

**UNITED NATIONS
EXPERT MONITORING MISSION
REPORT**

**St. Eustatius
Kingdom of the Netherlands
17 December 2014 Referendum**

I. Background

1. St. Eustatius is a former member of the Netherlands Antilles. Like Bonaire and Saba (together often referred to as the “BES” islands) it has the status of a “public entity” under Article 134 of the Dutch Constitution.
2. In accordance with prior agreements, a joint evaluation of the status of the BES islands is to take place “five years after the moment on which the three islands obtain a constitutional position within the Dutch state regime,” which was attained through the 10/10/10 referendum.
3. An Independent Evaluation Committee (established by the Dutch government) is due to produce a final report by 10 October 2015 to evaluate how the implementation of the post 10/10/10 agreements has taken place. St. Eustatius scheduled a referendum on its constitutional status on 17 December 2014, prior to the completion of the 2015 evaluation.

II. UN Electoral Expert Monitoring Mission (“the mission”)

4. On 8 December 2014, the Permanent Representative of the Kingdom of the Netherlands to the United Nations wrote a letter to the UN presenting and supporting the request by the Island Council of the Government of St. Eustatius for the United Nations’ Electoral Assistance Division’s (EAD) assistance with respect to the organization of the 17 December 2014 constitutional referendum. In response, EAD deployed an Expert Monitoring Mission (“the mission”) from 15 to 19 December 2014 to St. Eustatius to monitor the conduct of the referendum.

III. Context

5. Date & timing of referendum: The constitutional referendum on the future political status of St. Eustatius took place on 17 December 2014 at The Ernest van Putten Youth Center (known as ‘The Lion’s Den’). The one polling station opened at 7.30 am and remained open until 9.00 pm. The counting started immediately after the polling station was closed and took around one hour to complete.
6. Legal Framework: According to the Dutch Constitution, the Dutch Government interprets “Public Entity of Holland” to mean full integration. Consequently the Dutch government has since 10 October 2010 begun to directly implement Dutch legislation on the BES islands. Also, according to the Dutch Constitution, the only alternative status to public entity is independence since any other alternative would imply a change in the Dutch constitution.
7. In addition, the Dutch Constitution allows only for consultative referendums. Therefore, the 17 December 2014 referendum on St. Eustatius (as was the case in the 2010 Bonaire referendum), regardless of the participation rate is legally non-binding on The Netherlands. Furthermore, also according to the Dutch Constitution, the three BES islands integrated into The Netherlands as public entities do not have a sufficiently large population to allow them to have separate representation in the

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Dutch Parliament.¹ Additional referendum Ordinances were issued by the St. Eustatius elected Island Council to implement the operation that established, *inter alia*, a threshold of 60% turnout of registered voters for the process to be considered “valid” by the Council.²

8. **Institutional framework for conduct of the referendum:** Based on a mandate by the Executive Council of St. Eustatius, a Constitutional Committee (CC) was appointed to conduct a public consultation process within the community to establish if a referendum on the constitutional status of the Island was needed. The CC met with different stakeholders (NGOs, members of the clergy, undergraduate students and political parties) and posed a set of questions to each. As a result of this consultation process, the CC stated that “based on the common sentiments expressed by stakeholders it can be concluded that a referendum is indeed necessary.”³
9. Once the need for the holding of a referendum was agreed and accepted, the Executive Council appointed a Referendum Committee (RC) mandated to propose the set of questions to be included in the ballot (*see ‘Options on the ballot’ below*). The RC is composed of three Commissioners selected by the Executive Council from members of the island community.
10. The civil registry, under the operational authority of the Census Bureau, produced the voters’ list on 3 November 2014 that included a total of 2,546 registered voters.
11. The logistical arrangements for the organization of the referendum were under the responsibility of the Constitutional Affairs Commissioner, a member of the Executive Council.
12. On referendum day, the Voting Bureau at the polling station was constituted by staff from the Census Bureau with previous electoral experience. They were in charge of the electoral materials, the overall conduct of the voting and the count.
13. The Island Governor acted as Head of the Main Voting Bureau in charge of receiving and announcing the preliminary results on referendum day, then announcing the final results on 19 December.
14. **Options on the ballot:** Initially, the RC had proposed three options to be included on the ballot. However, after presenting their recommendations to the Island Council, the Council decided to add a fourth option of status quo:
 - a. **Stay as Public Entity** – in effect maintaining the status quo;
 - b. **Independent Country** – full internal self-government, ability to develop its own system of government and its own constitution;
 - c. **Autonomous Territory within the Dutch Kingdom** – autonomous country within the Kingdom of the Netherlands (like Curacao and St. Maarten) where

¹ BES citizens, having retained Dutch nationality after the 10/10/10 referendum, have the right to vote in elections for the Dutch House of Representatives and for the European Parliament. They are not, however, allowed to vote in Provincial Council election because these public entities are not part of any Dutch province. (“The Kingdom of the Netherlands: new constitutional structure”, Ministry of the Interior and Kingdom Relations and Ministry of Foreign Affairs, October 2010, updated April 2014)

² Note that the initial turnout threshold for the referendum process to be valid was established at 75% of registered voters - this was later reduced by the Island Council to 60%.

³ For details see ‘Engaging the Stakeholders. Constitutional Process of St. Eustatius.’, March 2014.

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- the ‘laws of Holland will not apply and the Kingdom laws would apply only after consultation with the St. Eustatius political leadership’;
- d. **Integrated part of the Netherlands** – full political integration (like in the French system) that would require for the Netherlands to accept St. Eustatius ‘under equal political, economic and social terms’.
15. **Voters’ list/Census Bureau issues:** A voters’ list was extracted from the civil registry on 3 November 2014. This was used to produce voter cards (printed in the Netherlands) that were then delivered by mail to the voters. The voter cards that were not delivered or returned were kept at the Census Bureau; voters had until 16 December (the day before the referendum) to collect them, although the Census Bureau eventually remained open until 3pm on referendum day to allow collection.⁴ No voters’ list was used or available on polling day instead voter card unique numbers were crossed off a list to tally turnout and reconcile with votes cast.
16. Eligibility to vote included those not deprived of their right to vote, who were 18 years of age on the day of voting, resident of the island and holding Dutch nationality; as well as those who were also 18 years of age on the day of the vote and had been legally resident for five or more years on the island.
17. A public outreach campaign through local media explained to voters the need to present both their voter card and an official ID to be able to vote (traditionally, Statians only required an official ID to vote but voter cards were reportedly used in the last three elections); this campaign also encouraged those who did not receive their cards to collect them at the Census Bureau. A process to replace lost/incorrect cards was also available.
18. The Census Bureau indicated the voters’ list had not been recently updated and probably still contains names of deceased people and/or those registered voters that live abroad (and would not have been eligible to participate unless they had made efforts to re-register and sign a proxy).
19. A maximum of two proxies per voter was allowed if the proxy’s voter card had been completed and signed on its reverse by the voter. The proxy’s ID (or copy) was also required to receive a ballot. The mission was made aware of some confusion with respect to proxy voting as the language on the voter cards appeared only in Dutch.
20. In addition a number (estimated by interlocutors to be 60) voters were receiving medical treatment off-island and there were doubts about their ability to participate. Officials claimed a Referendum Commissioner was in face-to-face contact with them in an attempt to allow them to vote (by encouraging them to sign a proxy). Otherwise no out-of-country voting was implemented for the referendum. It was unclear to the mission how many potential voters this could have affected but estimates ranged into the tens not hundreds.
21. No political party representatives were allowed into the polling station on referendum day; however the count was open to the public.

⁴ Reports from civil society suggested many cards remained uncollected – however, this could not be verified by the mission.

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22. Civil society organizations in St. Eustatius, although small, are active and relatively well organized and their outreach appeared widespread. For the referendum, organizations such as Brighter Path Foundation, Pro Statia and People Voices, Views and Opinions actively campaigned for autonomy and conducted sensitization campaigns among Statians to encourage participation in the referendum. Civil society representatives were also not allowed into the polling station on referendum day but some were present for the count.

IV. Conduct of the referendum

23. The conduct of the referendum on 17 December 2014 appeared to go well. The mission did not have the opportunity to review polling procedures or the legal framework in English ahead of the poll. Nevertheless it appeared that staff implemented a consistent approach to the polling that broadly followed recognized practice in other jurisdictions. Overall the technical conduct was assessed as good, with adequate checks to voter cards, issuing of ballots and secrecy of the vote (only 12 of 1156 votes were declared invalid). Notably the polling staff implemented their mandate in a conscientious and consistent manner over a very long working day. Police/security presence was noted for the entire day, which passed without incident.
24. The one polling station opened on time at 7.30am and remained open until 9pm. In previous elections/referenda employees had four hours off work to cast their vote. The newly implemented Dutch voting regulations do not allow for time off work, consequently voting hours were extended to accommodate after work voters. The mission noted a steady flow of voters throughout the day with almost equal numbers of men and women (although no official disaggregated data was released). The mission also noted few young people participating in the vote. No long queues were observed although some small gatherings were witnessed outside the polling centre within the grounds of the location.
25. Notably the polling location (traditionally the library in the centre of the main town) had been changed from previous elections to a new location near the airport. This proved contentious and civil society remained critical up to and on the voting day itself. The Governor's primary reasons for changing the location were to mitigate traffic jams and the congregation of people in the town centre. The new location was a spacious community hall accessible by steps and a ramp located within a walled compound. The mission found the polling location easily accessible for all voters (including those with disabilities and the elderly) with ample parking space and walking distance from the old site. No individual or civil society organization complained that voters were not aware of where to go and cast their vote. Civil society claimed that the change was not only inconvenient but had significantly affected voter turnout. It is understood that the Governor intends to use the same location for Island Council elections in March 2015.
26. No provision was made to allow for observation of the process by civil society or political parties. Consequently no representation of either was present inside the polling centre during the vote. Some civil society members were seen congregating outside the centre within the walls of the compound. They primarily appeared to be managing distribution of proxy voting forms. The mission was approached on a number of occasions by both voters and civil society to discuss polling and to complain that voting cards were required to vote. Notably a member of the local press was present for the entire day inside the polling centre and took photographs of key

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personalities when they voted. A member of the Referendum Committee and the Governor were present at the start of polling and thereafter observed voting on and off during the day until the close of polling.

27. Counting took place immediately after the close of polling. Those members of the public still at the polling location were invited in to watch the process. Both T.V. cameras and journalists were also present. The Governor, some members of the Island Council and civil society were also present. The total number of witnesses to the count numbered approximately 30. Counting procedures appeared to be followed including reconciliation of ballots cast with number of persons who had voted. The Governor immediately announced preliminary results at the polling centre. Final figures (unchanged from preliminary results) were announced two days later, with members of civil society, the media and the Island Council present. The Governor invited complaints to be filed with his office in writing.

V. Observations

28. The legal framework used in past elections and referendums was used for the current referendum and was issued in Dutch by The Hague. This raised no notable concerns from civil society or political parties. However, the mission noted the lack of public information (particularly in English) on the legal framework or procedures.
29. While the referendum is not legally binding on The Netherlands, the Island Council's own threshold for approval was not met (turnout was 45.4% of registered voters).
30. It is the assessment of the mission that the intention of the voters was clear and was not challenged.
31. While the voting location had been changed – this was done well ahead of polling day and voters were well aware of the new venue. Bar some possible inconvenience it is the mission's assessment that the change in location probably did not affect voter turnout or level of participation.
32. The operational implementation of the referendum largely met international best practice. Nevertheless no domestic observation was permitted. Some technical improvements would enhance the credibility of the process – such as a transparent ballot box, use of numbered ballot box seals, but their lack was not detrimental to the poll.
33. Although some voters may not have voted due to lack of a voter card they were afforded ample opportunity to collect or seek a replacement card ahead of referendum day.
34. The need for a voter card to vote became the referendum day issue of note. Some complained that this was a new practice (although use of a card had reportedly been necessary in the last three elections), some indicated that the public information campaign had been confusing and contradictory, while others suggested that the voters' list itself was inadequate for purpose (duplications, deceased voters, etc). Some members of civil society alleged that many voter cards remained unclaimed ahead of the poll due to difficulty in delivering them by mail. However, the mission did not receive significant numbers of complaints or see large numbers of voters turned away for not having their voter cards.

35. A complaints period and procedure was not apparent. The Governor did verbally invite those present at the count and at the final announcement of the results to submit any complaints in writing to his office. Nevertheless the process was not commonly known or understood.
36. The ballot was printed in English and was clear on the options. The voter card was printed in Dutch only. Some voters who were apparently not conversant in Dutch appeared to have trouble understanding instructions concerning proxy voting. The mission witnessed a number of voters prevented from utilizing proxy votes as the voter card had been signed in the incorrect place rendering it invalid.

VI. Recommendations/comments

37. Public information: The mission recognizes that the official language of St. Eustatius is Dutch, but highlights that some interlocutors were either not fluent or found difficulty in reading/understanding Dutch in some public information materials. The ballot was printed in English only while the voter card was in Dutch only.
 - a. The mission recommends that in future, measures be considered to make easier voter access to relevant legislation and procedures (including consideration of translation into English) – particularly voting day and count procedures as well as any complaints process;
 - b. The mission recommends that further efforts could be made to support public outreach on the need for voting cards to vote (if this is to be the case in future elections/referenda);
 - c. The mission recommends that further efforts could be made to promote delivery of voting cards and that consideration is given to the display of a total number of non-delivered/non-collected cards ahead of any election event.
38. Voting cards: The mission suggests that, while conforming to requirements on official language, the government consider use of English on voting cards to facilitate access and understanding amongst many voters not fluent in Dutch.
39. Voters' list: The mission suggests that authorities continue their efforts to ensure a voters' list which enjoys broad public trust.
 - a. Consideration be given to the common practice of displaying the voters' list ahead of any election/referendum for voters to review and challenge;
 - b. Efforts continue to be made to clean the current list of duplicates and other anomalies ahead of future electoral events.
40. Observation: As a confidence building measure and online with common good practice, provisions are made to allow future domestic observation inside the polling stations/centres (access be granted to accredited civil society, political parties and media).

Expert Monitoring Mission
28 December 2014