness. Rules should be predetermined 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 results process observed on Election Day in Saba had several steps. Ballots were counted at each voting bureau; as per the fields on the results form discussed below, this process requires that the members of the Voting Bureau reconcile the number of ballots with the valid voting passes and proxy certificates prior to counting votes. Although this process was public, it was conducted in near silence (though under the law, anyone present could have raised objections during the process), with polling officials only addressing the public with aggregated results by candidate once they completed their counts and filled in the results form.

While the counting process did not permit observation of individual ballots, polling officials allowed observers to view the training and reference materials they relied on when making a determination of 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 where this did occur, the decision of polling officials appeared accurate and in compliance with the legal framework. This is in stark contrast to recent practice in Sint Maarten, where IFES conducted a technical observation mission in 2018. In that case, many ballots were declared invalid as a result of a strict interpretation of the law that neglected to properly account for the intention of the voter.

Directly following counting, the sealed results packets and *proces-verbaal* were taken to the government administration building. At that time, the Island Governor made a public announcement of preliminary results for the Island Council elections and the five successful candidates are given an opportunity to



Under the law, each polling booth must contain a set of instructions for the voter

³⁹ The Netherlands Parliamentary Elections: Election Assessment Mission Final Report, pp. 16-17.

⁴⁰ Ibid.

make remarks. Two days later, at a meeting of the Central Voting Bureau, final results were declared. Between the preliminary and final results announcements, two votes were deemed invalid and removed from the count for the WIPM party, which won all five seats on the Island Council, as well as the two Commissioner positions on the Executive Council (who are the top two vote-getters).⁴¹ A more detailed discussion of the results of the election were included in the *Law Reform Process and Electoral System* section above.

According to international good 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.⁴² 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 (*proces-verbaal N 10-1*) 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.



Polling officials count ballots in Windwardside after the close of polls while voters, candidates, and journalists look on

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 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 PV 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.

⁴¹ New Saba Island Council, Commissioners Sworn In. The Caribbean Herald, 29 Mar. 2019, www.thedailyherald.sx/islands/86388-new-saba-island-council-commissioners-sworn-in.

⁴² Vote Counting: Transmitting Voting Station Results, ACE: THE ELECTORAL KNOWLEDGE NETWORK, <https://aceproject.org/ace-en/topics/vc/vce/vce04/default>.

Of the information captured, of note is the fact that the voting bureaus could not account for 5 ballots for the Island Council election and 1 ballot for the Senate Electoral College elections (reflecting the information captured in form N 10-1 for each voting bureau), which deviated from the count of voter passes retained on Election Day. Although it is likely that this particular deviation was not outcome determinative, given the small size of the electorate and the magnitude of votes received by winning candidates (the lowest number of votes received by a candidate who ultimately earned a seat on the Island Council was 39) it presents a vulnerability that should be considered for the next election process.

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.”⁴³ Parking facilities, bathrooms, and entrances to both of the two voting bureaus on Saba appeared to be accessible to voters with physical disabilities. In each location, there were two voting booths with privacy screens. The voting booths were all at standing height, which could create difficulties for voters in wheelchairs. In addition, the transparent ballot boxes in use (newly procured for the March 20 elections) are tall, and labeled on the top and the back as receptacles for ballots for Island Council or Senate Electoral College. There should be an additional sign on the front of each box to ensure that voters in wheelchairs are able to identify the proper box for each of the two ballots (although checks were conducted during the count process and any misplaced ballots were shifted to the correct pile prior to counting the votes).

A voter with a physical disability was observed requesting assistance from a poll worker and was advised that the support would be provided by the poll worker, rather than a companion of his choice. The law provides for the right to choose an assistant, however, in accordance with good practice. This issue has been noted in the European Netherlands as well; in 2017, the OSCE observed that “certain voting bureaus required assistance to be provided by a member of the PEC, at odds with the legal requirement to allow the voter to request assistance from a person of their choice. This reinforces the need for clearer guidance and uniform implementation of key election day procedures.”⁴⁴



A voter is assisted by a member of the voting bureau

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.

⁴³ Elections of the Island Councils, Kiesraad, <https://english.kiesraad.nl/elections/elections-of-the-island-councils>.

⁴⁴ The Netherlands Parliamentary Elections: Election Assessment Mission Final Report, p. 18.

The government administration on the Island, Public Entity Saba, developed, printed and distributed informational bulletins on the electoral process and candidate profiles in the weeks prior to Election Day. The primary communication mechanism used by the government and the political parties to conduct outreach is Facebook, however. For some issues, these communications tools could be sufficient, given the small, close-knit population, which is clustered in a relatively small geographic range. However, several interlocutors noted that the complex process by which votes are converted to seats for the Island Council and the Electoral College is not well understood by the public. As the 2019 elections resulted in a sweep for the WIPM political party, despite a considerable proportion of votes garnered by opposition candidates, insufficient understanding of the process represents an important vulnerability that could have impacts on public perceptions and credibility of the election. This is not simply a voter information and education issue, however; as noted above, the Netherlands should consider changes to the electoral system for the Island Council that would recognize the small number of seats and the size of the electorate, and provide for a simpler and more representative seat allocation process.

Interlocutors also noted that the electorate receives insufficient information on a number of additional issues, including the distinction between and mandates of the Island and Executive Councils and the purpose and functioning of the Electoral College. It was also noted that many voters may have chosen to vote in only one of the two elections, as they did not understand the distinction between them. Reports from regional media highlighted the lack of attention paid to the island electoral process for the Senate Electoral College, including that the political parties fielding candidates for the Senate prepared election programs for most provinces in the European Netherlands, but none for the Caribbean municipalities. One article notes that “Whoever wants to know what the political parties want to accomplish when it comes to the islands has to scour the websites of the parties and look for the ‘BES-eilanden’ tab.”⁴⁵

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.

The electoral complaints process in Saba 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 offences are dealt with by the Public Prosecutor’s Office. While no concerns were expressed by interlocutors about the impartiality and professionalism of these different bodies, the process itself does not appear to be well known, and complaints are very rarely filed with the Administrative Jurisdiction Division of the Council of State.

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

⁴⁵ Not a Lot of Interest for Senate Elections on Bonaire, Saba, and Statia.

sixth day after the date on which the decision is published,⁴⁶ and review processes are governed by the Dutch General Administrative Law Act.⁴⁷ 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.⁴⁸ The validity of candidate lists are announced by the Central Voting Bureau in a public meeting,⁴⁹ 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.⁵⁰ 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 particularly 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 Saba in terms of access to justice.

Most complaints during polling and counting are addressed orally by 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 waiting in line too long. 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 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.⁵¹ 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

⁴⁶ Dutch Electoral Act (1989), § G.5.

⁴⁷ Ibid.

⁴⁸ Dutch Electoral Act (1989), § I.2.2.

⁴⁹ Dutch Electoral Act (1989), § I.4.

⁵⁰ Dutch Electoral Act (1989), § I.7.

⁵¹ 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.

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.”

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 6 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 reconsidered.

As noted at the start of this report, electoral justice would be improved in Saba 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, it is not clear in the law that an avenue of appeal exists against final results.



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