

**ST KITTS AND NEVIS GENERAL ELECTION
25 OCTOBER 2004**

**REPORT OF THE COMMONWEALTH
EXPERT TEAM**

Commonwealth Secretariat

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INTRODUCTION

INVITATION AND COMPOSITION OF THE EXPERT TEAM

This report presents the observations, conclusions and recommendations of the Commonwealth Expert Team, which was present in St Kitts and Nevis for the General Election held on 25 October 2004.

The Commonwealth had previously provided a Commonwealth Observer Group for the 1995 General Elections but did not observe the 2000 General Election.

The Commonwealth Secretary-General's decision to send an Expert Team to the 2004 General Election followed an invitation from the Prime Minister of St Kitts and Nevis, Dr the Hon Denzil Douglas. A copy of this letter and the Secretary-General's attached at **Annex C**.

The Team consisted of:

Hon David Thompson MP (Team leader)
Former Leader of the Opposition
Barbados

Mr James Morrison
Former Director of Administration and Returning Officer
Member of the Association of Electoral Administrators
United Kingdom

The Expert Team was assisted by two Commonwealth Secretariat staff members of the Political Affairs Division, Ms Juliet Solomon (Head of the Caribbean/Pacific Section) and Ms Charlene Lee Ling (Administrative Assistant).

TERMS OF REFERENCE

The Team's Terms of Reference were as follows:

"The Commonwealth Expert Team for the St Kitts and Nevis General Election shall observe the

- preparations for the election;*
- the polling, counting and results process; and*
- the overall electoral environment.*

The Expert Team will report to the Commonwealth Secretary-General, with recommendations, if appropriate, for Commonwealth technical assistance. The Secretary-General will in turn send the Team's report to the Government of St Kitts and Nevis, the Electoral Commission, the political parties and Commonwealth Governments. It will then be made public."

The Experts were invited in their individual capacities and it was made clear by means of a Press Release, (copy attached at **Annex D**) that the views they expressed regarding the election would be their own and not those of either the Governments of their respective countries or of the Commonwealth Secretariat.

BACKGROUND ON ST KITTS AND NEVIS

Situated in the Leeward Islands in the Caribbean Sea, about one-third of the way from Puerto Rico to Trinidad and Tobago, St. Kitts and Nevis has a total area of 261 sq km (St. Kitts 168 sq km; Nevis 93 sq km). First settled by the British in 1623, the islands became an associated state with full internal autonomy in 1967. The island of Anguilla rebelled and was allowed to secede in 1971. St. Kitts and Nevis attained full independence on 19 September 1983.

The population of St Kitts and Nevis is estimated at 38,836 (July 2004 est.). The main language spoken is English. The legal system is based on English common law as exercised by the Eastern Caribbean Supreme Court of Justice; provision is made for appeal to the Judicial Committee of the Privy Council in London.

St Kitts and Nevis is regarded as a middle-income nation with a per-capita income of \$8,800 (2002 est.). St. Kitts and Nevis is a member of the Eastern Caribbean Currency Union (ECCU). The Eastern Caribbean Central Bank (ECCB) issues a common currency for all members of the ECCU. The ECCB also manages monetary policy, and regulates and supervises commercial banking activities in its member countries.

As Head of State, Queen Elizabeth II is represented in St. Kitts and Nevis by a Governor General, who acts on the advice of the Prime Minister and the Cabinet. The Prime Minister is the leader of the majority party of the house, and the Cabinet conducts affairs of state. St. Kitts and Nevis has a bicameral legislature: An 11-member Senate appointed by the Governor General (mainly on the advice of the Prime Minister and the Leader of the Opposition); and an 11-member popularly elected House of Representatives which has eight St. Kitts seats and three Nevis seats. The Prime Minister and the Cabinet are responsible to the Parliament.

Under the Constitution, Nevis has considerable autonomy and has an Island Assembly, a Premier, and a Deputy Governor General.

ACTIVITIES OF THE EXPERT TEAM

The Expert Team began work in St Kitts and Nevis on 19 October 2004. The Team held a series of briefings over three days with key stakeholders at the Marriott Hotel, including the three St Kitts-based political parties, the Supervisor of Elections, the Electoral Commission, the Commissioner of Police, representatives of the media, representatives of civil society, the British Consul and other groups. A list of meetings held is attached at **Annex E**.

These meetings provided the Team with information on the electoral process, the overall political and electoral environment, the conduct of campaigns, and issues with respect to the current electoral arrangements. The Supervisor of Elections provided the Team with relevant documentation pertaining to the electoral regulations and processes.

On 20 October the Team travelled to Nevis and held meetings with stakeholders there (see **Annex E**) including the Premier of Nevis, the police force, and representatives of Nevis-based political parties. The Team also deployed around the island in order to ascertain constituency boundaries, the placement and accessibility of polling stations and other arrangements for the elections.

During a period of three days (22 – 24 October) members of the Team were on deployment in St Kitts and travelled to all eight constituencies¹, during which time they were able to assess the overall electoral environment, meeting people and observing final preparations for the elections including visiting a number of political rallies. Members of the Team also witnessed the distribution of ballot boxes and related polling materials by the Supervisor of Elections on 24 October.

A CARICOM Observer Team was also present in St Kitts and Nevis for the elections and interacted with the Commonwealth Team during the course of the elections.

On Polling Day itself all constituencies and most polling stations in the country were visited including the deployment of one Team member to Nevis.

The Team's report was prepared prior to departure from St Kitts and Nevis on 28 October 2004.

¹ The eleven constituencies are: St Christopher 1 - 8 and Nevis 9-11

THE DEMOCRACY AND ELECTORAL FRAMEWORK

St. Kitts and Nevis is a federal state which became independent on 19th September 1983. The general election of 25th October 2004 is the sixth since independence following on such elections in 1984, 1989, 1993, 1995 and 2000.

PRE-INDEPENDENCE STATUS

During the progression of St Kitts and Nevis from colonial status towards statehood, the two islands have variously been connected both together and singularly, to other island groupings. In 1816, both islands were joined with Anguilla and the British Virgin Islands to form one colony. St Kitts together with Anguilla formed one unit in the Leeward Islands Federation in 1871, and they were subsequently united into a single Presidency. In 1882, St Kitts and Nevis became a joint colony. St Kitts joined the Federation of the West Indies in 1958, remaining as a member until the dissolution of the Federation some four years later.

St Kitts, Nevis and Anguilla became a state in voluntary association with Britain on 27 February 1967. In 1969-70, at the invitation of the British Government, the Commonwealth sent an International Commission to assist in resolving the constitutional crisis arising from Anguilla's desire to secede from the three-island state. The *de facto* separation of Anguilla became official on 19 December 1980, leaving St Kitts and Nevis to proceed towards complete independence.

At a Constitutional Conference held in London in 1982, it was agreed that St Kitts and Nevis would become a federated state. St Kitts and Nevis subsequently achieved full independence in 1983 as the Federated State of St Kitts and Nevis.

NEVIS

The Saint Christopher and Nevis Constitution Order 1983 enacted by the British Parliament is the Constitution for independent St. Kitts and Nevis. The autonomy of St. Kitts is established by virtue of entrenched provisions of the Constitution.

They provide for a separate Nevis Island Assembly of 11 members and a Nevis Island administration headed by a Premier. The Assembly may make laws – known as ordinances – for the peace, order and good government of Nevis with respect to specific matters.

As part of the federal arrangements, Nevis has three seats out of eleven in the St. Kitts and Nevis Parliament. Members of the Nevis Island Assembly are entitled to and contest constituencies in the federal general election and may hold positions in both the Nevis Island Assembly and the Federal Government.

At the time of the 2004 general election the Concerned Citizens Movement was the political party in office and the Nevis Reformation Party was in Opposition. The Constitution also provides for and establishes the procedure required for Nevis to unilaterally secede from the Federation.

The Constitution does not provide for a separate St. Kitts assembly or administration nor are there provisions for its secession from the federation. The Federal Government performs all of the local government functions in St. Kitts. The Federal Government is also the local government for St. Kitts which has resulted in the perception in Nevis that the interests of Nevis are being neglected by the Federal Government.

BACKGROUND TO POLITICAL PARTIES

The general election of 25 October 2004 was contested by five political parties. Three of them contested the St. Kitts constituencies – the St. Kitts/Nevis Labour Party (SKNLP) established in 1932, the Peoples Action Movement (PAM) established in 1965 and the United National Empowerment Party (UNEP) established in May 2004. There was one independent candidate.

Two parties contested the Nevis constituencies – the Concerned Citizens Movement (CCM) established in 1987 and the Nevis Reformation Party (NRP) established in 1970.

In the previous general election, SKNLP led by Dr. Denzil Douglas won all eight constituencies in St. Kitts and, by the time of the 2004 election had served its second term in office.

In the 2000 election CCM led by Mr. Vance Amory won two of the three seats in Nevis.

As a result of there being no other party in St. Kitts holding sufficient seats to outnumber the two held by the CCM, the Leader of the Opposition was chosen from among the two CCM members.

In the 2004 general election, PAM was led by Mr Lindsay Grant and UNEP was led by Dr. Henry Browne.

In each case, the two major parties contested all of the constituencies in their respective territories.

The Team held discussions with the leaders and members of all of the political parties.

The background to the 2004 general election was that the SKNLP was seeking a third term. We found the campaign to be lively, the candidates and parties well prepared and the expectations of supporters high.

ELECTORAL LAWS

The National Assembly Elections Act Cap. 162 divides St. Kitts and Nevis into 11 electoral districts for the purpose of federal elections. Each electoral district constitutes one constituency and each constituency elects only one member to the Assembly.

Schedule 2 (1) of the Constitution states that "There shall be not less than eight constituencies in the island of St Christopher and not less than three constituencies in the island of Nevis and if the number of constituencies is increased beyond eleven, not less than one third shall be in the island of Nevis."

CONSTITUENCY BOUNDARIES

The Constitution provides for a Constituency Boundaries Commission charged with the duty of reviewing the number and boundaries of the constituencies into which St Kitts and Nevis are divided². The Commission comprises a Chairman and four members all of whom are appointed by the Governor General acting in consultation with the Prime Minister or Leader of the Opposition as the case may be.

The Commission is required to submit a report of its work to the Governor General at intervals of not less than two nor more than five years.

During our discussions with the political parties and civic organisations, the view was expressed that a review of the boundaries and constituencies was long overdue and certainly necessary in light of population shifts and growth in some constituencies, physical developments and the disparity in representation occasioned by urban/rural differences.

The Constitution also states: "All constituencies shall contain as nearly equal number of inhabitants as appear to the Constituency Boundaries Commission to be reasonably practical..."³.

² Section 49 (1)

³ Schedule 2 (2)

In the 2004 election, constituency number 2 in St. Kitts had 6,077 voters on the register followed by constituencies 1 and 8 with over 5,000 voters on the register while constituencies 3,4,5 and 6 had under 3,000 voters on the register. In Nevis a similar situation obtains.

This means that one constituency had twice the number of voters on its register than four others. The two major political parties in St. Kitts appeared to place boundary changes lower in the order of priorities for electoral reform than other recommendations.

Having covered both islands on Polling Day and prior to the election and witnessed the nature of the disparities, it is clear that boundaries should be reviewed as soon as practicable by the Commission.

THE ELECTORAL COMMISSION AND SUPERVISOR OF ELECTIONS

There is an Electoral Commission whose remit is to supervise the Supervisor of Elections in carrying out his or her functions in exercising general supervision over voter registration and the conduct of elections.

Both the Commission and the position of Supervisor are created under the Constitution⁴.

The Electoral Commission is composed of three members appointed by the Governor General: the Chairman on his "own deliberate judgement"; one member on the advice of the Prime Minister; and one member on the advice of the Leader of the Opposition. The role of the Electoral Commission is to supervise the Supervisor of Elections in the performance of his functions.

After the last election, the advice of the party which gained the second largest number of votes in St. Kitts would not have been sought because they did not represent the official opposition in Parliament. This lack of representation by the second largest national party – in what is essentially a two-party democracy – deprives that party of a voice and adds to the element of controversy and contention on issues relating to the electoral process. We note that a change in the way in which the Commission is appointed would require a change in the Constitution.

All the members of the Commission, including the Chairman who is a legal practitioner, serve on a part-time basis. The Commission has no staff of its own and relies on the Supervisor of Elections for logistical support in carrying out its functions.

⁴ Sections 33 and 34

In our various sessions with political parties and civic groups, we heard complaints that the Commission was too passive – even indifferent – to matters brought to its attention and which were viewed as deficiencies in the electoral process. We also heard allegations of bias in the appointment of election officials such as Presiding Officers, Poll Clerks and Returning Officers.

Not all of the criticisms were valid and we concluded that the allegations of bias were not justified. The Electoral Commission appeared to be aware of the comments and exercised its supervisory role without public intrusion.

In this regard, we cannot help but comment on the failure of the Commission to effectively explain its decisions and to diffuse potential controversy particularly on the issues of such appointments and the registration of voters and other matters, some of which were detailed in correspondence from the leader of PAM to the Supervisor of Elections and the Electoral Commission.

In addition, opposition parties not represented on the Commission were thereby not able to object to the list of electoral officials selected for polling day before it was finalised. The Government and Electoral Commission should consider whether there is not a better procedure to permit valid objections to be heard by a wider and more representative spectrum of political and civic organisations to such appointments.

It should be noted that the Commonwealth, in its Report on the 1995 Elections in St Kitts and Nevis, concluded that:

“The Government and/or Electoral Commission might consider whether a procedure can be devised to allow all political parties to be consulted on the appointment of electoral officers before these are finalised by the Electoral Commission.”

Such a practice would contribute to the building of confidence in the electoral process.

The Supervisor of Elections also holds a constitutional office and is charged with the duty of exercising general supervision over the conduct of elections. He is appointed by the Governor-General acting in his own deliberate judgement on the advice of the Prime Minister, the Premier of Nevis and the Leader of the Opposition⁵.

It was felt by some of those with whom we held discussions that in such a case the consultation on the appointment of the Supervisor might have taken into account the view of the second-largest national party in St. Kitts bearing in mind the number of constituencies in St. Kitts by comparison to Nevis.

⁵ Constitution, Section 34 (6)

Like the members of the Commission, the Supervisor of Elections serves in a part time capacity. The Supervisor of Elections is required to act in accordance with the directions of the Electoral Commission in the exercise of his or her functions but otherwise is not subject to the direction or control of any other person or authority.

The new Supervisor of Elections was appointed in July 2004 consequent on the death of his predecessor. This hardly gave the new occupant, who was not a public officer who had served in any similar capacity, enough time to evaluate the need for changes in the registration process, appointment of election officials nor other issues since the election was called within three months of his appointment.

The Supervisor of Elections accorded us with much courtesy and co-operation and was fair and balanced in his responses to our questions and the concerns we put to him in our discussions.

THE ELECTORAL OFFICE

For the purpose of registration of voters, there is an Electoral Office which is managed on a full-time basis by an Assistant Registration Officer. There is also a Registration Office in each electoral district supervised by a Registration Officer but staffed by an Assistant Registration Officer who in practice runs the office on a full-time basis. The Registration Officers are usually retired or serving public servants engaged full-time in other duties.

REGISTRATION OF VOTERS

The Constitution states: "Every Commonwealth citizen of the age of eighteen years or upward who possesses such qualifications relating to residence or domicile in Saint Christopher and Nevis as Parliament may prescribe shall, unless he is disqualified by Parliament from registration as such, be entitled to be registered as a voter for the purpose of electing Representatives in one (but not more than one) constituency in accordance with the provisions of any law in that behalf and no other person may be registered as such."⁶

The law relating to the eligibility of voters in St Kitts and Nevis is as follows:

- a) A citizen of St Christopher and Nevis of the age of eighteen years or upwards who is domiciled in St Christopher and Nevis or is ordinarily resident there at the date of registration;
- b) A Commonwealth citizen of the age of eighteen years or upwards and has resided in St Christopher and Nevis for a period of at least 12

⁶ Section 29 (2)

months immediately before the date of registration as a voter or is domiciled in St Christopher and Nevis and is resident therein at that date⁷.

Ordinary Residence

The place of ordinary residence of a person is, generally, that place which has always been, or which he has adopted as, the place of his habitation or home, whereof when away from there he intends to return.

The question as to whether a person is ordinarily resident or domiciled in any electoral district at any material period shall be determined by reference to all the facts of the case.

Domicile

For purposes of registration, domicile means domicile of origin or domicile of choice in St. Christopher and Nevis as ordinarily interpreted at common law.

In the case of a separation or desertion a married woman may have a separate domicile.

Every person who is qualified to be registered as a voter for a constituency shall apply in person to the Registration Officer for that constituency to have his/her name entered on the monthly list of voters prepared for the constituency⁸.

Under Section 3 of the Electoral Registration Regulations 1984, every person who is qualified to be registered as a voter for a constituency shall apply in person to the Registration Officer for that constituency to have his/her name entered on the Monthly List for that constituency under a qualifying address. Every application under this subsection shall be in writing and shall be in Form No 1 as set out in the Schedule to the Regulations.

It should be noted that where a person who is registered as a voter for a constituency has ceased to reside in that constituency, he shall not on that account cease to be qualified to be registered as a voter for that constituency until he has become qualified to be registered as a voter for another constituency.

St. Kitts and Nevis operates a system of continuous registration in each electoral district. Those wishing to register as voters must apply in person to the Registration Officer. No identity document is required to be produced at the time of registration. Agents of political parties or candidates or persons likely to be nominated as candidates are entitled to inspect the certificate of registration issued by the Registration Officer. A list of the registered voters

⁷ House of Assembly Elections Ordinance (Amendment) Act1983 - 16

⁸ House of Assembly Elections Ordinance (Amendment) Act1983 - 16

for the district is published around the middle of each month and the Election Registration Regulations provide a full opportunity for the lodging of claims and objections with respect to the appearance or non-appearance of a name on the list and for hearings on such claims and objections. A revised list is then published which takes into account the decision of the Registration Officer on the claims and objections that might have been made.

In addition, every 30 January the Registration Officer publishes a consolidated list of persons registered for the electoral district as at 31 January of the previous year to enable corrections to be made to the list by reason, for instance, of death or transfers.

The final official election list for the 25 October 2004 general election contained 37,865 eligible voters. Of this number 30,649 were registered to vote in the eight constituencies in St. Kitts and 7,216 in the three constituencies in Nevis.

Consequent on the last general election, one Terrence Henry brought an action against Leonard O'Loughlin – the Registration Officer for constituency number 2 – in respect of an objection to the inclusion of “electors” on the monthly list on the ground that they did not live in the constituency in which they were registered. The action was dismissed by the Court of Appeal, which affirmed the High Court’s decision that there was an evidential deficiency in the action. The issue of whether the inclusion of names of persons on a monthly list who did not live in the constituency in which they were registered, was not clearly resolved.

It remains, however, a major issue for candidates and civic organisation which allege that, among other things, there is double registration of voters, large numbers of overseas voters return to the federation specifically to vote (since there are no provisions for overseas voting); that a number of transfers were effected without deletion of the name from the original constituency list; and that there are a number of registrations that take place without the voter appearing personally or producing identification.

These issues were disconcerting and our discussions with political parties and civic groups consistently highlighted these matters. There can be no doubt that these matters have cast disturbing doubts about preparations for elections including the registration process and the integrity of the electoral system as a whole.

We were able to establish that the names of eligible voters were excluded from the electoral roll and we did see evidence of this; that a number of persons did return from overseas to the federation to vote (which we witnessed as well); that there were examples of more than one person voting under the same name since there is an absence of voter identification; and

that there were several examples of persons voting in constituencies for which *prima facie* they would not by law qualify to be registered or vote.

Another contentious issue was the inclusion on the Voters' List, it was believed, of many voters who had died. Whilst this concern was genuinely held, it must be acknowledged that the law does not allow people to be removed from the register unless proof of death is presented (i.e. a death certificate). The difficulty is that the last thing on relatives' minds at such a difficult time as bereavement is removing a name from the Voters' List.

THE CAMPAIGN

The campaign of the political parties in St. Kitts and Nevis was generated around a number of issues of national interest and specifically the conduct of the election.

Our presence on the island of St. Kitts appeared to be well known and publicised and we were in no way hindered in our work.

The specific allegations of electoral and campaign irregularities included:

- Voter registration
- Voting by persons not resident in St. Kitts and Nevis
- Registration of persons not resident or domiciled in St. Kitts and Nevis
- Double and triple voting
- Election spending by both candidates and political parties
- The presence of foreign advisers
- Media bias
- Use of government resources by the incumbent party's campaign
- The involvement of senior civil servants in campaigns
- The use of defective electoral ink

We sought to examine each of these allegations and to gather as much information as possible by discussions with a wide range of groups and individuals.

ISSUES

A number of issues have affected the run-up to and conduct of the elections in St Kitts and Nevis. These include:

MEDIA

Several media houses, both print and electronic, operate in St Kitts and Nevis, including official newspapers for most political parties. Several new radio stations have been granted licences since the last election and this seems to have broadened and intensified political awareness and discussion in the run-up to the election. However, there is a perception that such public discussion suffers from a lack of informed input. Given that there has been a high level of confusion on issues such as voter registration and balloting procedures during the campaign, informed input from the Bar Association and the Electoral Office on call-in and other debate programmes would have greatly assisted in clarifying such issues and lowering the heat of the political debates.

Representatives of the media, for their part, complained that they experienced difficulty in getting information or clarification from the Supervisor of Elections on complaints made by members of the public and political parties on registration procedures and with regard to election-related incidents in the run-up to the polls. This was, however, viewed as a lack of resources and time on the part of the Electoral Office rather than deliberate attempts to block media access. It may therefore be useful for the appropriate authority to consider the introduction of the positions of Public Relations Officer and independent Legal Adviser within the Electoral Office (presently legal advice is being provided to the Commission and the Electoral Office by the Attorney General).

There also do not seem to exist official guidelines for balanced media coverage during election campaigns and there were perceptions that state-owned media houses were not balanced in their coverage and in the allocation of air time to opposition parties.

COMPOSITION AND FUNCTIONING OF THE ELECTORAL COMMISSION AND SUPERVISOR OF ELECTIONS

During the course of its consultations the Team received the impression that while the Commission met regularly with the Supervisor of Elections, it did not appear to be particularly forceful or involved in dealing with concerns raised by members of the public and political parties with regard to the conduct of

the election. It was the view of the Team that given the atmosphere of uncertainty and controversy surrounding the entire registration and election process the Commission should have played a key role in clarifying and overseeing preparations, particularly in view of the fact that the incumbent Supervisor had inherited the position only a few months prior to the elections upon the death of the previous Supervisor and was therefore new to the role.

In addition, the peculiar character of the St Kitts and Nevis political system and the composition of its legislature (eight seats out of a total of eleven based in St Kitts and the remaining three reserved for Nevis) can often lead to a situation where the main opposition party in St Kitts holds none of the seats in the legislature and/or is not the official Opposition. In such a case – as obtains at present – such parties, though representing a significant percentage of the electorate, have no say in the selection and appointment of Election Commissioners. This can lead to dissatisfaction and accusations of bias in the appointment of Commissioners.

ELECTORAL INK

There was a concern by some organisations and individuals that the ink which is used to mark voters' fingers after voting was of such inferior quality that it could easily be removed, thus allowing individuals to try to fraudulently present themselves at a polling station with a view to voting more than once.

VOTING FRAUDULENTLY USING A FALSE NAME

There was concern that individuals could attempt to vote using the name of someone on the Voters' List who was perhaps deceased. In any case where this might be attempted the concern was that the lack of requirement to produce an Identity Card (ID) would lead to an inability to prevent such practices wherever it was suspected.

The law in these circumstances is clear. Provided that a party agent is alert enough to raise an objection, the Presiding Officer shall then put to the voter the following questions:

- a) Are you the same person whose name appears on the Voters' List for this polling division; and
- b) Have you already voted in this election either here or elsewhere?

If the voter answers "yes" to (a) and "no" to (b) s/he is allowed to vote.

The situation is different if a case arises where a person representing himself to be a particular voter applies for a ballot paper after another person has voted as such a person. In this case, s/he will be allowed to vote after

swearing an oath of identify in the prescribed form and otherwise establishing his/her identify to the satisfaction of the Presiding Officer.

VOTER IDENTIFICATION

In St Kitts and Nevis no voter ID exists and no form of identification is required either to register or to vote. The system of registration depends upon the individual presenting him/herself to the registration office and declaring name, address and occupation. Should such representation be challenged, the onus is on the challenger to prove that the declaration is false.

With respect to Polling Day, The ***Manual for Returning Officers, Presiding Officers and Poll Clerks***, which is based upon the St Christopher and Nevis National Assembly Elections Act (Chapter 162) states at section 10.2 as follows:

- (i) When persons apply for ballot paper after another has voted as such a person
 - (a) The Presiding Officer requires the applicant to take the oath of identity (Form No. 12) and establish his identity before giving him a ballot paper....and allowing him to vote following the procedure set out for voting in ordinary circumstances."

Opposition parties assert that this section can be interpreted to mean that the Presiding Officer may, in addition to administering the oath, request a form of identification from the voter in order to require the applicant to "establish his identity" before giving him a ballot paper.

In addition, any name on the register can be voted in up to three times. If a name appears as having already voted, up to two subsequent voters can also vote in that name upon taking the oath and satisfying the Presiding Officer as to his/her identity.

This system relies heavily on the recognition of individuals by polling officials. While this has been feasible in the past, population growth and an increase in the number of overseas citizens returning home to vote make such a recognition-based system open to abuse and uncertainty and can adversely affect public confidence in the security and fairness of the process.

It should be noted that due to the small size of the electorate in St Kitts and Nevis, a relatively small number of votes either way could significantly affect the outcome of elections (in the previous elections some seats were won by as few as 12 votes) thus the intense emotion which this issue engenders.

REGISTRATION

In addition to the issues addressed in relation to registration under the section of this report dealing with the Democracy and Electoral Framework, the encouragement of party supporters from stronghold constituencies to register in marginal ones in order to boost the parties' chances of winning seats was also raised. If true, this practice would make a mockery of the present constituency system, which is the basis for the First-Past-the-Post electoral system which obtains in St Kitts and Nevis.

POSSIBILITY OF VIOLENCE

St Kitts and Nevis, as with most of the Caribbean, has a history of peaceful elections despite often heated campaign atmospheres. On this occasion there have been a number of accusations, from both sides of the political divide, of the use of intimidatory tactics and of attempts to incite violence from political platforms.

In June 1995, prior to the July 1995 General Election, a ***Code of Conduct for the Political Process: Ethical Guidelines*** was signed by the leaders of the four major political parties of the day and jointly published by the Christian Councils and Evangelical Associations of St Kitts and Nevis.

The Code of Conduct agreed, *inter alia*, that "care must be taken not to incite sectional hostility or violence" and to "avoid language that is abusive, indecent or inflammatory". In the absence of any new Code having been agreed on for the 2004 Elections, the 1995 Code was republished on 20 October 2004 in the local media via a press release by the St Kitts-Nevis Chamber of Industry and Commerce which expressed the hope that it would "serve as a reminder to all political parties, political candidates, voters, the Electoral Commission, and the media...".

It was commonly agreed by most people interviewed by the Team that the Code of Conduct was not being followed. It was unfortunate that civic organisations did not press for a recommitment by political leaders and candidates to the desirable objectives of the original Code of Conduct for the 2004 campaign.

INVOLVEMENT OF "EXTERNAL" PERSONALITIES IN ELECTORAL CAMPAIGNS

While the use of foreign born advisers on political campaigns by all parties is not new, the 2004 campaign was characterised by controversy over some of these advisers. Accusations from both sides were levelled about undue

influence and unwholesome tactics employed by such advisers in the conduct of the campaigns including accusations of “subversive activities” and “intimidatory tactics” both by and against these individuals. The Team also heard dissatisfaction expressed about the appearance of politicians (including several Heads of State) from other Caribbean countries on political platforms during the run-up to elections.

CAMPAIGN FINANCING

There are no regulations governing the limits on the amount that could be spent on campaigning by parties, nor any method for ensuring the transparency or probity of political donations. The Team received complaints about the appearance of substantial spending by parties on campaign events, including a series of free concerts featuring well known regional artistes. Members of civil society in particular felt that spending limits and reporting would be desirable and that a levelling of the financial playing field for election campaigning would benefit the democratic process in the future.

VOTER EDUCATION

The Team was told that political parties are mainly responsible for educating their supporters on how to register and vote and voter education material appeared regularly in the party newspapers in the days leading up to the election. The Electoral Office also published information on the location of polling stations and voting procedures. However, because of the controversy over the registration law and the accusations of possible attempts to vote fraudulently, both main parties in St Kitts spend a great deal of time “educating” its supporters according to its own version of the electoral law (i.e. one party repeatedly informed its supporters that they could register and vote anywhere they liked and the other exhorting its supporters not to allow anyone to vote who appeared to them to be doing so fraudulently). Both these positions contributed to raising tensions to fever pitch while doing nothing to clarify the actual process.

GENDER BALANCE IN ST KITTS AND NEVIS POLITICS

During its consultations the Team heard that many women in St Kitts and Nevis feel intimidated in a political environment and are reluctant to enter the political scene, mainly through fear of discrimination against themselves and their families and the use of gender-biased rhetoric on political platforms aimed at denigration and ridicule. Each of the main political parties in St Kitts fielded only one woman candidate each in a slate of eight, both of whom (one being an incumbent) did not win in their constituencies. There is one woman on the three-member Electoral Commission and the Deputy-Chair of one of

the political parties is a woman. The involvement of women in the staffing of polling stations and the turnout of women voters is, however, high.

POLARISATION

The Team observed a high degree of polarisation in St Kitts and Nevis society along political lines and were repeatedly told that a high degree of antagonism exists between political parties and their supporters both during elections and in everyday life. The small size of the St Kitts and Nevis population exacerbates such antagonisms and is an obstacle to fruitful political debate and confidence in the democratic processes of the country. However, on Polling Day the Team witnessed a high level of civility and courtesy between party agents in polling stations.

THE POLL AND THE COUNT

The Team observed the polls in all 11 constituencies on Polling Day and managed to visit a majority of the 95 polling stations. The atmosphere in which the poll was conducted was calm and peaceful and no member of the Team observed any violent incidents and disorderly behaviour with the exception of the constituency St Christopher 4. At around midday, reports of rioting and unruly behaviour were received. Police and soldiers were deployed to restore order. Polling nevertheless continued but the atmosphere in the Old Road and Halfway Tree area remained tense for the rest of the day. A conspicuous security forces presence remained in the constituency until the polling and counting was completed.

PRE-ELECTION DISTRIBUTION OF POLLING MATERIAL

On Sunday 24 October 2004, members of the Team visited the Sugar Factory's Social Centre to observe the Supervisor of Elections distribute polling material to the Presiding Officers.

Each Presiding Officer was given a lockable ballot box, a copy of the relevant Voters' List, stationery and a sealed envelope containing an appropriate number of ballot papers in books of 100 for their particular stations. These envelopes were to remain sealed and shown undisturbed on the morning of the poll to the Party Agents at the polling stations just prior to voting commencement. The process was conducted in an efficient and orderly manner and the fact that most of the people involved had done this work before was apparent.

EVENTS ON POLLING DAY

Our two teams were deployed at randomly selected polling stations across the constituencies well before the opening at 0700 hrs. All stations observed opened punctually at 0700 hrs and the required procedures for commencement were followed rigorously by polling staff. The ballot box was shown to all present to be empty and the sealed envelope containing the ballot papers was opened only after the seals had been examined to demonstrate that they had not been tampered with. Polling stations were located in police stations, schools, church halls, community centres and other public buildings and were in the main well laid out, assisting in the orderly processing of voters. In many stations access for the elderly, infirm or disabled was not easy mostly due to steps, but we recognised that in many cases there would be no alternative venues.

PERFORMANCE OF ELECTION STAFF

We were impressed by the professionalism, efficiency and courtesy of Presiding Officers and Poll Clerks. They applied the electoral laws rigorously and fairly, explained to voters the voting procedure before entering the voting compartment, and almost always checked fingers for ink and ensured that the various oaths were taken in all the various circumstances when it became necessary. A very significant number of the polling staff had done the work before and this experience undoubtedly assisted in the smooth running of the poll. There was a high proportion of women employed on the day, which was noteworthy.

During our observations we noticed that the members of the Electoral Commission and Returning Offices were regularly touring constituencies to ensure that matters were running smoothly. This will have helped in the creation of a supportive team environment. There was clearly a high degree of competent administration behind the successful completion of the poll.

In one station our observer was informed that three electors had apparently been missed off the register due to a clerical error in the Electoral Office as they did all possess a certificate of registration. The Supervisor of Elections had therefore written a letter of instruction to the Returning Officer that the three individuals should be allowed to exercise their franchise. The Team remain unsure of whether or not the law allows such corrections to be made on Polling Day. This is bad practice and can only lead to accusation of manipulation of the Register on Polling Day. There should be a clear cut off date for such clerical errors to be corrected, perhaps seven days before polling. It should always be remembered that there is also a responsibility on citizens to check that they are correctly registered, and trying to correct matters halfway through Polling Day is fraught with danger no matter how well meaning the action.

POLLING AGENTS

Polling agents of political parties were present at all polling stations. They undertook their part in the process in a commendable way observing procedures carefully and co-operating with polling staff regularly. We observed agents challenging voters only in St Christopher 4 (though the records showed challenges elsewhere), when they were alleging that individuals were not resident in the constituency. It is no coincidence that this was the constituency where the only trouble occurred. Presiding Officers observed always followed the correct procedure.

VOTING PROCEDURES

Every voter entering the polling station was required to state their name, residence and occupation to enable the Poll Clerk to check the official register. The Poll Clerk once satisfied that the voter was registered would enter those details in the poll book while the Presiding Officer checked to ensure no traces of ink appeared on the voter's fingers. The voter was then handed a ballot paper bearing the Presiding Officer's initials. The Presiding Officer would explain the voting procedure and how to fold the ballot paper in the prescribed manner. The voter would then proceed to the voting compartment, mark the ballot paper, fold it and return it to the Presiding Officer, who would ensure that the voter's finger was then marked with ink. The Presiding Officer then checked the folded ballot paper to see that it contained his or her initials, removed the counterfoil and placed the ballot paper in the ballot box.

These procedures were carefully followed in all the polling stations visited. There were a number of voters wishing to place their ballot directly into the box but this is not allowed under the existing rules. This is one aspect of the procedure which seems to us to be at odds with electoral practice elsewhere and an unnecessary complication. The ink was always applied, though not always to the right index finger, and although we heard rumours that someone had successfully removed the ink using bleach, no evidence of this was forthcoming. The Team felt that the ink was of sufficient quality to be satisfactory.

In one or two polling stations we noticed that the voting compartments were situated in such a manner as to be visible from open windows, and thus voters could perhaps be seen whilst casting their vote. This should never be countenanced and needs addressing by the Electoral Office. In one case the Presiding Officer was observed to be advising voters to use a church pew if they so wished to mark their crosses, which is inappropriate.

CLOSURE OF THE POLL AND THE COUNT

We found that the prescribed procedures were followed by Presiding Officers at the close of the poll and the arrangements for collection of the ballot boxes and materials were secure and safe.

At the counting centres we visited, we found the prescribed procedures being followed meticulously. The counting was very slow and deliberate with each ballot paper being shown to Party Agents. The process was conducted in an open and transparent manner and Returning Officers treated any doubtful ballot paper in a completely impartial manner.

One area which concerned the Team was the rejection of ballot papers in some counting stations which had been rejected on the following basis:

- an imperfect cross
- one part of the cross touching the edge of the box
- a tick (not a cross)
- all ends of the cross touching the edge of the box

Whilst acknowledging that such ballots were rejected without any party bias, we were concerned to see such examples of voters' franchises being taken away when it was clear what the voters' intentions were. Whilst the Team has not seen the relevant electoral laws on this topic, it is an established principle in election law in many countries that votes should be allowed whenever the voter's intention is clear.

CONCLUSIONS

Despite the many concerns expressed to us prior to Polling Day and during our discussions with political parties, civic organisations, the media and individuals, we found no evidence that on Polling Day itself there were actions by any election official or otherwise that prevented voters from exercising their franchise peacefully, freely and unhindered.

The Expert Team was small but we were able to cover much ground physically on Polling Day and are confident that election officials generally were competent and fair in undertaking their duties.

It is clear that there are very important issues that need to be addressed to ensure that voter registration and the processes leading up to general elections are above question. We strongly believe that the authorities are aware of several of these issues some of which we have detailed in this report.

Our overall judgement, notwithstanding the concerns we have enumerated, is that the election was credible and that the result reflected the will of those who voted.

RECOMMENDATIONS

- There is a need for Constitutional amendments to facilitate wider consultation especially with major national political parties which may not be represented in Parliament:
 - by the Governor General in the appointment of members of the Constituency Boundaries Commission, Electoral Commission and the Supervisor of Elections;
 - by the Supervisor of Elections in the appointment of election officials to ensure confidence in the system by those involved.
- There is a need for a comprehensive review of constituency boundaries to reflect balance and fairness in the number of electors;
- There is a need for a systematic national registration and enumeration exercise to ensure:
 - a reliable and accurate register of electors;
 - the introduction of voter identification technology;
 - the identification of non-resident electors;

- the regular removal of deceased persons from the register;
 - the requirement that voters (other than those residing overseas at the time of an election) are registered in the constituency of their normal residence.
- We recommend that the Commonwealth offers technical assistance to the Government to undertake the national registration and enumeration exercise;
- There is a need for a Code to govern media coverage during an election period to ensure balance and fairness in the presentation of issues, parties and candidates. The Commonwealth Secretariat and Commonwealth organisations such as the Commonwealth Press Union, the Commonwealth Broadcasting Association and the Commonwealth Journalists Association could be of assistance in this regard.
- There is a need for the introduction of campaign financing rules to ensure fairness and no undue influence on the outcome by large financiers.
- There is a need for a voter education exercise to explain and clarify the current election laws and to identify the issues for reform.
- We recommend that the Commonwealth offers technical assistance to the Government to assist in the processes of identifying key issues and drafting new election laws and regulations to govern elections.
- The Commonwealth should assist in enhancing participation of women in St Kitts and Nevis politics. Best practices in other Commonwealth countries could be utilised in this regard.
- There is a need for strengthening the roll of civic organisations in the democratic process. Technical assistance to build capacity in this regard could be sought from organisations such as the Commonwealth Foundation.

