

Head: A Perfect Storm: Covid-19, Snap Elections, and Archaic Legal Framework

Cynthia Barrow-Giles

The University of the West Indies, Cave Hill Campus (Professor of Constitutional Governance and Politics)

Rico Yearwood

CARICOM Attorneys-at-Law, Petit Calivigny Bay, St. George's, Grenada (Attorney-at-Law and Head of Public Law Department)

Citation: Cynthia Barrow-Giles and Rico Yearwood (2022) Head- A Perfect Storm- Covid-19, Snap Elections, and Archaic Legal Framework, *Global Journal of Politics and Law Research*, Vol.10, No.4, pp.40-57

ABSTRACT: *The Covid-19 pandemic has tremendous implications for democracy worldwide. Emergency measures undertaken to combat the pandemic tend to demonstrate a trade-off between public health and fundamental democratic principles. The Caribbean is not immune from this. This paper examines how Covid-19, and the calling of a snap election in Barbados scheduled for January 19, 2022, when combined with archaic election rules, led to serious implications for the conduct of the election, specifically regarding the ability of citizens to vote. The paper is divided into five sections, beginning with an introductory section. The second section examines the implications of Covid-19 for democratic participation. The third section explores the legal framework for the conduct of elections in Barbados and the limitations of that legal framework. The penultimate section discusses the implications of the snap election for electoral participation and electoral integrity. The paper ends on the need for electoral reform in the country.*

KEYWORDS: Barbados, elections, Electoral and Boundaries Commission (EBC), Covid-19, Constitution, democracy.

INTRODUCTION

On December 27, 2021, the Prime Minister of Barbados announced that general elections for the thirty-seat House of Assembly would be held on January 19, 2022, in what would have been the shortest election period for the country. The calling of a snap election is not unusual in parliamentary democracies without fixed terms of office, and the Commonwealth Caribbean is not therefore immune from this. However, while seven other Commonwealth Caribbean countries have held general elections during this global health pandemic, these have tended to be held near the end of the five-year sitting of the parliament. In that regard, St. Kitts-Nevis was the first to do so on 5, June 2020, followed by Trinidad and Tobago (10 August 2020), Jamaica (3 September 2020), St.

Vincent and the Grenadines (5 November 2020), Belize (11 November 2020), St. Lucia (26 July 2021) and the Commonwealth of the Bahamas (16 September 2021). Barbados is the only Commonwealth Caribbean country to have called an election early during the pandemic period.

The Barbados Labour Party under the leadership of Mia Mottley was swept into office following the May 24, 2018, general election having won every seat in the 30-seat national assembly.¹ For the first time in the electoral history of the country, the political opposition was excluded from the parliament which could have had serious constitutional implications, not to speak of the democratic deficit. In the weeks which followed this historic victory, Reverend Joseph Atherley crossed the floor and constituted himself as the official opposition, thus narrowly avoiding any constitutional crisis.

Having inherited an economy that was in recession and massive debt, which Hinds and Stephens (2017), discuss in their article *Fiscal crises in Barbados: comparing the early 1990s and the post-2008 crises*, the government undertook a major restructuring of its external debt with the international community. For the first time in its history, the government entered a homegrown, but IMF supervised structural adjustment programme, and an Extended Funding Facility (EFF) with the Fund.² On June 1, 2018, less than a month after its massive election victory, the government undertook this restructuring of both its commercial debt to external creditors and its various treasury bills.³ A few months later, that is in October 2018, the government also made a policy decision in relation to settling its internal debt, agreeing to a collective action mechanism. The Barbados Economic Recovery Transformation (BERT) was imposed by the newly elected administration as a major plank to rescue the economy from its malaise, restoring fiscal and debt sustainability, addressing falling reserves, and increasing growth, but did not envisage major changes to the structure of the economy, although much was made of the benefits to be had from both the development of the blue and orange economies. Whether the public policy approach of the government would have had the desired effect is open to speculation as the Covid-19 global health pandemic was to derail the plans of many regional governments including Barbados. However, prior to the onset of the global health pandemic and its impact on Barbados, the country was achieving a measure of success. The IMF in its 2019 ARTICLE IV CONSULTATION, SECOND REVIEW UNDER THE EXTENDED ARRANGEMENT, REQUEST FOR COMPLETION OF THE FINANCING ASSURANCES REVIEW, AND MODIFICATION OF PERFORMANCE CRITERIA, stated:

“Barbados continues to make good progress in implementing its comprehensive homegrown economic reform program. All quantitative performance criteria, indicative targets, and all structural benchmarks for end-September 2019 were met.”

To further address the difficult economic situation, the government also undertook several major tax reforms including the highly controversial changes to the corporate

income tax (CIT) which was a direct response to the OECD's newly issued framework on Base Erosion and Profit Shifting (BEPS), and in the process eliminating the differentiation between resident and non-resident corporate profits, (a new unified tax structure was established), and a reduction in personal income tax (PIT) as a populist measure. Further tax reform included revenue-enhancing measures designed to offset the reforms to the personal income tax, such as property taxes, and the introduction of new taxes such as the room rate levy. Additionally, the VAT tax base was broadened by eliminating several exemptions and preferential rates. Other non-populist revenue-raising policies such as an increase in the bus fares, (from BD\$2 to BD\$3.50) in April 2019, an Airline Travel and Tourism Development Fee (collected on airline passengers and transferred to the tourism agencies), the Health Service Contribution (transferred to the Queen Elizabeth Hospital) the Garbage and Sanitation Contribution (transferred to the Sanitation Services Authority), and new water consumption rates were introduced for both commercial and residential customers. These had mixed reactions in Barbados and were generally unpopular with the average citizen.

The BLP administration was also focused on the governance of the country and while it made little headway with the issue of promoting a vigorous anti-corruption legislative agenda which had been one of its 2018 campaign promises, perhaps the most notable political development of 2020, was the announcement by Prime Minister Mottley that on November 30, 2021, Barbados would become a Republic. That call itself while largely supported was not without opposition as a significant segment of the population held the view that prior to the removal of the Monarchy from the existing political order, greater consultation with the public and the holding of a referendum should proceed and determine whether the necessary constitutional amendments could be initiated.

The Republican Status Transition Advisory Committee (RSTAC) was established by the government to undertake a number of functions. Foremost among its remit was to review the previous work done on constitutional reform in the country, and in so doing determine the legislative and procedural changes that may be required to effect constitutional reform. Secondly, RSTAC had to advise on the required reform measures necessary to achieve this status; to recommend the constitutional requirements necessary to effect the change. In as much as the transition necessitated a change to the office of the Head of State, RSTAC was directed to recommend the type of presidency, the powers and tenure of the president, and to determine the ceremonial and legal implications of the Presidential status. Fourthly, RSTAC was charged with the responsibility to indicate the impact that the new presidency would have on the public service. Having made such determinations, on September 20, 2021, the Bill was introduced in the parliament of Barbados.⁴

Essentially the Bill sought leave of the parliament to alter the Constitution to provide for Barbados to become a Republic with a President and to make provisions for related matters. Unsurprisingly, given the overwhelming majority of the government, the Bill was quickly and successfully passed in the two houses of the Barbados parliament

paving the way for the government to meet its November 30, deadline. On November 30, 2021, Barbados became a Republic with Dame Sandra Mason, the current Governor-General becoming the first president to be appointed under the new arrangement for the selection of a Head of State.

Quite apart from these economic and political developments, the health pandemic was an additional dimension to the electoral environment in 2022. On the eve of the election, and having faced almost two years of curfews, social distancing, mask-wearing, and at least one major lockdown under successive Emergency Management (COVID-19) (Curfew) Directives, approximately six thousand citizens were either under home isolation (the majority) or in quarantine at government facilities. Indeed, the Ministry of Health and Wellness' daily release on the Barbados Covid-19 Situation Report for January 19, 2022, showed that while the death toll from Covid-19 was placed at two hundred and seventy-three persons, five thousand, nine hundred and ninety-two persons were in home isolation with another one hundred and twenty-three in primary isolation centers.

These were the immediate circumstances and backdrop to the election of January 19, 2022, which again saw a triumphant Mia Mottley leading her party to a resounding victory at the polls and repeating her 2018 feat, with yet again a clean sweep at the polls. This time, however, the results, while showing no difference in terms of what would be the final composition of the elected House of Assembly, clearly revealed the growing disillusionment with both political parties and the obvious impact that holding an election under pandemic conditions can have for democracy, not to speak of the impact of staging an election in a relatively short period of time, that is a mere 24 days after the announcement. Preliminary data show that this was the lowest voter turnout on record in the country. As table 1 shows, in the last thirty years, voter turnout has typically recorded between 60-70 percent of the electorate voting. In the 2022 general elections, early data show that it was a record low of 45-46 percent. We take the view that the snap elections under Covid-19 circumstances, combined with the lack of modernization of the legal framework for elections, contributed significantly to the record low voter turnout in the country.

Table: Voter turnout in Barbados 1991-2022

Year	Voter Turn out
1991	63.72
1994*	60.89
1999	63.36
2003	61.03
2008	63.04
2013	62.02
2018	60.0
2022	45.00 (preliminary estimates)

Source: http://www.caribbeanelections.com/bb/elections/bb_results_1994.asp

*Early general elections were held due to the no-confidence motion passed against Prime Minister Erskine Sandiford and his subsequent decision to advise the Governor General of a dissolution of the parliament rather than resign as Prime Minister.

Covid-19 and democratic governance

There is some consensus that democracies have sustained a battering in the twenty-first century. Varieties of Democracy (V-Dem),⁵ have argued that there have been improvements in the elections in areas such as overall quality with respect to issues of integrity, reduction in the open intimidation of opposition political parties, the larger role played by independent electoral bodies and vote-buying. Overall, however, according to V-Dem:

“The average level of democracy in the world has slipped back to where it was before the year 2000. The decline has been moderate, however, and most changes have occurred within regime categories— with democracies becoming less liberal and autocracies less competitive and more repressive. So far, at least, the data show relatively few countries backsliding from democracy all the way to full-blown autocracy. (Valeriya Mechkova, Anna Lührmann, and Staffan I. Lindberg, 2017, p.162).”

This backsliding of democracy is largely demonstrated in what V-Dem describes as “Behind-the-scenes media censorship, unofficial government harassment of critical journalists, constraints on academic freedom imposed without changing any laws, and ignoring high-court rulings... the principal means that governments have used to constrict democratic space in the liberal democracies”. (Mechkova et al, 2017, p.167). This is consistent with the views expressed by Christopher Hill et al (Hill et al, 2018) that the decline of democracy is broader than threats to elections and can be linked to the “ownership of political power by one of the branches” primarily the executive branch of government that encroaches upon areas under the jurisdiction of other branches.

Natural and man-made disasters can prove to be highly detrimental to the holding of an election as such disasters can compromise opportunities for deliberation, contestation,

participation, and election management quality (James, & Alihodzic 2020). Equally true, is the fact that holding an election under such conditions may pose a great risk to citizens, whether physical in the case of an earthquake, hurricane, volcanic eruption, or medical as in the case of a virus. The International Institute for Democracy and Electoral Assistance (IDEA) database shows that between February 2020 and December 2021, eighty elections had been postponed with the largest number in Europe (32.5 percent), the Americas, and Asia/Pacific at 22.5 percent each, followed by Africa at 18.8 percent, with only three elections being postponed in the Middle East. In the Caribbean region, local government elections which were originally scheduled for the Commonwealth of the Bahamas in June 2020 were postponed for January 2022. The Dominican Republic postponed its parliamentary elections from May 2020 to July 2020. Haiti has been by far the most impacted for a variety of reasons including the Covid-19 having seen approximately 8 postponements. Further, despite the risk posed to societies, at least 153 countries and territories held elections or referendums during this same period.⁶ Table 2 shows the number of Commonwealth Caribbean countries postponing elections from 2020 - January 2022.

Table 2: Elections postponed in the Commonwealth Caribbean under Covid-19 conditions, March 2020 to 2022

Country	Date Elections were due	Date Postponed to	Type of Election
Commonwealth of the Bahamas	June 2020	January 2022	Local Government (subnational)
Jamaica	29 November 2020	February 2021 and a further postponement to 2023*	Local Government

IDEA: <https://www.idea.int/news-media/multimedia-reports/global-overview-covid-19-impact-elections>

* This followed the approval of The Representation of the People (Postponement of Elections to Municipal Corporations and City Municipalities) Act, 2022 in the House of Representatives on January 25, postponing elections to no later than February 2023. See, <https://jis.gov.jm/local-government-elections-postponed-for-a-further-12-months/>.

The global health pandemic in the form of Covid-19 has certainly contributed to the concerns surrounding democratic governance and specifically the conduct of elections. The evidence suggests that staging and managing an election during a health pandemic presents several risks especially with respect to political participation. Minimally, the pandemic poses risks to the ability of countries to guarantee genuine and transparent elections, and in the absence of appropriate measures, electoral integrity may in fact suffer.

While Covid-19 has and will continue to pose a major health risk, in so far as the Caribbean is concerned, this demanded a response of the government and election management bodies that would minimize both the health risk posed to the nation and the potential for disruption of democracy. Clearly, Barbados' election officials had to face a conundrum/dilemma for the 2022 election. It is a conundrum that pitted two critical goals, neither one of which should have been sacrificed to promote the other. On the one hand, there was, unfortunately, a perception that because Covid-19 is a health crisis it merely required a medical response. But Covid-19 is more than simply a health security issue, it is indeed a major crisis that demanded a response that ensured the security and safeguarding of democracy. This understanding was clearly absent from the approach taken by the Electoral and Boundaries Commission of Barbados (EBC). On January 01, 2022, and January 17, 2022, mere days after the announcement of the snap elections, the chairman of the EBC (Leslie Haynes) and the Head of the Covid Monitoring Unit (Ronald Chapman), declared that Covid-19 patients would not be allowed to vote in clear violation of the Representation of the People Act (ROPA). The Chairman maintained that as the EBC was "bound by the law" Covid-19 positives in quarantine and home isolation cannot vote "because of the Covid-19 Directive currently in force under the Emergency Management Act, which prohibits those persons from leaving isolation for any reason".⁷ Health concerns were, therefore, completely, and erroneously elevated over democratic rights, whether constitutional, legal or simply political.

The abject failure of the Commission to undertake any modification of the arrangements for the conduct of elections in the country over the eighteen-month period following the onslaught of the virus globally and in the Caribbean specifically exposed the limitations of the Elections Management Body. There was a clear lack of appreciation on the part of the Commission that managing an election during a natural disaster required a delicate balance between maintaining democracy and human security. Instead, the EBC saw the choice in binary terms. This binary choice was unnecessary. We can thus conclude that for all intents and purposes, the EBC boxed itself into what can only be described as a classic cornelian dilemma, operating under the notion that faced with a difficult choice, it was impossible not to choose one path over another given the perceived unpalatable consequences for the nation. The EBC, therefore, chose to disenfranchise thousands of voters who were Covid-19 positive, an act that had serious implications for the credibility of elections 2022 in the country.

As we will show based on the assessment of the legal environment and the possibilities for facilitating electors, the EBC failed to develop contingency plans over the period. Indeed, the Chairman was quite pellucid when he stated that, staging the election under emergency conditions such as Covid-19 was unanticipated. That is highly debatable notwithstanding the snap elections. Many countries, including some of those who held elections in the Caribbean under Covid-19 conditions, made minor adjustments to facilitate voters infected with the virus, though these changes did not extend to modifying the legal framework. For sure, the outbreak of Covid-19 in early 2020 in the

US, gave the authorities sufficient time to implement postal voting mechanisms in time for the November 2020 presidential election. Similarly, South Korea is heralded for the innovations taken to encourage voters to exercise their franchise.

The Legal Environment for Elections in Barbados

Just like other Commonwealth Caribbean countries, Barbados has a bipartite electoral legal framework, comprising constitutional electoral law and legislative electoral law. The cornerstone of any electoral legal framework is the principle that all citizens of a country, barring certain disqualifications, have the right to vote in free and fair elections. This is a universal and fundamental right that is enshrined in international human rights instruments, some of which Barbados has ratified. (Art. 25 of ICCPR; Art. 23 of ACHR). In Barbados, while there is an express statutory right to vote, there is no such express right in the Constitution. Nonetheless, the right to vote can be necessarily implied into the Constitution on the basis that the text and structure of the Constitution established a representative democracy/government. (*Roach v Electoral Commissioner* [2007] HCA 43, paras. 6-7).

To ensure that elections are conducted in a free and fair manner, the Constitution of Barbados also established the EBC, which functions as an autonomous body and is entrusted with the sole responsibility for the direction and supervision of the conduct of elections in Barbados and any matters incidental thereto. (sections 41A - 42 of the Constitution of Barbados). Further, section 42(2) of the Constitution stipulates that any piece of legislation providing for the election of members of the House of Assembly shall, amongst other things, “contain provisions designed to ensure that as far as practicable any person qualified to vote at an election of members of the House of Assembly, has a reasonable opportunity of voting.” In 1971, the ROPA was enacted as the primary piece of legislation to serve this purpose and to govern and make provision for elections and the conduct thereof in Barbados. In other words, as far as staging elections is concerned, the EBC must operate within the parameters of the ROPA when discharging its constitutional functions.

The ROPA is an extensive and detailed legislative instrument, which has been amended on several occasions since its promulgation. However, despite its extensiveness and legislative amendments, the ROPA remains overwhelmingly archaic in this day and age. This was best exemplified and brought into sharp relief when Prime Minister Mottley called the snap election in Barbados amidst the Covid-19 pandemic. After the calling of the snap election and up until election day, the ROPA was not conducive to the enfranchisement of Covid-19-positive electors. In the wake of the calling of the election, the EBC formally confirmed that its hands were legally tied since the ROPA, in its current archaic formulation, precluded Covid-19-positive electors from voting on polling day, and there was nothing it could do unless the ROPA and other relevant legislation were duly altered. On the other hand, concerned citizens made appeals to the Prime Minister to address this undemocratic state of affairs, but these appeals fell on deaf ears.⁸ The ultimate result of this conundrum was that thousands of Covid-19-

positive electors were unable to exercise their democratic franchise at the 2022 Barbados general election. An evaluation of the ROPA against this backdrop will reveal that the ROPA proved to be deficient and inadequate to the extent that it failed to fulfil its purpose under section 42(2) of the Constitution since it did not contain enabling provisions for Covid-19-positive electors to have a reasonable opportunity of voting at an election during the pandemic.

The ROPA Framework

The ROPA embodies the entitlement of electors to vote at elections in Barbados. Section 6 of the ROPA provides that a person is entitled to vote at an election in a constituency if he is qualified to be an elector for that constituency and is registered in the register of electors to be used in that constituency on polling day. The qualifications for registration as an elector in a constituency are enumerated in section 7 of the ROPA, which states that:

“...a person is qualified to be registered as an elector for a constituency if, on the qualifying date, he

- a) is a citizen of Barbados; or
- b) is a Commonwealth citizen who has resided in Barbados for a period of at least three years immediately before the qualifying date; and
- c) is 18 years of age or over; and
- d) has resided in that constituency for a period of at least 3 months before that qualifying date...”

Under section 8 of the ROPA, certain categories of persons are disqualified from voting at an election. These disqualified persons are: (i) persons of unsound mind and patients in psychiatric hospitals; (ii) imprisoned persons; (iii) condemned persons; and (iv) persons who are disentitled from voting under any other law.

At first blush, therefore, there is nothing in sections 6-8 of the ROPA that specifically disqualifies Covid-19 patients or persons with other infectious diseases from voting at a national election in Barbados. However, the limitations of the ROPA became quite manifest when the ROPA was contextually construed and applied during an election that transpired amidst the Covid-19 pandemic. For example, section 39 of the ROPA effectively makes it mandatory for electors, who are domiciled in Barbados, to vote *in person* at designated polling stations in their constituencies. This provision, by itself, made it virtually impossible for Covid-19-positive electors to vote at the 2022 Barbados general election since the vast majority of them were in home isolation while the others were quarantining in isolation facilities, as required by the Emergency Management (Covid-19) Order, 2020. Moreover, although it would have been logistically possible for the EBC to set up polling stations at isolation facilities for Covid-19-positive electors therein to vote in person, this was legally difficult to do once a strict interpretation of the law was adopted. The strict interpretation of the legislative requirements in sections 6 & 7 of the ROPA would have put a spoke in the EBC's

wheel. While most or all Covid-19-positive electors in isolation facilities would have been able to satisfy criteria (a)-(c) listed in section 7 of the ROPA, it was impossible for some or most of them to satisfy criterion (d), given that they would not have been deemed to be resident in the constituencies in which the isolation facilities are located for at least three (3) months. Consequently, some of the Covid-19-positive electors would have been disqualified from being registered as electors for those constituencies, and the EBC would have infringed section 6 of the ROPA if it had created polling stations at the isolation facilities to allow these Covid-19 patients to vote. The conjoint effect of these limitations identified in the ROPA was that even though Covid-19-positive electors met the eligibility criteria for voting under the ROPA, they were nonetheless deprived of their right to vote during the pandemic when a snap election was called.

Right to Vote vs Protecting Public Health

While it is permissible to curtail or derogate from the right to vote during periods of public emergency such as the Covid-19 pandemic, the curtailment or derogation from that right must be to the extent strictly required by the exigencies of the situation. In other words, it must be proportionate relative to the achievement of the objective. (CCPR General Comment No. 29, para. 4). Indisputably, the objective to be achieved by requiring Covid-19 patients to quarantine at home or in isolation stations is the protection of public health and safety. This is an objective that cannot be understated, considering the havoc that Covid-19 has wreaked in Barbados and across the globe. However, in liberal democracies, even amidst public health calamities, a delicate balance must be struck between ensuring the protection of public health and the protection of civil rights and liberties. The question, then, is – did the exigencies of the Covid-19 pandemic warrant the deprivation of Covid-19-positive electors' right to vote in the 2022 Barbados general election? The answer must be in the negative. The government and the EBC could have safeguarded public health and avoided the disenfranchisement of Covid-19-positive electors simultaneously if they had both ensured that the ROPA was amended before the election to provide for special voting mechanisms, which would not have required Covid-19-positive electors to cast their votes in person at the usual polling stations in their constituencies.

In an effort to strike a proper and effective balance between protecting public health and electoral integrity, the ROPA could have been amended to facilitate mail-in voting for Covid-19-positive electors. While the ROPA makes provision for some form of mail-in voting, this voting device is exclusively available to foreign service electors, i.e. persons who are qualified to vote at elections in Barbados and are: (i) serving abroad at a Mission; or (ii) members of the household of a person who is serving abroad at a Mission. After foreign service electors have cast their votes at the Mission, rules 45-48 of the Election Rules of the ROPA require the foreign service ballot papers to be placed in envelopes, and these envelopes must be placed in a packet, which must then be transmitted by the presiding officer of the Mission to the Supervisor of Elections in Barbados. However, by restricting the accessibility of mail-in voting to one category of

electors, the rules in the ROPA leave much to be desired and pale in comparison to what obtains in other countries with more progressive rules. Electoral rules in countries such as Australia and America expand the categories of electors that can utilize mail-in voting, and Covid-19 patients undoubtedly fall into some of these categories. For instance, section 184A of the Australian Commonwealth Electoral Act 1918 provides that:

“(1) An elector may apply to the Electoral Commissioner for registration as a general postal voter for a Division.

(2) An application shall be made on one of the following grounds:

...

(b) the applicant:

(i) is a patient at a hospital (other than a hospital that is a polling place); and

(ii) because of serious illness or infirmity, is unable to travel from the hospital to a polling place;

(c) because of serious illness or infirmity, the applicant is unable to travel from the place where he or she lives to a polling place....”

Moreover, States in America permit electors to benefit from mail-in voting with or without an excuse. In States where an excuse is required in order to vote by mail, a legitimate excuse is usually that an elector is ill or infirm and therefore will be unable to physically go to his/her polling station. (USA.gov.). Due to the availability of this voting method, many electors, including Covid-19-positive electors, were able to vote by mail for the 2020 US presidential elections. Statistical information from the United States Census Bureau demonstrates that 69 percent of voters in the US cast their ballots non-traditionally – by mail and/or before polling day – in the 2020 election, and 43 percent of that 69 percent cast their ballots via mail.⁹ One US scholar even posited that “mail-voting during the pandemic is a necessary countermeasure to protect public health and safety...[2020] provides opportunity to expedite necessary election modifications that encourage exercise of the franchise and expand accessibility to historically disenfranchised eligible voters.” (Kawahara, 2020, p. 3). The absence of this voting mechanism for more categories of electors in Barbados once again highlights the limitations of the ROPA, which led to the undue and unfair disenfranchisement of Covid-19-positive electors during the 2022 general election.

Online voting is another medium that could have been incorporated into the ROPA to enable Covid-19-positive electors to vote remotely at the 2022 Barbados general election. This option, however, would have necessitated tremendous technical and expert backing to implement a robust electronic voting system, which would pre-empt problems such as electronic malfunction, electoral fraud, data privacy risks and cyber-

attacks. As it stands, Estonia is the only country in the world that allows all electors to cast votes online for any type of election.¹⁰ However, to ensure the minimization of security risks, the government of Barbados could have altered the ROPA to only allow certain categories of electors – including Covid-19-positive electors – to employ this voting method. For example, in countries such as France, Panama and Pakistan, online voting is specifically for the avail of electors who reside abroad, and in some States in Australia, this voting option is reserved for incapacitated or disabled electors, who are unable to go to designated polling stations.¹¹ By the same token, after careful thought and planning, online voting for Covid-19-positive electors could have been adopted in Barbados, subsequent to the onset of the pandemic and prior to the calling of the snap election, to enfranchise those Covid-19-positive electors who were in home isolation or in isolation facilities. Had this been done, these electors' democratic right to vote and public health and safety would have been equally protected.

Voting by proxy is also an alternative voting arrangement that could have been deployed to ensure the enfranchisement of Covid-19-positive electors at the 2022 general election in Barbados. While the ROPA does not explicitly make reference to proxy voting, it nevertheless effectively makes provision for a similar type of voting in the form of companion voting. However, just like mail-in voting, this voting procedure is reserved for limited categories of electors, viz., blind and incapacitated electors. Under section 31 of the ROPA, a blind or incapacitated elector can cast their vote with the assistance of another person who accompanies them ("a companion"). The inconvenience, though, is that these blind or incapacitated electors and their companions are still required to go to polling stations for this voting procedure. This existing voting procedure as prescribed in the ROPA would not have served Covid-19-positive electors well since not all of them would be deemed "incapacitated", and in any event, they could not go to polling stations owing to the requirement for them to remain in home isolation or quarantine facilities. There are other national precedents that Barbados could have followed to allow proxy voting for Covid-19-positive electors. For instance, in Croatia, the State Election Commission initially issued instructions which stated that electors who were infected with Covid-19 would not be able to vote at the 2020 Croatian parliamentary elections. This restriction on Covid-19-positive electors' right to vote was successfully challenged before Croatia's Constitutional Court. The Court ruled that the Commission had to ensure that every citizen had the opportunity to exercise their right to vote and that people with infectious diseases cannot be denied their right to vote, but due to the requirement to protect public health, the right to vote had to be exercised by protecting the health of all persons involved in the electoral process. As a result of this ruling, the Commission was constrained to pivot and subsequently announced that Covid-19-positive electors in isolation would be able to vote by proxy, whereby they could choose a trusted representative to vote on their behalf.¹² This method enabled Covid-19-positive electors to vote without coming into contact with electoral officers or the ballot. Other countries such as Gibraltar and the Netherlands also facilitated voting for Covid-19-positive electors who were in isolation by allowing them to vote by proxy in referenda and at

parliamentary elections. (IDEA Report on Global State of Democracy, 2021, p. 12). The government of Barbados could have followed suit by amending the ROPA to permit the EBC to implement measures for the facilitation of proxy voting by Covid-19-positive electors. However, this was not done. Instead of effecting this amendment to strike a proper balance between the protection of public health and the protection of the right to vote, the EBC and the government placed a premium on the former and completely relegated the latter.

Another deficiency of the ROPA is that it does not make provision for mobile ballot box voting. Mobile voting is “a form of voting where members of the election administration visit a voter either at home or at an institution in which they reside with a mobile ballot box to facilitate their vote.”¹³ In other countries around the world, this modality of voting is typically restricted to various special categories of voters, including disabled voters and voters in hospitals, nursing homes, prisons and detention centres. During the pandemic, countries such as Bulgaria, Iran, Mongolia and Portugal utilized this voting modality to facilitate the casting of votes by voters in Covid-19 quarantine facilities. (IDEA Report on Global State of Democracy, 2021, p. 12). However, while the usage of this method enhances voting accessibility for Covid-19-positive electors in isolation, it must also ensure the safety of the electoral officials who will be visiting these infected electors. Unquestionably, therefore, if the government of Barbados had altered the ROPA to institute this voting procedure, it would have had to dictate the strict adherence to Covid-19 protocols by the electoral officials and the electors in isolation. This means that the usual requirements such as adequate social distancing, mask-wearing and frequent sanitization would have been absolutely critical to ensure that the voting was taking place in a safe manner and environment. Once again, by failing to make this voting method available in the ROPA, the government squandered a golden opportunity to safeguard public health without depriving Covid-19-positive electors of their franchise.

Undemocratic Jeopardy

The requirement in the ROPA that makes it obligatory for all electors in Barbados to vote in person at an election renders the ROPA unwarrantedly restrictive and practically archaic. This archaism engendered the disenfranchisement of thousands of Covid-19-positive electors at the 2022 Barbados general election. Such disenfranchisement was disproportionate and unjustifiable on the basis that it could have been avoided if the government had amended the ROPA to allow for less restrictive voting means, such as postal voting, online voting, proxy voting and mobile ballot box voting. As a result, the ROPA failed to realize one of its primary constitutional purposes under section 42(2) of the Constitution of Barbados, which requires the ROPA to afford all persons who are qualified to vote a reasonable opportunity of enfranchisement. This constitutional requirement to afford all electors a reasonable opportunity of voting was designed to preserve and valorize the right to vote and democracy itself. The right to vote is so foundational to democracy that it is virtually inconceivable for one to exist without the

other. Therefore, to unduly deprive persons of their right to vote would be to divest democracy of its essence. It is safe to say, then, that by disbarring Covid-19-positive electors from electoral participation in the 2022 general election, Barbadian democracy was subverted, and this resulted in an undemocratic precipice. The International Institute for Democracy and Electoral Assistance confirmed in 2021 that the global state of democracy has been at a low ebb on account of the pandemic era. Nonetheless, it still encouraged democracies to reflect on lessons learned from the pandemic and implement the reforms needed to be able to circumvent future democratic challenges more effectively, efficiently and responsively. (IDEA Report on Global State of Democracy, 2021, p. 37). Hopefully, Barbados, as a relatively young democracy, has learned its lesson and will effect the much-needed reforms to the ROPA for its modernization.

The Snap Election of 2022

One of the outstanding features of Westminster parliamentary systems is the ability of governments to call an early election by dissolving the parliament. Alternatively, early elections have been called as a direct result of a successful no-confidence motion. The Barbados Constitution clearly grants such absolute power to the Prime Minister and on December 27, 2022, the Prime Minister availed herself of that constitutional power and scheduled an election in the shortest turnaround period following an election in the country. Not much work has been done on the advisability of calling an early election during a natural disaster such as Covid-19, and we do not believe that any country except Barbados has in fact done so. While Covid-19 has forced several countries to postpone their elections for a variety of reasons, most have chosen to undertake elections when constitutionally due during this period.

The call itself was quite controversial given that the country was in the throes of an upturn in Covid-19 related infections and does at face value appear to be counterintuitive as explained by James and Alihodzic given the obvious risks posed to human life and security and the importance placed on elections and the right to vote. They, therefore, contend that “[h]olding elections when they might jeopardize lives would therefore be a counterintuitive use of institutions designed to facilitate individual and collective preservation” (James and Alihodzic, p.348). This recognition is clearly evident in the decision for instance of the government of Jamaica to further postpone local government elections which were already postponed to 2022 by another year to February 2023. In defense of a further amendment to the Representation of the People Act, (Postponement of Elections to Municipal Corporations and City Municipalities), the Minister of Local Government and Rural Development, Hon. Desmond McKenzie, argued that given the ongoing coronavirus (COVID-19) and the fourth wave of the pandemic, the holding of an election in February 2022 would put the country at greater public-health risk.

Given the clear failure of the EBC to undertake any assessment of the legal framework for the conduct of elections during the Covid-19 period and in the context where there was glaring evidence that Covid-19 negatively impacted voter turnout globally, it was

unsurprising that Barbados experienced its lowest voter turnout on record for the country and elsewhere in the Caribbean with the single exception of Jamaica where turnout was placed at 37.85 percent down from the already low voter turnout of 48.37 percent in 2016.

We agree with James and Alihodzic that democracy demands robust electoral management quality and that electoral laws can be designed in ways that support and strengthen democracy. We further agree that both electoral law and robust election management quality must be marked by convenience to the voter, quality of service, transparency, professionalism, probity, cost-effectiveness, and citizen and stakeholder satisfaction. Some of these were clearly lacking in the 2022 Barbados general election.

But the snap elections also had important consequences for the political parties who must attempt to mobilize voters if they have a reasonable chance to win an election. These elections were conducted against the backdrop of a clean sweep of the BLP in 2018 which left the other major political party, the Democratic Labour Party, struggling to rebuild. Given the Covid-19 and the measures taken to stem the spread of the virus, it was impossible for parties to engage in the traditional strategies for mobilizing voters. These now had to be pivoted to online or a blended/hybrid form of electioneering as we witnessed in the US 2020 presidential elections. At the same time, the pandemic provided an opportunity for parties to reduce their dependency on mass rallies, motorcades, and so on and to utilize social media, and the internet as a means of sharing their campaign messages.

CONCLUDING REMARKS

The paper argued that the January 19, 2022, general election which took place in Barbados occurred in a context where it was unlikely that the voters, political parties, and candidates would not have been negatively impacted by a range of factors. Most notable, was the unexpected nature of the dissolution of the national parliament more than sixteen months before elections were constitutionally due. When combined with an archaic electoral framework that is stuck in the twentieth century and which does not conceive of anything but voting in attendance in the midst of a natural disaster such as the Covid-19 pandemic, this could not but have had serious consequences for the conduct and outcome of the elections. We further argue that above all, these elections signal the need for major reform of the electoral framework for the conduct of elections to ensure that in keeping with the understanding of democracy and specifically the importance attached to the vote, every effort must be made to modernize the legal framework for the conduct of elections.

Notes

1. Clean sweeps were also achieved in St. Vincent and the Grenadines in 1989, Grenada in 1999, 2013, and 2018.
2. The 2008-2009 global economic crisis severely impacted Barbados which experienced a decade of low growth, fiscal and external imbalances averaging about 8 percent of GDP. The public debt of the government grew from 81 percent to 158 percent of GDP. This was accompanied by the reduced attractiveness of government borrowing so that commercial banks responded by reducing the holdings of long-term debt in favour of short-term debt with the resultant consequence that government gross financing needed to be increased to 51 percent of GDP from an already unmanageable 16 percent. International reserves also declined to a mere US\$220 million by 2013. The Barbados credit rating, therefore, plummeted to selective default on June 6, 2018.
3. The timing of the government's announcement in June 2018 was largely motivated by hefty external debt payment which was due in early June 2018.
4. Act to alter the Constitution, https://www.barbadosparliament.com/uploads/bill_resolution/56f53e308108b4b315d1b367c2914f7a.pdf. (Accessed September 30, 2021).
5. V-Dem is the largest global democracy database in existence and the first systematic effort to measure the de facto existence of all institutions that make up Robert A. Dahl's famous conceptualization of electoral democracy as "polyarchy" in addition to the rule of law ensuring respect for civil liberties, judicial constraints on the executive branch, and legislative checks and oversight of the executive. It has more than eighteen-million data points relevant to democracy, which measures 350 highly specific indicators across 174 countries.
6. See IDEA <https://www.idea.int/news-media/multimedia-reports/global-overview-covid-19-impact-elections>.
7. See Carrington, Julie. (2022). "EBC Bound By Law Regarding COVID Positive Voters." Government Information Service. <https://gisbarbados.gov.bb/blog/ebc-bound-by-law-regarding-covid-positive-voters/> (Accessed online, January 23, 2022).
8. See Yearwood, Rico. (2022) "The boundaries of the EBC." Barbados Today Newspaper. <https://barbadostoday.bb/2022/01/07/btcolumn-the-boundaries-of-the-ebc/>. (Accessed online, January 27, 2022); see also Patterson, Garth. (2022) "Our electoral laws are constitutionally flawed." Barbados Today Newspaper. <https://barbadostoday.bb/2022/01/11/btcolumn-our-electoral-laws-are-constitutionally-flawed/>. (Accessed online, January 27, 2022).
9. See Scherer, Zachary. United States Census Bureau (2021). "What Methods Did People Use to Vote in the 2020 Election?". <https://www.census.gov/library/stories/2021/04/what-methods-did-people-use-to-vote-in-2020-election.html>. (Accessed online, January 28, 2022).
10. See IDEA <https://www.idea.int/data-tools/question-view/742>. (Accessed online, January 28, 2020); see also Pérez, Adrià. (2020) "Which Countries Use Online Voting?" <https://medium.com/edge-elections/which-countries-use-online-voting-3f7300ce2f0>. (Accessed online, January 28, 2022).
11. See IDEA <https://www.idea.int/data-tools/question-view/742>. (Accessed online, January 28, 2020); see also Pérez, Adrià. (2020) "Which Countries Use Online Voting?"

<https://medium.com/edge-elections/which-countries-use-online-voting-3f7300ce2f0>.
(Accessed online, January 28, 2022).

12. See Control of elections: U-VII-2980/2020
<https://sljeme.usud.hr/usud/praksven.nsf/fOdluka.xsp?action=openDocument&documentId=54A9F7A62A4363AAC125859F00234EC8>. (Accessed online, January 28, 2022); see also Keršić, Marin. (2020). "Voting in Times of a Pandemic: The Case of Croatia: Constitutional Conflict between the Right to Vote and the Protection of Health." *Verfassungsblog on Matters Constitutional*. <https://verfassungsblog.de/voting-in-times-of-a-pandemic/>. (Accessed online, January 28, 2022).
13. See IDEA. "Mobile Voting – Serving Voters, Protecting Democracy."
<https://www.idea.int/es/node/312766>. (Accessed online, January 28, 2022).

Reference List

1. ACHR <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>.
(Accessed online, January 27, 2022).
2. Act to alter the Constitution,
https://www.barbadosparliament.com/uploads/bill_resolution/56f53e308108b4b315d1b367c2914f7a.pdf. (Accessed September 30, 2021).
3. Australian Commonwealth Electoral Act, 1918.
<https://www.legislation.gov.au/Details/C2021C00140>. (Accessed online, January 27, 2022).
4. CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency.
<https://www.refworld.org/docid/453883fd1f.html>. (Accessed online, January 27, 2022).
5. Constitution of Barbados, 1966. https://www.oas.org/dil/the_constitution_of_barbados.pdf.
(Accessed online, January 27, 2022).
6. Emergency Management (Covid-19) Order, 2020. <https://pmo.gov.bb/wp-content/uploads/2020/03/Emergency-Management-Covid-19-Order-2020.1.pdf>. (Accessed online, January 27, 2022).
7. Hill, Christopher et al. (2018). "Democratic Erosion: An Empirical Approach".
https://www.democratic-erosion.com/wp-content/uploads/2018/06/Event-Dataset-on-Democratic-Erosion_Final.pdf. (Accessed online, January 23, 2022).
8. Hinds, Kristina and Stephens, Jeremy. (2017). "Fiscal crises in Barbados: comparing the early 1990s and the post-2008 crises." *Third World Thematics: A TWQ Journal*, Volume 2 (6) 762-782.
9. ICCPR <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>. (Accessed online, January 27, 2022).
10. IDEA <https://www.idea.int/news-media/multimedia-reports/global-overview-covid-19-impact-elections>. (Accessed online, January 23, 2022).

11. IDEA Report on Global State of Democracy: Building Resilience in a Pandemic Era, 2021.
https://www.idea.int/gsod/sites/default/files/2021-11/the-global-state-of-democracy-2021_1.pdf. (Accessed online, January 28, 2022).
12. IMF (2019). “Barbados: 2019 ARTICLE IV CONSULTATION, SECOND REVIEW UNDER THE EXTENDED ARRANGEMENT, REQUEST FOR COMPLETION OF THE FINANCING ASSURANCES REVIEW, AND MODIFICATION OF PERFORMANCE CRITERIA —PRESS RELEASES; STAFF REPORT; AND STATEMENT BY THE EXECUTIVE DIRECTOR FOR BARBADOS.” IMF Country Report No. 19/370 (December). <https://www.elibrary.imf.org/view/journals/002/2019/370/002.2019.issue-370-en.xml>, (Accessed online, January 22, 2022).
13. James, Toby S. and Alihodzic, Sead. (2020). “When Is It Democratic to Postpone an Election? Elections During Natural Disasters, COVID-19, and Emergency Situations”. *ELECTION LAW JOURNAL*, Volume 19, (3), 344-362.
<https://www.liebertpub.com/doi/epdf/10.1089/elj.2020.0642>. (Accessed March 06, 2021).
14. Kawahara, Emily (2020). “Mail-Voting During COVID-19: Protecting Public Health and Expanding Voting Accessibility.” *Center for Health Law Policy and Bioethics*. 75.
15. Landman, Todd and Di Gennaro Splendore, Luca (2020). “Pandemic democracy: elections and covid-19.” *Journal of Risk Research*, Volume 23 (7-8), Special Issue.
<https://www.tandfonline.com/doi/full/10.1080/13669877.2020.1765003>. (Accessed online, January 23, 2022).
16. Mechkova, Valeriya, Lührmann, Anna and Staffan I. Lindberg. (2017). “How Much Democratic Backsliding?” *Journal of Democracy*, Volume 28 (4) October, 162-169.
https://www.researchgate.net/profile/Staffan-Lindberg-3/publication/320275677_How_Much_Democratic_Backsliding/links/59f2e281aca272cdc7d0326b/How-Much-Democratic-Backsliding.pdf. (Accessed online, January 23, 2022).
17. Representation of the People Act (1971), CAP. 12.
http://www.caribbeanelections.com/eDocs/legislation/bb/bb_%20Representation%20of%20the%20People%20Act-%20CAP12%20-2007-19.pdf. (Accessed online, January 27, 2022).
18. Roach v Electoral Commissioner [2007] HCA 43
<https://eresources.hcourt.gov.au/showCase/2007/HCA/43>. (Accessed online, January 27, 2022).
19. USA.gov. <https://www.usa.gov/absentee-voting>. (Accessed online, January 28, 2022).