

## Chapter 2

# The Electoral Framework and Preparations for the Election

### Constitutional Background

St Kitts and Nevis is a federal state comprising the two islands of Saint Christopher on the one hand and Nevis on the other separated only by a narrow stretch of water. The Constitution provides for a federal Parliament comprising Her Majesty Queen Elizabeth II (represented locally by an indigenous Governor-General) and an elected National Assembly of 11 members.

In addition to the federal Parliament, the Constitution provides for a separate assembly for Nevis, styled the Nevis Island Assembly, which is empowered to make laws on certain specified matters for Nevis including the power to enact a law which could provide for Nevis to secede from the federation. However, unlike Nevis, St Kitts does not have its own separate island assembly.

### The Legislative and Administrative Framework

For the purposes of federal elections, and pursuant to the National Assembly Elections Act (CAP 162 of the laws), the territory of St Kitts and Nevis is divided into 11 electoral districts. Each of the electoral districts constitutes one constituency and each constituency returns one member to the National Assembly. Pursuant to the Constitution, eight of the constituencies are in St Kitts while three are in Nevis which has a much smaller population. Consequently, the constituencies in Nevis overall are smaller as compared to those in St Kitts with regard to the distribution of the population and electors.

### The Constituency Boundaries Commission

There is a Constituency Boundaries Commission charged with the duty of reviewing the number and boundaries of the constituencies into which the country is divided. The membership of the Commission comprises a Chairman and four other members all of whom are appointed by the Governor-General after appropriate consultation as prescribed by the Constitution. 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. The Commission last met in 1990 but did not recommend any changes. During the course of the Group's discussions with the political parties and other civic groups, a view commonly expressed to it was that a review of the boundaries of the constituencies was both desirable and overdue, since the present boundaries led to disparity in representation and, moreover, population growth in some constituencies had outstripped that of others. In one particular urban constituency in St Kitts, the number of voters on the roll was twice that of five other constituencies in St Kitts, and the three constituencies on Nevis. The two major political parties in St Kitts appeared to be satisfied with the existing boundaries of the constituencies and did not press for redrawing of the constituency boundaries, possibly because under the existing voting patterns neither party appeared to be significantly disadvantaged. None the less, we feel that the issue of constituency boundaries merits examination by the Constituency Boundaries Commission at an early opportunity.

### 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 of exercising general supervision over the registration of voters and the conduct of elections. Both authorities are created under the Constitution.

The membership of the Commission comprises a Chairman appointed by the Governor-General acting in his own deliberate judgment and two other members also appointed by the Governor-General, in one case acting on the advice of the Prime Minister and in the other on the advice of the Leader of the Opposition. All the members of the Commission, including the Chairman who is a senior 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.

In our various discussions about the role and functions of the Electoral Commission we heard complaints that the Commission was too passive in its approach, and did not generally initiate action to remedy perceived drawbacks and/or deficiencies in the electoral process. We also heard allegations of bias and/or passivity in relation to the appointment of Returning Officers, Presiding Officers and Poll Clerks, which is effected by the Supervisor of Elections under the supervision of the Electoral Commission.

We examined the validity of these complaints and concluded that they were neither fair nor well-grounded. In every important matter relating to elections, the Electoral Commission appeared to be actively involved in the exercise of its supervisory jurisdiction. In relation, for example, to the appointment of electoral officials, there is in practice a procedure followed by the Commission under which each of the two major political parties is provided an opportunity to raise objections through its representative on the Commission before any list is finalised by the Commission. Notably, in the present election, the list of electoral officials was finalised by the Commission with the unanimous consent of all three members. A drawback in the system is that the other political parties do not have a formal opportunity to object to any names on the list before it is notified. The new government or the Electoral Commission might well consider whether in future any procedure can be devised to remedy this.

So far as the composition of the Commission is concerned, dissatisfaction was expressed to us by the two political parties in Nevis, as to their lack of representation on the Commission. This may well be a manifestation of wider unhappiness on the part of the people in Nevis about perceived neglect of Nevis by the federal government. We note that a change in the composition of the Commission would require an amendment to the Constitution.

Notwithstanding any criticisms of the role and functions of the Electoral Commission, the personal integrity of the current Chairman and of his two colleagues on the Commission was not questioned by anyone. The Chairman enjoys a high reputation among both political parties and civil society for impartiality and dedication, and this is important in the highly-charged political atmosphere prevailing in the country. It was noteworthy too that on polling day itself, all three members of the Commission were very much in evidence doing the rounds of polling stations to ensure that arrangements were in place and that the process was working as it should.

The Supervisor of Elections also holds constitutional office and is charged with the duty of exercising general supervision over the registration of voters for the purpose of elections to the National Assembly and the conduct of elections. He is appointed by the Governor-General acting in his own deliberate judgment after consulting the Prime Minister, the Premier of Nevis and the Leader of the Opposition. As with members of the Electoral Commission, the Supervisor of Elections serves in a part-time capacity and is otherwise either a full-time public servant or such other person as the Governor-General may decide. 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.

Doubts were expressed to us in some quarters as to the independence and impartiality of the current occupant of the position of Supervisor of Elections, principally because of his concurrent full-time responsibilities as the head of a civil service department answerable to the then Deputy Prime Minister, in turn a member of the then ruling party, PAM. Specific allegations of bias were made before us in respect of the appointment of electoral officials, namely Returning Officers, Presiding Officers and Poll Clerks.

While such apprehensions were perhaps understandable in the prevailing political climate, they did not stand up to closer scrutiny. In the first place, the appointment of such officials was confirmed by the Electoral Commission which, as outlined previously, included among its

members representatives from both the then ruling party, PAM, and the opposition SKNLP. Most significantly, church leaders with whom we spoke stated emphatically that the current Supervisor was a person of integrity and impartiality who commanded widespread confidence, and who would have the courage to resist any improper instructions or requests, if such were made.

For our own part we were afforded the utmost courtesy and co-operation by the Supervisor of Elections and his staff, and he was open-minded in his responses to our various suggestions on ways in which the electoral process might be improved.

### **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 on other duties.

### **Registration of Voters**

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. 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 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 hearing 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 December of the previous year to enable corrections to be made to the list by reason for instance of deaths or transfers.

For the 3 July 1995 general election, the list used was that published on 17 June 1995 which was essentially the consolidated list published on 30 January 1995 plus new registrations up to 30 April 1995. This included any young people who might have become eligible by 30 April 1995 to vote for the first time. It also included corrections that, of necessity, had to be made as a result of claims and objections upheld by the Registration Officer relating to the new additions since 31 December 1994.

In the event, the final official list for the 3 July 1995 general election contained a total of 31,726 eligible voters. Of this number 25,719 were registered to vote in the eight constituencies in St Kitts and 6,007 in the three constituencies in Nevis.

### **Preparations for the Election**

A total of 96 polling stations were established in the 11 constituencies with 73 in St Kitts and 23 in Nevis.

A number of allegations of malpractice, based on speculation and suspicion rather than substance, were brought to our attention in regard to some aspects of the electoral process. Among these, for example, were the allegations that some people were registered in constituencies in which they did not reside; double registration; and the 'funding' of overseas residents to return specifically to vote. (The law does not provide for overseas voting.)

In the course of our various discussions with the Electoral Commission, political parties and others, several matters were raised which gave rise to concern among the Group about the preparations for the election and public perception of the integrity and impartiality of the electoral process.

In the first instance we were concerned that the voters' roll might have excluded some eligible voters. Indeed, the leader of one of the political parties was adamant that some half

dozen names had been left off the roll in a key constituency.

We also detected some unease about the existing practice of delivering election materials including ballot papers to Presiding Officers on the eve of the election for storage at their homes overnight. Without in any way questioning the probity and integrity of Presiding Officers, we felt that this ran the unnecessary risk of jeopardising the otherwise carefully prescribed procedures for the security of the electoral process. It seemed to us that it would be much better to deliver such materials to Presiding Officers on election morning itself.

The actual process of voting also gave rise to concern among the Group, in that the Presiding Officer was entrusted with the responsibility of placing the completed ballot paper in the ballot box rather than the voter himself or herself doing so. This seemed to us incorrect on principle and, moreover, it could in a given case affect the secrecy of the ballot by making it possible for the Presiding Officer by lifting the folded part of the ballot paper a little, to find out in whose favour the voter had voted.

Accordingly, our Chairman wrote on behalf of the Group on 29 June 1995 to the Chairman of the Electoral Commission to bring these concerns to the attention of the Commission and the Supervisor of Elections, with a suggestion to consider if the situation might be remedied notwithstanding that it was rather late in the day. (See *Annex X*.)

The same day, the Chairman and one of the members of the Group met with all three members of the Commission together with the Supervisor of Elections to discuss the issues involved.

As regards registration, we were assured by all the members of the Commission that all complaints of non-inclusion had been examined and dealt with, and that not a single complaint of non-inclusion was pending before the Commission.

On the matter of storage of election materials overnight in the homes of Presiding Officers, the Chairman and members of the Commission said that they would have no objection to such materials being stored at police stations overnight for delivery to the Presiding Officers on election morning. But as this would involve a change of procedure, they could not effect the change unless all parties involved agreed, including the political parties and the candidates.

The Commission took a similar position on the proposal that the voter should be given the choice of placing his or her ballot in the ballot box.

Following upon correspondence with the political parties, the Chairman of the Commission wrote to the Chairman of the Group on 30 June 1995 to say that they had not been able to obtain unanimous consent to the proposals made by the Group, and attached copies of responses received by him from the Supervisor of Elections as well as the three political parties in St Kitts in relation to the proposed new procedures which would have answered the Group's concerns. Copies of these various documents are at *Annex XI*.

In brief, the documents showed that the Commission was advised by the Supervisor of Elections that the Returning Officers felt that the suggested changes, coming at such a late hour, could create 'tremendous confusion' and that they therefore could not be a party to any such changes. The then ruling party, PAM, had no objection in principle to the proposed changes but stated that it was concerned about possible legal challenges later on. PAM therefore declined to agree, notwithstanding earlier positive reaction from its representatives with whom we spoke. The two political parties in Nevis did not respond. The Commission felt therefore that it had no option but to decline to accept the changes proposed by us.

For the future, the Group's considered assessment is that these and other matters need to be looked at afresh, with a view in particular to strengthening the voting format and allowing voters to cast their own ballots. The Group feels too that the electoral process could benefit from a better system of identifying voters, for example, through the use of a voter's card or some other form of identification. We propose these reforms in the spirit of facilitating greater confidence in the transparency and integrity of the electoral process, and to minimise the possibility that the all-important secrecy of the ballot might in any way be jeopardised or challenged.